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<thead>
<tr>
<th>Month</th>
<th>Date</th>
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<td>13, 14, 15, 16, 19, 20, 21, 22, 23</td>
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<td>September</td>
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<td>November</td>
<td>6, 7, 8, 9, 27, 28, 29, 30</td>
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<td>December</td>
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**RADIO BROADCASTS**

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

Nations 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
### Members of the Senate

<table>
<thead>
<tr>
<th>Senator</th>
<th>State or Territory</th>
<th>Term expires</th>
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<td>TAS</td>
<td>30.6.2011</td>
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(1) Chosen by the Parliament of Queensland to fill a casual vacancy vice Hon. John Joseph Herron, resigned.
(2) Chosen by the Parliament of Victoria to fill a casual vacancy vice Hon. Richard Kenneth Robert Alston, resigned.
(3) Term expires at close of day next preceding the polling day for the general election of members of the House of Representatives.
(4) Chosen by the Parliament of Tasmania to fill a casual vacancy vice Susan Mary Mackay, resigned.
(5) Chosen by the Parliament of South Australia to fill a casual vacancy vice Hon. Robert Murray Hill, resigned.

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

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

Prime Minister
The Hon. John Winston Howard MP
Minister for Transport and Regional Services and
Deputy Prime Minister
The Hon. Mark Anthony James Vaile MP
Treasurer
The Hon. Peter Howard Costello MP
Minister for Trade
The Hon. Warren Errol Truss MP
Minister for Defence
The Hon. Dr Brendan John Nelson MP
Minister for Foreign Affairs
The Hon. Alexander John Gosse Downer MP
Minister for Health and Ageing and Leader of the
House
The Hon. Anthony John Abbott MP
Attorney-General
The Hon. Philip Maxwell Ruddock MP
Minister for Finance and Administration,
Leader of the Government in the Senate and
Vice-President of the Executive Council
Senator the Hon. Nicholas Hugh Minchin
Minister for Agriculture, Fisheries and Forestry
and Deputy Leader of the House
The Hon. Peter John McGauran MP
Minister for Immigration and Multicultural Affairs
Senator the Hon. Amanda Eloise Vanstone
Minister for Education, Science and Training and
The Hon. Julie Isabel Bishop MP
Minister Assisting the Prime Minister for
Women’s Issues

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

Minister for Industry, Tourism and Resources
The Hon. Ian Elgin Macfarlane MP
Minister for Employment and Workplace
Relations and Minister Assisting the Prime
Minister for the Public Service
The Hon. Kevin James Andrews MP
Minister for Communications, Information
Technology and the Arts and Deputy Leader of
the Government in the Senate
Senator the Hon. Helen Lloyd Coonan
Minister for the Environment and Heritage
Senator the Hon. Ian Gordon Campbell

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

Minister for Justice and Customs and Manager of Government Business in the Senate
Minister for Fisheries, Forestry and Conservation
Minister for the Arts and Sport
Minister for Human Services and Minister Assisting the Minister for Workplace Relations
Minister for Community Services
Minister for Revenue and Assistant Treasurer
Special Minister of State
Minister for Vocational and Technical Education and Minister Assisting the Prime Minister
Minister for Ageing
Minister for Small Business and Tourism
Minister for Local Government, Territories and Roads
Minister for Veterans’ Affairs and Minister Assisting the Minister for Defence
Minister for Workforce Participation
Parliamentary Secretary to the Minister for Finance and Administration
Parliamentary Secretary to the Minister for Industry, Tourism and Resources
Parliamentary Secretary to the Minister for Health and Ageing
Parliamentary Secretary to the Minister for Defence
Parliamentary Secretary to the Minister for Transport and Regional Services
Parliamentary Secretary to the Minister for Immigration and Multicultural Affairs
Parliamentary Secretary to the Prime Minister
Parliamentary Secretary to the Treasurer
Parliamentary Secretary to the Minister for the Environment and Heritage
Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry
Parliamentary Secretary to the Minister for Education, Science and Training
Parliamentary Secretary (Foreign Affairs)

Senator the Hon. Christopher Martin Ellison
Senator the Hon. Eric Abetz
Senator the Hon. Charles Roderick Kemp
The Hon. Joseph Benedict Hockey MP
The Hon. John Kenneth Cobb MP
The Hon. Peter Craig Dutton MP
The Hon. Gary Roy Nairn MP
The Hon. Gary Douglas Hardgrave MP
Senator the Hon. Santo Santoro
The Hon. Frances Esther Bailey MP
The Hon. James Eric Lloyd MP
The Hon. Bruce Frederick Billson MP
The Hon. Dr Sharman Nancy Stone MP
Senator the Hon. Richard Mansell Colbeck
The Hon. Robert Charles Baldwin MP
The Hon. Christopher Maurice Pyne MP
Senator the Hon. John Alexander Lindsay (Sandy) Macdonald
The Hon. De-Anne Margaret Kelly MP
The Hon. Andrew John Robb MP
The Hon. Malcolm Bligh Turnbull MP
The Hon. Christopher John Pearce MP
The Hon. Gregory Andrew Hunt MP
The Hon. Sussan Penelope Ley MP
The Hon. Patrick Francis Farmer MP
The Hon. Teresa Gambaro MP
### SHADOW MINISTRY

<table>
<thead>
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<th>Role</th>
<th>Member</th>
</tr>
</thead>
<tbody>
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<td>Leader of the Opposition</td>
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<td>Jennifer Louise Macklin MP</td>
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<td>and Shadow Minister for Corporate Governance and</td>
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<td>Responsibility</td>
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(The above are shadow cabinet ministers)
**SHADOW MINISTRY—continued**

<table>
<thead>
<tr>
<th>Position</th>
<th>MP Name</th>
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<tbody>
<tr>
<td>Shadow Minister for Consumer Affairs and</td>
<td>Laurie Donald Thomas Ferguson MP</td>
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<td>Shadow Minister for Population Health and Health Regulation</td>
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<td>Shadow Minister for Agriculture and Fisheries</td>
<td>Gavan Michael O’Connor MP</td>
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<td>Shadow Assistant Treasurer, Shadow Minister for Revenue and Shadow Minister for Small Business and Competition</td>
<td>Joel Andrew Fitzgibbon MP</td>
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<td>Shadow Minister for Transport</td>
<td>Senator Kerry Williams Kelso O’Brien</td>
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<td>Shadow Minister for Sport and Recreation</td>
<td>Senator Kate Alexandra Lundy</td>
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<td>Shadow Minister for Homeland Security and Shadow Minister for Aviation and Transport Security</td>
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<td>Shadow Minister for Veterans’ Affairs and Shadow Special Minister of State</td>
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<td>Shadow Minister for Defence Industry, Procurement and Personnel</td>
<td>Senator Thomas Mark Bishop</td>
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<td>Shadow Minister for Immigration</td>
<td>Anthony Stephen Burke MP</td>
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<td>Shadow Minister for Ageing, Disabilities and Carers</td>
<td>Senator Jan Elizabeth McLucas</td>
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<td>Shadow Minister for Justice and Customs and Manager of Opposition Business in the Senate</td>
<td>Senator Joseph William Ludwig</td>
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<td>Shadow Minister for Overseas Aid and Pacific Island Affairs</td>
<td>Robert Charles Grant Sercombe MP</td>
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<td>Shadow Minister for Citizenship and Multicultural Affairs</td>
<td>Senator Annette Hurley</td>
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<td>Shadow Parliamentary Secretary for Reconciliation and the Arts</td>
<td>Peter Robert Garrett MP</td>
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<td>Shadow Parliamentary Secretary to the Leader of the Opposition</td>
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<tr>
<td>Shadow Parliamentary Secretary for Defence and Veterans’ Affairs</td>
<td>The Hon. Graham John Edwards MP</td>
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<tr>
<td>Shadow Parliamentary Secretary for Education</td>
<td>Kirsten Fiona Livermore MP</td>
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<td>Shadow Parliamentary Secretary for Environment and Heritage</td>
<td>Jennie George MP</td>
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<td>Shadow Parliamentary Secretary for Industry, Infrastructure and Industrial Relations</td>
<td>Bernard Fernando Ripoll MP</td>
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<td>Shadow Parliamentary Secretary for Immigration</td>
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<td>Shadow Parliamentary Secretary for Treasury</td>
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<td>Shadow Parliamentary Secretary for Science and Water</td>
<td>Senator Ursula Mary Stephens</td>
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<tr>
<td>Shadow Parliamentary Secretary for Northern Australia and Indigenous Affairs</td>
<td>The Hon. Warren Edward Snowdon MP</td>
</tr>
</tbody>
</table>
CONTENTS

WEDNESDAY, 18 OCTOBER

Chamber

Long Service Leave (Commonwealth Employees) Amendment Bill 2006—
  Second Reading ................................................................................................................. 1
  Third Reading ................................................................................................................... 14

Corporations (Aboriginal and Torres Strait Islander) Bill 2006,
Corporations Amendment (Aboriginal and Torres Strait Islander Corporations) Bill 2006, and
Corporations (Aboriginal and Torres Strait Islander) Consequential, Transitional and Other
Measures Bill 2006—
  Second Reading ................................................................................................................. 14
  In Committee ................................................................................................................... 32
  Third Reading .................................................................................................................. 38

Child Support Legislation Amendment (Reform of the Child Support Scheme—New
Formula and Other Measures) Bill 2006—
  Second Reading ................................................................................................................. 38

Matters of Public Interest—
  Private Health Insurance ..................................................................................................... 47
  Independent Contracting: Owner-Drivers ........................................................................... 50
  Water .................................................................................................................................. 52
  Sedition Laws ..................................................................................................................... 56
  Child Abuse ....................................................................................................................... 59

Questions Without Notice—
  Media Ownership .............................................................................................................. 61

Distinguished Visitors ........................................................................................................... 62

Questions Without Notice—
  Drought ............................................................................................................................ 62
  Aged Care ......................................................................................................................... 64
  Mental Health ................................................................................................................... 66
  Aged Care ......................................................................................................................... 67

Distinguished Visitors .......................................................................................................... 69

Questions Without Notice—
  Crime in the Community .................................................................................................... 69
  Nuclear Energy .................................................................................................................. 70
  Immigration ....................................................................................................................... 71
  Military Justice .................................................................................................................. 73
  Media Ownership .............................................................................................................. 74
  Civil Aviation Safety Authority .......................................................................................... 75

Questions Without Notice: Additional Answers—
  Military Justice .................................................................................................................. 76

Questions Without Notice: Take Note of Answers—
  Answers to Questions ........................................................................................................ 77
  Nuclear Energy .................................................................................................................. 83

Notices—
  Presentation ....................................................................................................................... 84

Committees—
  Rural and Regional Affairs and Transport Committee—Extension of Time ...................... 86
  Foreign Affairs, Defence and Trade Committee—Meeting ................................................. 86
  Environment, Communications, Information Technology and the Arts Committee—
  Meeting ............................................................................................................................. 86
CONTENTS—continued

Environment, Communications, Information Technology and the Arts Committee—
  Extension of Time ................................................................. 86
  Treaties Committee—Meeting ............................................. 86
50th Anniversary of the Hungarian Revolution ................................................. 86
Leave of Absence............................................................... 87
Notices—
  Postponement ................................................................. 87
Crimes Amendment (Victim Impact Statements) Bill 2006—
  First Reading ........................................................................ 87
  Second Reading .................................................................... 87
Child Protection ........................................................................ 91
Global Poverty and the Millennium Development Goals ...................................... 91
Siev X ...................................................................................... 91
Matters of Public Importance—
  Skills Shortages ................................................................. 91
Committees—
  Scrutiny of Bills Committee—Report ................................... 106
  Public Works Committee—Reports .................................... 110
  Foreign Affairs, Defence and Trade Committee: Joint—Report .................. 112
Documents—
  Parliamentary Service Commissioner Annual Report ......................... 113
Auditor-General’s Reports—
  Report No. 8 of 2006-07 ...................................................... 113
  Building Industry Taskforce: Commonwealth Ombudsman Review ........ 117
Parliamentary Zone—
  Proposal for Works ............................................................ 117
Committees—
  Membership .......................................................................... 117
Trade Practices Legislation Amendment Bill (No. 1) 2005—
  Consideration of House of Representatives Message ......................... 117
Documents—
  Department of Immigration and Multicultural Affairs ..................... 144
  Commonwealth Grants Commission .................................... 146
  Department of Immigration and Multicultural Affairs ..................... 147
  Commonwealth Ombudsman ................................................ 147
  Office of the Commissioner for Complaints .............................. 148
  Australian Security Intelligence Organisation Report to Parliament 2005-06 149
Adjournment—
  Iraq ...................................................................................... 150
  Poverty ................................................................................. 153
  Sir John Monash .................................................................. 155
Documents—
  Tabling .................................................................................. 158
Questions on Notice
  Cootamundra Aboriginal Girls Training Centre Memorial—(Question No. 1296) 160
  Post-Budget Function—(Question No. 1899) ................................ 160
  Clairvoyants—(Question Nos 1934 and 1936) ............................... 161
Wednesday, 18 October 2006

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

LONG SERVICE LEAVE (COMMONWEALTH EMPLOYEES) AMENDMENT BILL 2006

Second Reading

Debate resumed from 17 October, on motion by Senator Sandy Macdonald:

That this bill be now read a second time.

Senator SHERRY (Tasmania) (9.30 am)—The Senate is dealing with the Long Service Leave (Commonwealth Employees) Amendment Bill 2006. Labor supports this bill, which was introduced into the parliament last week. While Labor does not support the sale of Telstra, Labor does support protecting those employees who are at risk of being adversely affected by its sale. The purpose of the bill is to extend the operation of the Long Service Leave (Commonwealth Employees) Act’s coverage of Telstra employees for three years from the day on which the Commonwealth ceases to have a controlling interest in Telstra.

Telstra employees currently accrue long service leave entitlements under the Commonwealth long service leave act, which is three months long service leave after 10 years of service. However, the Telstra (Transition to Full Private Ownership) Act of 2005 already protects pre-privatisation long service leave entitlements accrued by Telstra employees, and this bill does not affect that. The intention of extending coverage of Telstra employees under the long service leave act for a period of three years from the day when the Commonwealth ceases to have a controlling interest in Telstra is to provide certainty to Telstra and to those employees who have not yet concluded alternative long service leave arrangements post-privatisation.

The bill seeks to minimise any negative impact of the sale on Telstra employees so far as long service leave entitlements are concerned by providing a three-year transition period for employees in Telstra to come up with alternative arrangements. While ultimately the form of arrangement that Telstra and its employees decide is up to them, Labor would certainly encourage Telstra to continue to offer employees—certainly existing employees—long service leave entitlements at the existing levels once the transition period has expired unless Telstra employees agree otherwise. A promise has been made—effectively a contractual obligation that should be met.

Telstra staff are currently employed under either a certified agreement which expires in August 2008 and provides for long service leave at the Commonwealth long service leave act rate or AWAs which provide long service leave which will be paid in accordance with Telstra policy but which cannot be lower than the relevant state legislative...
minimum. The amendment will provide cer-
tainty for employees, both for those who are
under the existing certified agreement and
for those who are currently engaged on
AWAs, that their entitlements will not fall
below current levels for the next three years.
However, unfortunately, this approach is not
being replicated by the government’s ap-
proach to the superannuation entitlements of
some existing Telstra employees. The Liberal
government has failed and is continuing to
fail to guarantee the rights of, and the pen-
sion promise made to, approximately 1,800
Telstra employees who, as a result of the sale
of the Commonwealth’s majority interest and
as a consequence of a government policy
decision, will be required to terminate their
ongoing membership of the Commonwealth
Superannuation Scheme, known as the CSS.

On 7 September last year Labor asked in
the Senate the Minister for Finance and Ad-
ministration, Senator Nick Minchin, explicit-
ly about this issue and he replied: ‘Super-
nannuation conditions would continue.’ That
was a response in respect of Telstra workers
once the company was sold by the govern-
ment. But he has misled the Senate on this
issue. The T3 prospectus states on page 51:
Telstra employees who are members of the Com-
monwealth’s Superannuation Scheme will cease
to be eligible employees for the purposes of the
Superannuation Act 1976 and will no longer be
entitled to contribute to the CSS.

This will have significant—it will vary from
employee to employee—adverse financial
consequences for those 1,800 Telstra em-
ployees. In a number of questions to the min-
ister for finance last week on this matter I, on
behalf of Labor, drew the attention of the
Senate to the adverse consequences for these
1,800 employees.

The CSS is a defined benefits scheme
which provides a pension promise at a given
age—55 or beyond—based on a formula of
years of membership. The CSS was available
to Commonwealth government employees
and closed to new entrants in 1990. In Aus-
tralia, when a defined benefits scheme in
either the public or the private sector is
closed, existing member benefits and the
pension promise made are maintained in
principle. It is new employees from the shut-
down date who enter the new, usually lower
level defined benefit contribution scheme or
fund; hence, the pension promise that has
been made is kept and preserved for the
member.

Labor believes this is a sound approach
both in principle and in law. A promise
made, particularly one concerning a retire-
ment benefit pension, should be kept. Labor
believes that this is not just an important
principle but also the correct legal approach.
I pose the fundamental question: can a guar-
anteed benefit made under contractual obli-
gation be removed without compensation or
a comparable alternative superannuation
benefit being offered?

Senator Murray—That’s a constitutional
issue.

Senator SHERRY—Exactly. Labor be-
lieves not just morally but also legally that
there is a significant constitutional question
as to the appropriation or, effectively, misap-
propriation of a property or benefit provided
to an individual unless just terms of compen-
sation are provided in the removal of that
benefit. Yet, what do we have with the T3
privatisation of Telstra? We know as a matter
of fact that there is an effective reduction of
the promised pension benefit for approxi-
mately 1,800 Telstra employees who are CSS
members. As I said earlier, this is due to a
policy decision—not a legal requirement—of
the Liberal government that on T3 privatisa-
tion this group of employees must cease on-
going membership of the CSS and from that
date revert to a lower superannuation benefit
offered to other Telstra employees—and, I
might emphasise, this is without their ceasing employment with Telstra.

The benefits of these employees will be maintained up to the date of cessation of their membership. The Minister for Finance and Administration, Senator Minchin, has emphasised this time and time again. However, the pension promise made if those members had continued in CSS will be broken. This is due to the nature of a defined benefits scheme. A reduction in benefits occurs if you do not reach the required qualification period. So all 1,800 employees will effectively have a cut in the pension promise made. In one case communicated to Labor, a supervisor linesman who commenced employment with Telstra at age 16 and is a member of the CSS will suffer a pension cut of $11,000 a year. I have already drawn attention to the promise made by the minister for finance, Senator Minchin, that superannuation conditions would continue. We now know that this will not be the case.

Senator Minchin has attempted to explain away this by referring to the circumstances of employees at Qantas and the Commonwealth Bank, privatised by a Labor government, who were treated in the same way. This is not the case. Whilst employees of both Qantas and the Commonwealth Bank were required to cease membership of the CSS, as is required in the case of Telstra employees, new provisions were inserted in the superannuation funds covering both the Commonwealth Bank and Qantas that ensured a comparable benefit was maintained. So both Senator Minchin and Senator Coonan—goodness knows what the minister directly responsible and a shareholder minister was doing in this regard—have not ensured that there will be a continuation of a comparable superannuation benefit for the 1,800 Telstra employees. This is yet another example of the botched regulatory and privatisation plan that has been erected around Telstra.

Telstra itself has legal doubts about the government’s handling of this matter. In recently released correspondence—it was secret correspondence—that I tabled in the Senate last week between Telstra and the T3 sale task force, Telstra itself argued:

Our legal advice is that the Deed of Release under which the Commonwealth assumed liability for Telstra’s CSS members, is a legally binding document on the three parties.

In Labor’s view, both the government and Telstra are exposed to possible legal action by the employees of Telstra whose pension promise benefit has been cut as a consequence of the Telstra privatisation.

Senator Murray interjecting—

Senator SHERRY—Over a future benefit—you are quite right, Senator Murray.

Senator Murray—And the future fund is liable.

Senator SHERRY—Yes. Whoever is liable, the fact of the matter is that there is potentially legal obligation and legal litigation in the wind on behalf of these 1,800 employees. Labor believes that, given the agreement between Telstra and the government and also the constitutional issue that I referred to earlier, whoever is responsible for this action—and we believe the primary responsibility for it lies with Senator Minchin and Senator Coonan—should be aware that it is probably illegal. Of course, that is to be established if the matter goes to court.

Further, I asked Senator Minchin in the Senate last week whether he had sought advice from the government pension regulator, the Australian Prudential Regulation Authority, known as APRA, on the legality of cutting a promised pension benefit. Labor is certainly aware that where cuts to pension promises have been made with the closure of defined benefits in other circumstances—and
there was a recent circumstance involving AXA, a well-known private superannuation fund which cut benefits to their employees—the regulator has stepped in and ensured corrective action was taken.

Accordingly, Labor will move a second reading amendment to this bill. It is the only mechanism we have before the Senate to attempt to deal with this matter. The amendment states that we regret the fact that the government has offered no such protections to the up to 1,800 existing Telstra employees who are currently members of the CSS and will have their membership terminated as a result of Telstra 3 privatisation; we consider that the pension promise made to those employees will not be met as a consequence and we believe that is a matter of fact; and we note that comparable provisions have been made to ensure the pension promise is met, for example, with respect to the Qantas privatisation.

We condemn the government for their failure. They have had this matter drawn to their attention on a number of occasions, yet they have not acted in this regard. They have acted with respect to long service leave entitlements but not with respect to the pension promise made for the 1,800 employees who are still in the CSS. We call on the government to immediately rectify the position for these disadvantaged Telstra employees. I have been dealing with superannuation issues for a lengthy period. I cannot recall a case either in the private sector or in the public sector where, as a consequence of a change of ownership of a company or authority, the pension promise made in a defined benefit fund has been cut in the way we are considering here today. I cannot recall a case where this has occurred, and for good reason: I suspect it is unconstitutional to remove a benefit without compensation or some effective comparable alternative being offered. I think the government could find themselves in very significant legal hot water as a consequence of the course they are determined to embark upon. Telstra could possibly find itself in hot water as well, but I do not blame Telstra. In this process they are following the command of the incompetent ministers, Senator Minchin and Senator Coonan.

Frankly, I cannot understand why the Minister for Finance and Administration, Senator Minchin, has not sought to address this issue. Senator Minchin well knows that, if he had attempted to deal in the same way with parliamentarians’ entitlements on the closure of the defined benefits scheme, he would not have left this place alive. Yet here we are dealing in a manifestly unfair manner with the pension promise made for some 1,800 Telstra employees. Whatever we think of the merits—in Labor’s case, the lack of merit—of the privatisation of Telstra, there is an important issue in principle here: a promise made with respect to a pension benefit in particular must be kept. Not only is it unethical not to keep the promise by ensuring that there is a comparable benefit offered or at least compensation but Labor believes that this matter poses a serious question legally for the government and for the Telstra corporation down the track in the commitments given when the government signed its memorandum of understanding with respect to Telstra employees’ superannuation benefits and the possible constitutional question that surrounds the manner in which these Telstra employees are to be treated.

As I said, we have not had a response to my question to the minister about whether this matter was referred to the pension regulator APRA. I think we will hear more about this particular issue. It is a further example of the botched regulatory issues around the T3 privatisation. Frankly, it is an added uncertainty that will put a question mark over Telstra going forward once the T3 privatisation
process is concluded. It is an added uncertainty which should have been dealt with in ensuring not only the preservation of a promise made to employees going forward but also certainty for shareholders and potential shareholders who will become engaged in the T3 process. On behalf of the Labor opposition, I move:

At the end of the motion, add “but while welcoming the fact that the Government has extended long service leave protections to Telstra employees for a period of 3 years following the time that the Commonwealth ceases to have a controlling interest in Telstra, the Senate:

(a) regrets the fact that the Government has offered no such protections to the up to 1800 existing Telstra employees who are currently members of the Commonwealth Superannuation Scheme (CSS) who will have that membership terminated as a result of the Telstra 3 privatisation;

(b) considers the fact that the cessation of CSS membership will mean the Government’s pension promise made to Telstra CSS members will not be kept;

(c) notes that: no comparable provision has been made to ensure the pension promise is met, as occurred in the Qantas privatisation;

(i) Notes that no other compensation is provided for;

(d) condemns the Government for its failure in this regard; and

(e) calls on the Government to immediately rectify the position for these disadvantaged Telstra employees”.

Senator MURRAY (Western Australia) (9.50 am)—As already noted in the Senate, the Long Service Leave (Commonwealth Employees) Amendment Bill 2006 extends the operation of the Long Service Leave (Commonwealth Employees) Act 1976 in respect of Telstra employees for a period of three years after the day on which the Commonwealth ceases to have a controlling interest in Telstra. ‘Controlling interest’ has great legal meaning and should be noted for the debate. As with other organisations that have shifted from Commonwealth owned to privately owned or publicly listed on the Stock Exchange, a savings provision was included in the Telstra (Transition to Full Private Ownership) Act 2005 to protect employee long service leave entitlements arising from pre-sale service that otherwise would be forgone due to the sale of Telstra.

The protection applies generally to Telstra employees with at least 10 years service. However, provisions are also made for employees with less than 10 years service to receive benefits commensurate with the long service leave act standard when they either complete 10 years service with Telstra or cease to be employees in circumstances under which the long service leave act entitlements would have applied but for the sale. The saving provisions for long service leave operate in relation to the ‘designated day’, that is, the day which, in the minister’s opinion, is the first day on which the majority of the voting shares in Telstra are, or were, acquired by persons other than the Commonwealth such that the Commonwealth ceases to have a controlling interest in Telstra. So the minister’s determination is not able to be made isolated from the legal consequences of that particular description.

The amendments proposed in this bill would defer the operation of the substantive and saving provisions for a period of three years after the ‘designated day’. As noted by the Bills Digest, this would have the effect of ensuring that Telstra employees will continue to accrue benefits under the long service leave act for a period of three years after the day on which the Commonwealth ceases to have a controlling interest in Telstra, and deferring the operation of the transitional provisions relating to Telstra employees’ long service leave entitlements for a similar
period. So far, so good. The Democrats support this bill because of those provisions, because they do improve the circumstances for Telstra employees.

The shadow minister has drawn attention to other issues which surround this matter. These are not simple transmission of business issues. When the government sells a major corporation like Telstra, in part or in whole, the normal transmission of business issues which are covered off in workplace law and in jurisprudence are complicated by the fact that the Commonwealth has certain constitutional and contractual obligations and liabilities which do not replicate those which are apparent in private transactions.

The shadow minister drew attention to the potential for legal action in this area, where groups of employees—a substantial number; 1,800, I am advised—may join together in a class action to determine just compensation if they feel that their entitlements as promised to them in a contractual sense have been unjustly taken from them. Again, the shadow minister made the point that that would have to be determined in the courts. I have sensed from some—certainly not all—members of the coalition that they think they may have the High Court in their pocket because of the appointment system. I do not agree with that. I think the High Court, if the matter ever got there, would have a mind of their own on this matter.

The liability, of course, may be seen to apply to both the government and Telstra. But I wonder whether it will also apply to the Future Fund. That was the point of my interjection to the shadow minister, which I do not think he picked up. My memory of the Future Fund Bill is that the government has given the Future Fund some legal reassurance that it will be protected from liabilities and indemnified to some extent. But if, subsequent to that bill passing, directors and managers of the Future Fund are aware of a circumstance which they could have intervened on, I wonder whether they will not be exposed to a little more liability danger than we might otherwise think. I am not a lawyer; I am a practical man. I would suggest that the liability issue might be wider than just to the government and to Telstra—which, of course, means that eventually taxpayers will pay.

While the Democrats did not support the Telstra (Transition to Full Private Ownership) Bill 2005, because we felt that the way the bill was structured was not in the national interest, it is my belief and that of my party that the government have mismanaged elements of the interconnections between Telstra, the telecommunications industry and the media industry with respect to competitive and community matters. One of those is with respect to the recent media package, which failed to acknowledge the pivotal role of the telecommunications industry in the provision of media content and access in the future. This is a big hole that should have been addressed. Much of the technology for media delivery in the future—and that future is not far distant—will be on telecommunications platforms. That being the case, it is essential that, for telecommunications and media, Australians, both metro and regional, have access to high-speed broadband.

Mr Acting Deputy President, with respect to security matters—and I note that the Minister for Justice and Customs is the duty minister in the chamber—you might not be aware that there is no requirement on Telstra to immediately, urgently and by law provide satisfactory broadband facilities to designated airports. The whole security system is linked in to broadband access—the ability to access CCTV camera material, the ability to interact in telecommunications bases with rapid response groups et cetera. Key regional airports that do not have dedicated broad-
band access already applied to them would be an issue. So there are all sorts of areas, frankly, that have not been signed off with respect to Telstra and its sale.

Anyway, the deals have been done. The National Party negotiators did not understand that telecommunications is the way to deliver media diversity in the 21st century, and the sale of Telstra is now a foregone conclusion. The moneys that could have been available for infrastructure, water and other things which the government is now waking up to were not secured from the sale of Telstra. There are all sorts of areas of negotiation which represent a missed opportunity.

I return to what is contained in the bill. The transition from Commonwealth employees to private employees is inevitable for Telstra personnel and will be triggered by the date, the shareholding and the circumstances when the Commonwealth ceases to have a controlling interest in Telstra. That will not necessarily be established by legislation but may well be established by courts, if it is ever challenged.

The bill, in effect, tries to minimise any negative impact that the full privatisation of Telstra may have immediately on Telstra employees’ long service leave entitlements. The amendments will provide certainty to employees beyond the term of the existing certified agreement and for those on AWAs that their entitlements will not fall below current levels for the next three years. This is a sensible position for the government to take and we are pleased, by and large, with their support for this position.

Labor has raised the inconsistent treatment the government has applied to Telstra employees when it comes to other employee entitlements—specifically, superannuation. The government’s bill, passed last year, included a clause that prevents new Telstra employees from being members of the Commonwealth Superannuation Scheme once the Commonwealth is no longer the majority shareholder—and we come back to that issue of when does the loss of controlling interest kick in. Specifically division 39L of the Telstra (Transition to Full Private Ownership) Act 2005 states:

If an employee of a Telstra body was an eligible employee for the purposes of the Superannuation Act 1976 immediately before the designated day, the employee is taken to have ceased to be an eligible employee for the purpose of that Act on the designated day.

In other words, that is the day on which the Gordian knot is cut.

Senator Sherry told the chamber very recently that the reductions in the promised defined benefits scheme are significant, although the impacts may vary depending on the circumstances of the 1,800 employees. He has given us a figure—I presume it is not a median or an average figure but an estimated figure—of an $11,000 cut in eventual superannuation entitlement. That is a matter of great concern to anybody who is going to retire. Senator Sherry gave the example of a foreman-linesman who, because of the sale of Telstra and the new pension arrangements that will have to be entered into, will have that cut in his promised pension benefit of $11,000 a year. I therefore assume that, if you did calculations for others, some could have a greater cut and some could have a lesser cut. I note for the purposes of Hansard that the shadow minister has nodded his head. So there could be people who will be more affected than his example.

Senator Minchin told the chamber last week that the Commonwealth is within its rights, as was the then Labor government, to stop membership of the Commonwealth Superannuation Scheme. Once the company is in majority private hands, that responsibility should no longer fall on taxpayers but on the new owners of the business. It is a perfectly
reasonable attitude to take with respect to the transmission of business, but the important aspects for the transmission of business with respect to Commonwealth obligations are that those who are transferred have their contractual benefits met.

Superannuation is increasingly a big issue for all Australians. Many Australians will have to live in retirement for a greater number of years, thanks to the better health that so many now have to look forward to, so to be told that you will not get the substantial amount that you expected would obviously be disappointing and frustrating. As the shadow minister rightly says, that might lead to litigation because, when people’s rights are taken away, they will turn to the courts—if there are enough of them and if they can afford it.

Clearly, this is a complex issue. I recognise the government’s arguments and the way in which it has tried to deal with this, but I think the precedent for dealing with these matters was established with the way in which Qantas was dealt with. The point that the shadow minister rightly says, that might lead to litigation because, when people’s rights are taken away, they will turn to the courts—if there are enough of them and if they can afford it.

Given this precedent, it should be no surprise to those listening that Labor was surprised to see that the government saw fit to extend long service leave protections to Telstra employees but has not sought to extend similar protections in the area of superannuation. In spite of its promise, the government has failed to protect the superannuation pension promise made to up to 1,800 Commonwealth Superannuation Scheme Telstra employees.

I freely confess that I am no expert in this complex area, but my reading of the situation is that employees in the privatised Qantas who had formerly been Commonwealth employees were not left in as exposed a situation as employees in the privatised Telstra circumstance. That is to be regretted, particularly if there is a precedent which not only was established but after all these years could be verified as to whether it worked. It is one thing to establish a law; it is quite another thing to see how it works out. So I would appreciate the government answering the perception that I have and the allegations made by Labor that, in fact, Telstra employees are going to be worse off shifting into privatised hands than Qantas employees were with respect to superannuation. I do not make a judgement in other areas but just with respect to superannuation.

In summary, the Democrats support this bill because it does improve the situation for employees of Telstra, which is being privatised. We have a concern arising from these matters, as I have tried to outline in my second reading remarks, and for that reason we
will be supporting the Labor second reading amendment.

Senator MOORE (Queensland) (10.06 am)—In supporting the Long Service Leave (Commonwealth Employees) Amendment Bill 2006 this morning, I want to take some time to make some comments about the workforce in Telstra. I think all of us in this place know that there are few groups of workers in this country who are more familiar with significant structural change and public scrutiny than those workers in Telstra. We have had seemingly endless debates over the last 12 years about what was going to happen to Telstra in the future. We have debates here, we have had them through the media and we have had large-scale community discussions about the future of Telstra. Throughout that whole process, often the voices of the workers were somehow silenced.

Naturally, the very strong work of the two trade unions—my own union, the CPSU, and the CEPU—came forward consistently with arguments about why Telstra should remain strongly in public hands, the position which Labor continues to promote. But, by nature of being employees of the company, individual workers were often not able to take part in these discussions and debates, although their workplaces and their own working futures were often part of the debate. I think that many Telstra workers have felt quite damaged because consistently throughout the process the working practices, the efficiency and the identity of Telstra were part of the debates.

This piece of legislation actually makes some effort towards providing some security into the future for some of the workers who are currently working in Telstra and what is now going to be their privatised process. That has happened to other chunks of Telstra over the last few years as various business enterprises have been pulled out, sold and moved around. In the past, certainly I as a CPSU official have been part of working with some of the workers as they were making decisions about what was best for them. Throughout that, the Telstra management has often provided great support for individual workers and groups of workers about protection of choices, what they could do, retraining options and so on.

But somehow, in these last few debates, as we have moved grindingly towards the decision on full privatisation, there has been so much focus on productivity and future efficiencies that somehow the workers have become the bargaining chips in this process. When we had the significant announcement of the major job losses which were going to be the first step to the new future of Telstra, that hit home immediately to workers, their families and also their public identity. So I think it is important when talking about this legislation, which is about providing some security around long service leave, that we make some acknowledgment of those workers and their families and also the way they have been almost part of the political fallout of the recent decisions.

It is also particularly important that we mention long service leave because no other entitlement has such a personal link to workers’ longstanding loyalty and service as does the condition which we know as long service leave. Many other countries do not have such a condition. It is something of which we are very proud. When I used to work in the Public Service and also with members in Telstra and, prior to that, Telecom, there was great celebration around giving out long service awards to workers who had been with the company, their employer, for extensive periods of time.

We are going to lose that kind of cultural experience in our current economy. I do not
think there will be workers in any organisation, let alone whatever the new privatised telecommunications entity is going to be, who will be celebrating long service, because the nature of the dynamic of the economy is that people come in and out of work. They are on individual contracts. There is not that personal relationship with work, that expectation that someone comes on, learns the skills and enhances their skills over long years of work in the community and that their working life is then celebrated with that employer as well as in their family arrangements and in the wider community which they serve.

So, for me, the whole concept of long service leave is one that is so important and that we should acknowledge. Telstra over many years has been able to give lists of employees who have marked 10, 20, 30 and in some cases 40 years of service to their employer. That is something which I think we as a community should celebrate strongly. In many ways, that is why I was so keen to make some comment today about where, in our debates about the economic realities and the economic futures, we remember the individual workers.

I have said before that there is something about the workers in Telstra, in Telecom before that and even before that in the PMG, across regional Australia, such that there was an immediacy of relationship between those workers who were part of that organisation and their local communities. In Queensland, how many places could you have visited in the past and seen the proud signage of Telstra and also the workers for that organisation, who were part of the community not just through the immediate work they did in providing telecommunications services but so often through various community activities? The workers in Telstra were part of local service groups, emergency fire services, school communities—I think in future times we will be able to look back with pride on the impact of Telstra employment in local areas across our country as part of a very strong history. I think that is lost.

Only recently, we have seen the first-round casualties of the new privatised environment, with the call centres in Queensland being closed overnight. We have talked here about what that is going to do to those families. No-one on any side of this chamber is pleased about that result, but the impact is that those jobs are lost and that money is lost to the community. Despite protestations that there are other work opportunities around, those workers are not facing those immediately at this stage. Through previous reorganisations, sell-offs and restructurings in Telstra, many workers who received their training and started their working lives under the Telstra umbrella have moved on. Those workers continue to talk to each other, even if their employment status has changed, and they know that the contract arrangements in whatever new places they have gone to do not equate to the conditions, the security and the team spirit which they used to know in the public sector environment in Telstra.

It is not a question of productivity, and I say again: there is absolutely no evidence to prove that people in a private enterprise arrangement are any better workers or any more productive or provide any greater service than those in a public sector environment. People like to make those statements and talk about the security of the process. Those workers who feel secure and valued, who know that there is a personal relationship between them and their employer and feel that they will be able to develop their skills to provide an effective future for them and their families, provide the best possible service and are the ones who give the most back, not just to their employer but to the wider community.
In terms of where we go now, we have this legislation looking after these conditions for a short term—a period of three years. It is good to have it there, but it would be much better if we had those conditions protected into the future. But we have three years and, at least in terms of planning and people being able to look at their futures and seeing that they are going to be able to accrue their long service conditions, it is a step towards saying to the employees: ‘We understand the pain and the insecurity, but we still expect you to continue to do the best possible job you can do for the company so that we will be able to sell you off and get the best profit. In terms of what we do it would be great.’

We have already heard from Senator Sherry and Senator Murray about the deep uncertainty around the workers and their superannuation entitlements—another condition of service which shows a particular relationship between workers and their employer. It is the linkage between valuing the worker, accepting their skills and giving them effective repayment for what they do. In many ways long service leave and superannuation are part of a special bond between the employer and the employee, because it is something that can be negotiated and actually quantified to say, ‘These are monetary repayments for the work that you do and show that we accept that you are continuing to provide service.’ It is not just an hourly rate; it is not just coming in for a certain number of hours or days. It is actually saying, ‘We accept you and the value you are to the whole company.’

It would be very valuable if we could give a commitment to the workers in Telstra that their superannuation entitlements were going to be protected as well. We heard early promises, which were widely publicised to the workers involved, when there was that process of keeping people going. As we know, productivity aspects within Telstra have been a strong talking point about whether in fact the sale was going to be effective or not. So the expectation was that the workers would be doing super efforts to ensure that the commitments made to the community about setting up their telecommunications services were fulfilled. We have had that quite interesting comment about what equals equity and effectiveness of service. I have never been quite sure whether we are going to reach ‘adequacy’, ‘efficiency’ or whatever.

Nonetheless, in terms of the workers of Telstra, they all want to provide the best possible telecommunications for everybody across this country. Their workload and work experiences have become public debate. It is one of the sad aspects that, while we have been looking at the future of Telstra, we have not often said how good and how valuable so many of the services have been. We tend to focus on where there have been inadequacies, problems and delays. No-one is more sensitive or more aware of those issues than the workers themselves. When things are brought to their attention, when delays or crises are identified, they are the ones who work most zealously to meet the requirements and to ensure that not just the work is done but the very strong reputation for them as workers and also for the organisation is protected. I wish that the loyalty and respect the workers often show to the employer was given back to the workers in this case.

As we move forward, again I would like to pay credit to those workers who have provided such great services such loyalty and great spirit to the organisation over many years in this country. I also want to pay credit to my coworkers in the Community and Public Sector Union and also the CEPU who have worked this in struggle alongside their members. Many of them had been Telstra employees, so they knew personally what was going on with the families and with the workers themselves. Whilst the vote
has gone through and we believe the prospectus is out there and there have been information sessions about this next round, the T3 sale, when we continue that process I think we should value the work that is done for Telstra, value the employees and try where we can in this place to ensure that their conditions, their security and their future continue to be part of the ongoing debate.

Senator ABETZ (Tasmania—Minister for Fisheries, Forestry and Conservation) (10.18 am)—I thank honourable senators for their contribution to the debate. I understand the opposition will be supporting the bill, although listening to them you might have thought they would not be. It is good that they are supporting the bill, so I will not delay the Senate unnecessarily. I remind honourable senators that this is the Long Service Leave (Commonwealth Employees) Amendment Bill 2006. We have traversed a few other areas, but allow me to respond. Telstra employees currently accrue long service leave entitlements under the Long Service Leave (Commonwealth Employees) Act 1976. Long service leave entitlements accrued up to the date that the Commonwealth ceases to have a controlling interest in Telstra are already protected by the Telstra (Transition to Full Private Ownership) Act 2005, or the transition act. Telstra has requested that it be allowed to remain under the Long Service Leave (Commonwealth Employees) Act for a further three years, and the government has agreed to meet that request. Suggestions to the effect that the government, or rather taxpayers, ought to be paying for the entitlements accrued by Telstra employees post sale are simply untenable.

The Minister for Finance and Administration has previously announced that the government would not be maintaining Commonwealth superannuation coverage of Telstra employees after Telstra is sold. That approach is consistent with that taken regarding other privatisations, including those promoted by the previous government. It is worthwhile noting and reminding those senators who would seek to take us back to the future with some of their speeches that they really want to go back even before the Hawke-Keating regimes and still believe in a degree of public ownership that even the Hawke-Keating governments were not prepared to accept. Indeed, Senator Moore’s contribution, sincere though it was, did not make it right. Her sincere approach unfortunately overlooked the fact that her party presided over the sale of the Commonwealth Bank, Qantas and CSL. Why did her Labor Party do that if they were so strongly of the view that privatisation was not a good thing? Is she now asserting to the Australian people that the Hawke-Keating governments acted against the best interests of the Australian people?

I believe that the Hawke-Keating governments acted in the best interests of the Australian people at that time, and that is why we as an opposition supported the then Labor government. It is just a pity, now the tables have been turned, that the Labor Party cannot, whilst in opposition, show the same degree of graciousness and the same degree of national interest as we were able to show when we were in opposition and supported the government through some of these very difficult decisions.

These decisions are never easy to sell, especially in circumstances where people like Senator Moore very cleverly seek to slip into the debate the loss of a few jobs—not a few jobs, a couple of hundred jobs—in call centres in their home state of Queensland. That is very unfortunate; it is unfortunately part and parcel of the modern world that people’s jobs are not always as secure as we might want them to be. But, while she lamented the
couple of hundred jobs lost just recently in Queensland, she was strangely silent about the thousands of jobs that were literally stripped out of Telstra while guess who was minister for communications for a very short period of time? It was none other than Mr Beazley. Those jobs were stripped out of Telstra whilst it was still under full public ownership.

Public ownership of itself does not guarantee job security, so it is a fraction mischievous of the honourable senator opposite to try to somehow link privatisation to job shedding in Telstra. I would have thought she knew—and if she does not, she knows now courtesy of this contribution—that, whilst in full public ownership, her current Leader of the Opposition presided over the mass loss of jobs in Telstra.

Maintaining Commonwealth long service leave coverage for a short transitional period has no cost implications for the Commonwealth. Maintaining Commonwealth superannuation coverage of former Telstra employees for an indefinite period would be at a cost to the Australian taxpayer. As Minister Minchin advised the Senate on 11 October:

"The Commonwealth is clearly entirely within its rights—as was the then Labor government—to stop membership of the CSS. That is, the Commonwealth Superannuation Scheme. He continued:

Once the company is in majority private hands, that responsibility should no longer fall on taxpayers but on the new owners of the business. Telstra employees will retain their accrued benefits under the Commonwealth Superannuation Scheme up to the date of sale. Those benefits will be paid in accordance with the rules of the scheme and the superannuation regulatory regime. The Australian government has already paid out in full its liabilities to Telstra super, which happens to be a total of $3.125 billion. When the Australian government majority ownership of Telstra ceases, superannuation arrangements for Telstra employees will be a matter for Telstra and its workforce. I commend the bill to the Senate, and I suggest the Senate oppose the second reading amendment.

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

The Senate divided. [10.30 am]
(The President—Senator the Hon. Paul Calvert)

| Ayes .......... | 31 |
| Noes .......... | 35 |
| Majority ....... | 4 |

AYS
Allison, L.F. Bartlett, A.J.J.
Bishop, T.M. Brown, C.L.
Campbell, G. Carr, K.J.
Conroy, S.M. Crossin, P.M.
Faulkner, J.P. Forshaw, M.G.
Hogg, J.J. Hurley, A.
Hutchins, S.P. Kirk, L.
Ludwig, J.W. Landy, K.A.
McEwen, A. McLuscas, J.E.
Milne, C. Moore, C.
Murray, A.J.M. Nettle, K.
O’Brien, K.W.K. Polley, H.
Ray, R.F. Sherry, N.J.
Siewert, R. Stephens, U.
Sterle, G. Webber, R.
Wortley, D.

NOES
Abetz, E. Adams, J.
Bernardi, C. Brandis, G.H.
Calvert, P.H. Chapman, H.G.P.
Colbeck, R. Coonan, H.L.
Eggleston, A. Ellison, C.M.
Ferguson, A.B. Ferris, J.M.
Fielding, S. Fierravanti-Wells, C.
Fifield, M.P. Heffernan, W.
Humphries, G. Johnston, D.
Joyce, B. Lightfoot, P.R.
Macdonald, I. Macdonald, J.A.L.
Mason, B.J. McGauran, J.J.J.
Nash, F. Parry, S.
Third Reading

Senator ABETZ (Tasmania—Minister for Fisheries, Forestry and Conservation) (10.32 am)—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

CORPORATIONS (ABORIGINAL AND TORRES STRAIT ISLANDER) BILL 2006

CORPORATIONS AMENDMENT (ABORIGINAL AND TORRES STRAIT ISLANDER CORPORATIONS) BILL 2006

CORPORATIONS (ABORIGINAL AND TORRES STRAIT ISLANDER) CONSEQUENTIAL, TRANSITIONAL AND OTHER MEASURES BILL 2006

Second Reading

Debate resumed from 16 October, on motion by Senator Santoro:

That these bills be now read a second time.

Senator BARTLETT (Queensland) (10.33 am)—I will lead off in speaking to the Corporations (Aboriginal and Torres Strait Islander) Bill 2006, 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 by noting their importance. In some ways, legislation that deals with corporate regulations, whether they are for Indigenous organisations, associations or other things, can be seen as fairly dry and unexciting, but it is crucial. It is crucial for the purposes of accountability but it is even more crucial for the effectiveness of the many and varied organisations and associations around the country.

This legislation seeks to dramatically update the existing legislation regarding Aboriginal councils and associations which goes back to 1976. It has had a fairly long gestation. The original piece of legislation—the foundation piece—was introduced in June 2005. Even though it is a little while ago now, I am fairly sure that it was a Democrat initiative to get that legislation referred to a Senate committee. This process again highlights the importance of having an effective committee system. As I said, that legislation was introduced in June 2005, which, whilst it seems a long time ago, was actually before this government had control of the Senate. It gained control of the Senate on 1 July.

The committee’s examination of the legislation highlighted the very simple fact that the legislative framework was not ready. When you are making major amendments to laws and procedures that have been in place for nearly 30 years, you want to make sure that it is quite clear what the new framework you are moving to is. The problem was that we had a proposed core bill which relied on a lot of the details being filled in later via regulations and transitional provisions. It was not the first time that this had occurred(where you had legislation where the real impact was impossible to determine because you could not see what the regulations were that were going to be put in place once
the law was passed. But I was pleased that on this occasion, I think as a direct consequence of the work of the Senate committee, it really became clear that it would be a huge leap in the dark to be passing that initial piece of legislation without having a much clearer idea of what the regulatory framework and the transitional provisions would be.

Putting in place legislation in this area is actually quite difficult. Everybody supports, and Indigenous people more than anybody else support, ensuring that the associations and organisations are accountable, that they operate effectively and that people get value for money out of them. But, as is the case with the wider community, it is actually quite a difficult balancing act to ensure that you have sufficient regulation to ensure proper and due practice and just competence without generating so much red tape and so many obligations and reporting requirements that it becomes impossible for small organisations to function.

This is a problem in the wider community. I know from my own experience—and I imagine many people here have been members of community organisations and associations—that, over time, the obligations on people who in many cases are volunteers on steering committees or boards that run associations with relatively small budgets can be quite enormous. It simply becomes a big disincentive to get involved in community based organisations when people who are basically volunteers end up having very significant legal obligations and, potentially, quite significant penalties imposed if they are found not to be complying with all the requirements. Of course, the difficulty is that you have such a wide range of organisations. This was noted in evidence to the committee—there are the largest corporations or service providers with quite huge multimillion-dollar budgets, significant staff numbers and a wide range of responsibilities right down to the tiniest community corporations. Trying to cover both those situations within legislation is quite difficult; and, with the consequential provisions and other proposed amendments to this bill that were provided to the committee, a view was taken that a reasonable attempt has been made to do that here.

But no matter how much you try to nail down in advance the operation of a new set of procedures, which everybody acknowledged needed updating, you will need to have a bit of a ‘suck it and see’ approach. I was pleased with the committee’s recommendations around the importance of monitoring the practical interaction of the bills with other legislation, particularly the Native Title Act, and reporting to the parliament at the end of the two-year transition period about the operation of the act. I hope we get a commitment on the record from the relevant minister during this debate that that recommendation will be followed because, once we put in place these changes, it is very important to look at how they operate in practice.

Everybody wants to see the necessary level of accountability. I think there is a bit of a myth going around about how inadequate existing accountability is in Aboriginal organisations. There are certainly problems from time to time, but an impression is sometimes created that there is just a mass of unaccountability or incompetence out there when the vast majority of organisations perform amazingly well, particularly given some of the challenges that some of them have to operate with. Everybody wants to have adequate accountability and to ensure value for money, and putting in place a new legislative regime to make that more likely to occur is important, but we want to make sure that it is not counterproductive. That is always the balancing act with any form of cor-
porate regulation. Whether you are dealing with big corporations, voluntary associations or anything in between, getting that balance right is important because if you get it wrong it becomes counterproductive. In such situations the associations cannot even do their job adequately because so many of their resources are tied up with accountability and compliance measures.

So monitoring the operation of those changes is important. The Indigenous representatives who appeared before the Senate inquiry, and no doubt some people within Indigenous communities, feel apprehensive about these changes. That is understandable as we are shifting to a new regime. Whilst there is potential for more complexity here, which is potentially problematic, if the implementation, administration and transition is done appropriately and with sensitivity and common sense, there will be a positive shift and development.

The Labor senators on the committee also put in place an additional recommendation that, for the next three financial years, ORAC include in its annual report a review of the operation of the new legislation and results of a statistical survey of stakeholder satisfaction. That recommendation also goes to the need to monitor how these changes work. The core test has to be whether it means improvements on the ground for Indigenous people— that is what all of this should be about, not just a theoretical exercise so everyone can feel happy that things are nicer and neater at the end of the day. It should be about getting better results on the ground for Indigenous people. I am sure that is a desire that we all have across the political spectrum.

As you know, Madam Acting Deputy President Moore, I try to be balanced in these things whenever I can. I think we do share a common view across this parliament about the need to get better results on the ground. That is the intent here, and the key challenge is to make sure that the intent actually becomes a reality. We cannot guarantee that reality here and now with what we pass in this place; we can only guarantee it by properly monitoring how it is implemented and how it works on the ground and by having a preparedness to make changes if necessary rather than just a stubbornness to insist that we got it all perfectly right the first time around. There is a fair chance we will not get it perfectly right the first time around. We need to have the willingness to listen to people on the ground about problems in the transition phase and be prepared to make changes if necessary.

I am not convinced that there is always as much skill in listening to people on the ground in Indigenous communities as there should be. We might all share a commitment to get improvements on the ground, but my view is that you are less likely to achieve those improvements unless you do more listening to what is actually happening on the ground rather than just pontificating from on high. We need to avoid that trap.

The only other point I would make is to once again emphasise the importance of Senate committees. They have once again proven their worth. I have already said on the record, and will say again, that the Senate Standing Committee on Legal and Constitutional Affairs in particular has developed a reputation as being the most effective of the Senate committees for a whole bunch of reasons, not just because of its excellent chair but also because of all its other excellent members and its preparedness to look at the issues on their merits. It is one that I would urge a few other committees to seek to aspire to in order to reach those same heights. I also say that because I always try to take the opportunity not only to compliment Senate committees when they do their work well but
also to use that to highlight the importance of keeping the committee system alive and functional in as effective a way as possible.

I obviously have views that that has not been occurring in the period since the first of these bills was introduced back in June 2005. But, as this example shows, it does still work well from time to time. Hopefully, it will work even better through the government listening to what the committee said. One of the key recommendations was to follow through with monitoring what happens. I hope the government commits to adopting the other recommendations that the committee has put forward in its report.

Senator PAYNE (New South Wales) (10.45 am)—I thank Senator Bartlett for his contribution and his observations in relation to the Senate Standing Committee on Legal and Constitutional Affairs and for his contribution to the report of the committee on the Corporations (Aboriginal and Torres Strait Islander) Bill 2006 and related bills. As I just observed to Senator Vanstone, these have been a long time in the making. They most certainly began as bills within her previous portfolio, which contained Indigenous affairs. We now find ourselves in October 2006 dealing with the substantive package, so its development has come some way. I also should acknowledge on the record the assistance of my colleagues at this time last year when the bills were first considered by the committee. As members of the Senate will know, due to some significant family challenges I was unable to deal with the bills in the first instance. Senator Scullion in particular took that role up for me and to him and to other committee members I am particularly grateful.

I want to make a few comments about the structure of the package of bills and the process of the committee inquiry. The achievement of these bills is to address the status of about 2,500 Aboriginal and Torres Strait Islander corporations which are registered under the Aboriginal Councils and Associations Act 1976. Many of those corporations play an essential role in delivering services to remote Indigenous communities. For the delivery of those services, a very significant amount of public funds is provided. The corporations may also hold land for remote Indigenous groups. Most native title corporations are registered under the current ACA Act, as are most remote Indigenous arts centres.

It is a statement of the obvious in many ways to say that since 1976 there have been substantial changes in the corporate regulatory environment in Australia. The old act is over 30 years old. It is not really in line with modern corporate governance and the accountability standards which are reflected in the substantive Corporations Act. This package provides a specific regulatory framework for Indigenous corporations in particular to deal with both the risks and the requirements of the Indigenous corporate sector.

As Senator Bartlett observed in his remarks, such corporations are many and varied. It is not simple; it is not a straight line. The corporations that fall within the provisions of these bills are often very different. They have different activities and different requirements and are of very different sizes. What the bills seek to do is to provide some flexibility and appropriate regulatory powers and compliance support, which are not available from other corporate regulators like ASIC, which are primarily concerned with relatively large trading corporations.

What is noted in bringing this package together is that special legislation like this needs to be consistent with the current practices of other corporate regulators. So the backbone of the reform process is the application of mainstream corporations law to
these corporations, bearing in mind their special nature. The reforms largely replicate the modern standards of duties for officers, directors and employees that exist in the Corporations Act. They also address some regulation gaps—for example, managers of Indigenous corporations will now have duties which mirror those of directors and will be subject to appropriate scrutiny. Directors and managers can be disqualified. Their names can be put on an appropriate register to make them visible. A person who is disqualified from managing a corporation under this legislation will also be recognised and disqualified from managing a corporation under the Corporations Act and, appropriately, vice versa.

We also have strong measures in the bills to mirror the requirements of the Corporations Act for disclosures and approvals required for related party transactions and measures to avoid what is described as nepotistic behaviour. Under the legislation, the registrar will also be able to check subsidiaries and trusts related to Indigenous corporations. Some of those hold substantial funds and assets. To protect the members of corporations, funding bodies and ultimately the taxpayer in this country, there are a range of offences covered in the bills. They largely reflect those in the Corporations Act and have been developed on the principle that similar obligations should attract similar consequences.

In the development of the CATSI bills, the unique circumstances of many Indigenous corporations—to which I referred earlier—have been considered. One of the measures in the bills, which also exists under the current ACA Act, is the power for the registrar to appoint a special administrator. It is an important safeguard. It protects the interests of those communities that might otherwise suffer the consequences of a corporate failure, especially when it could indeed threaten a community’s essential services and basic infrastructure, such as municipal services.

Corporations will be able to tailor their corporate governance practices to better suit their members and their communities. Smaller corporations will have fewer reporting requirements in proportion to their size. Larger, more sophisticated organisations will have appropriately rigorous reporting arrangements in line with modern corporations law. The bills offer a practical response to the need for good governance in relation to Indigenous communities. They enable Indigenous Australians to structure their corporations to create the best outcomes for their particular needs. They are very valuable initiatives.

There are three bills in the package. The first bill, which was introduced into parliament in 2005, is the Corporations (Aboriginal and Torres Strait Islander) Bill 2006. That is essentially the one that replaces the Aboriginal Councils and Associations Act 1976.

The second is the Corporations (Aboriginal and Torres Strait Islander) Consequential, Transitional and Other Measures Bill 2006. That is being introduced to support the implementation of the C(ATSI) Bill. It includes a range of consequential amendments—some very basic ones and some transitional arrangements—which set up measures that enable corporations to move from the ACA Act framework into this modern and new CATSI regime. That bill also contains a minor amendment to the Native Title Act 1993 which corrects a technical problem that prevents replacement agent prescribed bodies corporate, which are a type of corporation that can be formed to hold or to manage native title, from being recognised as registered native title bodies corporate under the Native Title Act.

Finally, the Corporations Amendment (Aboriginal and Torres Strait Islander Corpo-
BILL 2006 also supports the implementation of the primary bill. It serves to amend the Corporations Act 2001 to ensure that there is appropriate interaction between both those regulatory regimes and to close off any regulatory gaps where they may appear. It does that quite simply by confirming that section 57A of the Corporations Act, which provides that the term ‘corporation’ applies to any body corporate in Australia, applies to CATSI corporations for the purposes of the Corporations Act. It also makes sure that certain parts of the Corporations Act do not apply when there are corresponding provisions in the C(ATS)I Bill, which is essentially the point of this process.

That bill also aligns the disqualification provisions of the C(ATS)I Bill with those in the Corporations Act, creating a scheme where persons disqualified from managing corporations in Australia are recognised under both regimes. That will be a process which assists in the implementation of a national standard of disqualification that currently applies only to directors and officers of companies which are registered under the Corporations Act. I understand that those amendments to the Corporations Act have been agreed to by the Ministerial Council for Corporations.

It was clear in the committee process, which commenced last year, that, as Senator Bartlett alluded to, some significant concerns were raised by witnesses in submissions that were provided to the committee—about how the implementation process would work, how the transition would work and how existing corporations would manage this process. In response to that, the committee’s suggestion was that there was really a need to see the transitional bill and the provisions of the transitional bills before final sign-off could be given on the substantive legislation. After some period, I think in the mire of the drafting process, that bill appeared. As a result of that, the committee was finally able to report.

As a result of the ongoing consultation process by the government in response to the committee and in response to stakeholders in this area, we also have before the chamber a set of parliamentary amendments to the Corporations (Aboriginal and Torres Strait Islander) Bill 2005 put forward by the minister. They are going to assist in addressing some technical oversights in the C(ATS)I Bill—for example, ensuring that all CATSI corporations fall into the categories of small, medium and large, to create a more tailored reporting scheme.

Those amendments also respond to concerns which, as I said, were raised by stakeholders who made submissions and appeared before the then Senate Legal and Constitutional Committee inquiry last year. I think that is an important part of the process. I think that responsiveness is valuable and should be noted here in the chamber. It has been a constructive engagement between the Senate committee and the parliament to bring this forward.

In conclusion, I should also acknowledge the preparation of this report by Alistair Sands, from outside the normal legal and constitutional committee secretariat. We are very grateful for Alistair’s assistance in the process. I look forward to the rest of the debate on the bills.

Senator CROSSIN (Northern Territory) (10.56 am)—I rise this morning to provide a contribution to the debate on the changes being proposed through the Corporations (Aboriginal and Torres Strait Islander) Bill 2006, 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.
Senator Payne made some comments about the cooperation of the Senate Standing Committee on Legal and Constitutional Affairs in inquiring into these bills in the last 12 months. The initial amendment bill, which was pretty thick in terms of the number of pages and complexity compared to what Indigenous organisations and corporations now have to deal with, was somewhat overwhelming. But the legal and constitutional committee did agree cooperatively to put on hold the outcomes of their inquiry into this bill and the report until we had seen the transitional legislation. That has occurred.

The bills include many measures to replace the Aboriginal Councils and Associations Act 1976. According to the explanatory memorandum, the aim is to improve the governance and capacity of Indigenous organisations. I do not intend to go into great detail about these measures, although it will not come as any surprise to people listening that I might have some comments to make about what is currently occurring at the Mutitjulu community in the Northern Territory.

The original act was an incorporation statute to provide a fairly simple means for Indigenous people to establish legal corporations. It was last amended in 1992 to improve external accountability and is now considered to be out of step with modern corporations law in Australia. It was seen—and I hope it still is—that Indigenous incorporation needs are different from those of mainstream Australian corporations. Their associations tend to be quite small, are usually non-profit making, are often remote and involve people for whom English is at best a second language and for whom education standards are below those of mainstream non-Indigenous people.

When people have a concept about Corporations Law, they need to very clearly separate out in their minds the application of this law to Indigenous corporations and associations and its application to big business and multi-business corporations. Indigenous people have had their own culture and traditions—including clan leaders, traditional owners of land and so on—for thousands of years. In many areas of my electorate, Indigenous people had, and still have, their own traditional laws of governance. Even under the original Aboriginal corporations act, much of the legislation was based on non-Indigenous law and was often pretty foreign to the people to whom it applied. In instances today, that is still predominantly the case. It has taken people a long time to get a basic understanding of it. I believe that there are still people working within local government, in particular, in the Northern Territory, who say that many Indigenous people in remote areas still do not fully understand, appreciate or realise the intent of such legislation.

Despite any such problems of understanding existing regulations—and I use figures from my colleague in the other place—some 2,800 Aboriginal and Torres Strait Islander corporations are currently registered. That is a pretty large number, but I suspect that most of them are very small corporations. These new acts have come about as a result of a review by the Registrar of Corporations, who reported in 2002 that there was a need to change, a need to update the old act, while still keeping in mind the specific incorporation needs of Indigenous people. The review reported that a new act should provide for modern needs and, at the same time, provide some form of regulatory assistance to support modern standards of corporate governance.

The old act, dating back as it did from 1976, was undoubtedly outdated, and there is a need for some form of change. Labor supported this need for change, but I have some concerns about several matters that are con-
nected with these bills. They are reflected in the second reading amendment that has been moved by the Labor Party both in the House of Representatives and here in the Senate. These bills supposedly provide a more up-to-date framework for governance, while at the same time providing flexibility for special Indigenous factors such as cultural practices and any particular local needs and circumstances. The explanatory memorandum states that one reason for the need to change is that the substantial amount of public moneys provided to Aboriginal corporations has highlighted deficiencies in the old act. Returning to the principle of accountability—with which, I am sure, we all agree in principle—I sincerely hope that these changes are not part of what seems to be a witch hunt against Indigenous organisations by this government.

One of the first things done by this government on coming into power over a decade ago was to have the then Minister for Aboriginal Affairs engage a major accounting firm to do a total audit on all Indigenous organisations funded by ATSIC. The belief seemed to be that dishonesty and corruption were rife. However, the audit found that this was certainly not so. Indeed, the Federal Court later found the appointment of this auditor to be invalid. So now we appear to be back to those old days, where Indigenous organisations were strictly scrutinised and monitored for rigid compliance to rules and regulations.

In my own electorate over the past few months the Mutitjulu community have had funding suspended; for instance, Southern Barkly Aboriginal Corporation was closed down completely. I have had several other Indigenous organisations also complain that they have been threatened with closure or had fund releases subjected to lengthy delays because they were held to be in breach of one regulation or another, all over a few thousand dollars—organisations like Merrepen Arts or Majimap, in Malak, to give some examples. At the same time government departments such as Defence are purchasing billions of dollars worth of equipment, which then turns out to be less than ideal or takes forever to be modified and delivered at huge additional cost. Or Defence is purchasing small equipment for troops through poor procurement procedures and then finding it too is not suitable for the use it was to be put to. I even remember not so long ago Defence being unable to account for the whereabouts of tens of thousands of dollars worth of computers. What happened there? It made the papers for a few days and then got papered over and forgotten.

This would not happen with Indigenous organisations though—they get slammed. They get administrators appointed, as in Mutitjulu, for no valid reason whatsoever. They get a zealous minister going to the press, jumping on them from a great height or, even worse, making totally unfounded claims about what terrible things are going on. But I do not see the same sort of reaction occurring with the Department of Defence and their gross mismanagement of their funds and their lack of audited accounts year after year after year. I hope these bills truly represent changes which will benefit Indigenous corporations and will not be used as a means to further beat them down.

When initially introducing the bill in June 2005, the then minister for Indigenous affairs, Senator Vanstone, announced a rolling program of governance audits and explained that the bill would strengthen accountability provisions. Indigenous people are sick and tired of being victims of unscrupulous or incompetent administrators. The Northern Land Council, while accepting that corruption anywhere is unacceptable, pointed out the lack of any real evidence for such claims. Despite the possible inappropriateness of the
old act, most Indigenous corporations do seem to comply, or do their best to do so. There seems to be little real dishonesty. I am far from being the only one with concerns about this legislation, which I fear may prove to be overly complex and lacking in genuine support for those corporations affected. The Woodward report of 1974 stated:

The legislation must be simple ... it must be flexible ... it should make provision for Aboriginal methods of decision making by achieving consensus rather than majority vote ... it must contain simple provisions for control over a situation if things go wrong within an organisation ...

With over 500 pages included in this legislation, it is hard to believe that it achieves these criteria to any great degree. How can over 500 pages be simple? It seems impossible for those who draw up legislation—non-Indigenous lawyers and bureaucrats—to understand and empathise with real Indigenous values and needs. They lack the relevant experience to do so.

The Senate Standing Committee on Legal and Constitutional Affairs inquired into the provisions of this legislation, as outlined by Senator Payne, and presented their report earlier this month, on 9 October. While a need for some change was acknowledged by several organisations in their submissions or at hearings, land councils tended to criticise the initial legislation for being too large and far too complex. At the time of submissions and hearings, information on amendments since made was not available to organisations. As Senator Payne outlined, we were waiting for transitional legislation to see exactly how this would transpire. The Central Land Council, from my own electorate, stated in their submission:

... it is a complex statute designed to regulate large corporations.

They summarised their views as being unable to support the bill in its current form. They do not believe that it meets the special needs of Indigenous people; that potentially regulation could be very intense; that the bill is too prescriptive and may deter Aboriginal groups from using the statute; that many organisations struggle to meet the requirements of the existing legislation; and that what is needed is more assistance, not increased regulation and complexity.

The Northern Land Council said in their submission that they ‘recognise that the bill includes important accountability measures but considers it is seriously deficient in important respects’. They also could not support the bill in its current form. They continued:

... the Bill ... is overly prescriptive such that many unfunded, under resourced or remote ... corporations will be incapable of compliance ...

While general comments have later indicated a better degree of satisfaction with the transitional and amendment bills, doubts still remain about the legislation as a whole.

In the report of the Senate Standing Committee on Legal and Constitutional Affairs, Labor senators comment that they ‘remain concerned, however, about the level of regulation and the extent of the registrar’s powers’. At the hearings, staff of the Office of the Registrar of Aboriginal Corporations assured the committee that power to access books would not result in the examination of documents covered by legal privilege or any privacy rules. We can only take their word at this point in time. The potential still exists for the registrar to hold enormous power in issuing compliance notices and then, for example, to allow the registrar to appoint an authorised person to ‘assist’ in that compliance. While such legislation may be well meaning and intended to help with the provision of expertise, it does leave the way open for abuse and the overriding of Indigenous control and processes.
It is little use sending in some sort of non-Indigenous administrator unless he or she actually works with the Indigenous people; otherwise, they will learn little or nothing from any such exercise to improve future governance. Here I refer to the Central Land Council’s submission in which they said more assistance, not more complexity and regulation, was needed. Again, it seems to me that the government does not realise or appreciate how much assistance, training and mentoring is needed in these remote organisations. Appearing before the committee, Professor Mick Dodson said:

Let us stay with what we have because the new bill is far too complex.

While noting that the transitional bill does extend some degree of flexibility in acknowledging special Indigenous needs, Labor senators also reflected:

... there can be no certainty that these bills reflect an appropriate level of regulation which is workable for the specific conditions of the Indigenous corporate sector until they come into operation and have been tested in practice.

For this reason, we have recommended that the Office of the Registrar of Aboriginal Corporations closely monitor any effects of these changes for three years. I understand that there is an amendment on behalf of the Labor Party to be moved to that effect. However, even here I have concerns about the true independence of the registrar and about how independently of government interference they will be able operate if they are to be appointed by the minister. We have seen instances of that in the Northern Territory in only the last six months.

Furthermore, as previously mentioned, some of the amendments made since the introduction of the initial bill were not available to the public or specifically to Indigenous organisations wishing to submit or appear at committee hearings. As a result, the Indigenous corporate sector has not been able to examine and consider the amendments in what I would consider to be a reasonable period of time. This is again another example of where the government is simply not allowing for proper discussion or debate of this issue with the people most affected by it. We have groups such as the Central Land Council saying of the initial legislation that they could not support it. Groups like this definitely should be listened to and taken seriously.

Amendments and consequential legislation may have alleviated some of these concerns, but many still remain. While Labor supports these bills, the implementation of this legislation must be closely monitored with a preparedness to genuinely listen to Indigenous organisations, who should be given all and every assistance in the transition period. These changes could be used to genuinely help Indigenous organisations to improve their governance, not as further heavy-handed government intervention.

I want to mention the second reading amendment that Labor has moved in the House of Representatives and that will be moved in the Senate. For the record, I reiterate that, whilst we welcome many of the positive measures contained in the bills, there are still some concerns that remain on behalf of the Labor Party. These concerns go to ensuring that the government responds immediately and comprehensively to a recent report commissioned by the Office of Indigenous Policy Coordination, which found red tape and short-term, ad hoc funding arrangements were severely debilitating the Indigenous corporate sector—interestingly, the government’s own department found that to be the case. This legislative reform will not address these external causes of instability to corporate governance.

The government must also ensure adequate funding for training and assistance for
the Indigenous corporate sector to build their governance capacity and facilitate a smooth transition to the new regime, particularly as many Indigenous corporations deliver essential services. This was a unanimous recommendation of the Senate committee that inquired into the bill. All of us have recognised the need to ensure that the governance training of the office of the registrar does in fact increase—that is, that it is adequate and comprehensive.

There are significant outstanding concerns in relation to the level of regulation and the extent of the registrar’s powers in the bill, particularly given the lack of full independence of the registrar from ministerial and political interference. For the next three financial years the Office of Indigenous Policy Coordination should include in its annual report a review of the operation of the new legislation and results of a statistical survey of stakeholder satisfaction to ensure that the impact of the legislation is closely monitored and with appropriate transparency. We want to see some department within this government monitoring the impact and the flow-on of this new legislation and the effects that it will have on Indigenous people and their organisations.

The government should also ensure a review of the operations of the Corporations (Aboriginal and Torres Strait Islander) Act by a parliamentary committee within three years. We suggest that in three years time parliament should conduct a review to see what is happening with particular regard to the effective and proper use of the registrar’s powers under the act and the effectiveness and appropriateness of the act as a regime of corporate law for Aboriginal and Torres Strait Islander people. So while we will support this legislation, albeit with some changes and with a second reading amendment, and some of the improvements are worth supporting, we do have concerns that Indigenous people are fully trained and aware of the impact of this legislation, that they are not barrelled into a situation where they are bullied by this government into complying with regulations and requirements that they do not fully understand, and that the office of the registrar is used wisely and independently of this government, not simply as a puppet to impose unwieldy limitations on Indigenous people that are not necessary.

(Time expired)

Senator CHRIS EVANS (Western Australia—Leader of the Opposition in the Senate) (11.16 am)—I apologise for speaking later in this debate. I was unavoidably delayed at meetings. I thank Senator Crossin for her contribution. She no doubt has covered most of the ground, used my stuff and probably done a better job than I will do. That is always the disadvantage of letting her get a head start! I am not making a serious point, Senator Crossin. I appreciate your contribution and knowledge of the area.

I want to speak on this legislative package and will move a second reading amendment which has been circulated in my name and tries to encapsulate the concerns Labor has with these bills. The Corporations (Aboriginal and Torres Strait Islander) Bill 2006, 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 have additional parliamentary amendments. The Corporations (Aboriginal and Torres Strait Islander) Bill 2006 replaces the Aboriginal and Torres Strait Islander) Act 1976. It seeks to provide a modern framework with the flexibility to accommodate the specific needs and cultural requirements of the Indigenous corporate sector. The Office of the Registrar of Aboriginal Corporations states that the changes are intended to promote contemporary governance and accountability standards.
and to provide greater security for funding bodies and creditors, while allowing communities and groups the flexibility to design the constitutions of their corporations.

The Corporations (Aboriginal and Torres Strait Islander) Consequential, Transitional and Other Measures Bill 2006 is intended to help corporations adapt to the new regime while the Corporations Amendment (Aboriginal and Torres Strait Islander Corporations) Bill 2006 is intended to provide for an appropriate interaction between the major bill and other Corporations Law regimes. Listeners will be beginning to get a sense of the complexity of this whole package.

Labor recognises the need for reform in this area. In fact the change has been required for some time—it has been a long time in gestation. We support the modernising of the corporate governance regime and recognise the complexity of reforming this area. Aligning Indigenous corporate governance with modern mainstream standards at the same time as providing flexibility is no easy task. One might question whether these three bills end the complexity. It is starting to look like the tax act. I think it got to about 600 pages of legislation. That is one of our major concerns.

The Indigenous corporate sector delivers the bulk of essential services to remote communities. In many ways it resembles the community sector more than the mainstream corporate sector. Currently there are approximately 2,800 corporations registered under the act. Services delivered to remote Indigenous communities by such corporations include basics such as medical care and infrastructure. Other corporations hold land for Indigenous groups, and most native title corporations and Indigenous art centres are also registered under the ACA Act.

The characteristics and requirements of the Indigenous sector have led to recognition by both sides of politics since the 1960s that it requires a special incorporations statute. The most recent commissioned by the Registrar of Aboriginal Corporations chaired by Pat Dodson, which reported in December 2002, recommended the establishment of a new act. Many of the Dodson review recommendations have already been implemented by the Office of the Registrar of Aboriginal Corporations. This legislation seeks to implement a number of the other recommendations.

The government is not seeking to implement the recommendation which required the ORAC to seek a court order prior to the appointment of an administrator. This requirement would increase fairness and transparency and ensure that such appointments would not be subject to the suspicions of political interference. We have had recent issues and concerns in this regard. The introduction in this legislation of the right to appeal to the AAT against the appointment of an administrator certainly adds protections to the system but does not provide the added protection recommended by the Dodson review. As I said, the appointment of an administrator of the community at Mutitjulu was problematic. It is an area of the legislation which Labor believes needs further careful consideration.

I note that a restructure within FaCSIA has taken place, with ORAC now reporting to the corporate section of the department rather than to the Office of Indigenous Policy Coordination. That is probably a positive move and reduces the potential for a conflict of interest between the registrar and a major creditor of Indigenous corporations. Labor remains concerned about the potential for political interference and pressure on the decision making of the registrar. I make it clear that I have no criticism of the current registrar. Labor is concerned about the lines
of authority and ensuring the independence of the office.

Other recommendations of the review which have not been implemented include a requirement that membership of corporations be restricted to Indigenous people and their dependents, that corporate membership not be allowed and that the registrar not have the power to approve constitutions.

Labor believes that, overall, the bill improves on the existing outdated regime of the ACA Act. Labor welcomes the introduction of the legislation and the option to seek review of decisions by the registrar in the AAT—ensuring that the principles of natural justice and procedural fairness will now apply to the decision making of the registrar. We also support the introduction of a conference power, enabling the registrar to request that parties undergo mediation where a dispute arises. This power would have been very useful in the dispute between Mutitjulu Aboriginal Corporation and the Office of Indigenous Policy Coordination. The registrar cannot compel the parties to attend but can note in the annual report if any parties have refused to participate.

The bill seeks to enable Indigenous corporations to amalgamate and to more easily transfer between this regime and other Corporations Law regimes. I think the proliferation of corporations is a current weakness that hopefully will be addressed. The reforms seek to tailor the level of regulation for small, medium and large corporations—a move which may well prove to be problematic in practice. The changes aim to empower the registrar to exempt corporations or a class of corporation from certain requirements, or even chapters, of the bill. They enshrine a human rights standard in the preamble which states that the law is intended to be a special measure for the advancement and protection of Aboriginal peoples and Torres Strait Islanders.

While Labor supports the legislation, we do retain significant concerns that we believe need to be resolved by the government. The second reading amendment which I will move outlines those issues. Labor notes significant concern in relation to the level of regulation and the extent of the registrar’s powers sought in the bill. The extent of these powers might be acceptable when we have a registrar who genuinely attempts to work with Indigenous people rather than against them, but we cannot rely on the personality of the registrar in terms of the operation of the act. However, we also note the important protection provided by the right of appeal to the AAT.

The Senate committee inquiry into the legislation heard very strong criticisms of the bill on the grounds that it was heavily regulatory. As I said, 600 pages does not make for easy reading, nor does it make for easy examination by the Senate. The Central Land Council argued that it introduced a default setting of intense regulation. Labor recognises that some of the parliamentary amendments that were made publicly available on 5 October aim to reduce the burden of both regulation and paperwork. However, I also note that the Indigenous corporate sector was not given the opportunity to examine these further amendments, as they were published after the deadline for submissions. I do think that the haste with which that part of the process has occurred runs the risk of having unintended consequences.

While the parliamentary amendments serve to reduce the regulatory burden, they do call into question the approach of these reforms—imposing regulation and then offering a way to avoid that regulation via an exemption process. I think the office of the registrar has attempted to make this bill very
flexible, with a number of requirements able to be exempted either on request or at the discretion of the registrar. However, it may have been preferable to have omitted some parts of the non-essential regulation and thus to have produced a less complex piece of legislation.

We are concerned that the workload required of the registrar in processing exemptions could lead to lengthy delays and bureaucratic difficulties, particularly given the office’s limited resources. The provision allowing the registrar to exempt an entire class of corporations from certain obligations may allow it to manage its workload and tailor the act to eliminate unnecessary regulation. I trust that the registrar will manage both of these factors in the implementation of the bill. However, the various concerns I have raised will not be allayed until the legislation comes into practice and has been tested.

Labor has some concerns about the implementation of the new framework sought by the bill. The Senate committee inquiry unanimously recommended adequate funding for training and assistance of the Indigenous corporate sector to facilitate a smooth transition to the new regime. I understand the difficulties involved in providing that support and training. The last budget included a significant injection of funding into the Office of the Registrar of Aboriginal Corporations, but Labor is a bit concerned that the actual amount dedicated to training and support will not be adequate.

The injection of $28.1 million for reforming the delivery capacity of Indigenous corporations is still more focused on punitive measures than on capacity development. Less than a third of the funds will be spent on actual training, and half will be spent on using administrators and registering disqualified directors. I am also concerned that many of the administrators seem to be from communities so far away from the actual community being impacted. When I visited Mutitjulu the other day, the administrators had not been seen much around the community. I think that is a weakness.

ORAC’s enhanced training for directors initiative received funding of $1.46 million for the last financial year. This initiative includes three-day introductory workshops in corporate governance and training towards the Certificate IV in Business (Governance). To date, there have been 24 introductory workshops, with a total of 632 participants and 101 graduates of the certificate IV course. This training is extremely worthwhile, but it will not be enough to support the directors and officers of the 2,800 Indigenous corporations who will be making the transition to the new regime.

The Senate committee inquiry also noted concern about the capacity within ORAC’s budget to train and support directors and members of corporations making the transition. Clearly, the government needs to take a more evidence based approach to implementation. Funding needs to respond to assessed need, particularly given that many of these corporations deliver essential services; thus a smooth transition should be a priority, backed up by the necessary resources. These are not just small companies delivering non-essential services; these corporations are often the difference between life and death for people living in those communities. So we have to manage this properly.

I also point out that this legislation will not address one of the most significant problems facing Indigenous corporations—that is, government bureaucracy and the instability of funding. One of my staff recently found on the FaCSIA website, unheralded and unremarked upon by the government, an independent report commissioned by the Office of Indigenous Policy Coordination,
identifying bureaucratic red tape and short-term, ad hoc grant funding as a major destabilising and debilitating influence on Indigenous corporate governance. I could not agree more.

The report, *A red tape evaluation in selected Indigenous communities*, contains evaluations of 22 Indigenous community organisations and the Indigenous coordination centres that serviced them from mid-2005 to January 2006. The report found that there were 336 grants going to these 22 organisations. Basically the organisations will spend the whole time managing the grants. Half of all the grants were very small, yet they had the same reporting and application requirements as the larger grants. Two-thirds of these grants required annual applications even though they were rolling programs. So, despite the fact that it was an ongoing program, they had to apply for the money annually and to justify the need even though there was little change in the risk profile or circumstances of the funded organisation. Three-quarters of funding agreements contained a majority of performance indicators that were not useful or relevant to government agencies. Only 11 per cent of the performance indicators set by the government for their grants were categorised as effective.

Aboriginal people and Aboriginal corporations have been saying this for years. To its credit, the government now has a report that brings home the truth of their frustrations. The report makes strong recommendations, including that a paradigm shift is needed to change departmental culture and priorities from rigid compliance to achieving outcomes for Indigenous communities. Wouldn’t that be a useful change! The report also says that funding mechanisms and processes need to be improved to reflect this paradigm shift, including using triennial block grant funding where possible rather than annual appropriations. We cannot expect to achieve outcomes until we have a system that supports Indigenous capacity and problem-solving rather than primarily serving the needs of the bureaucracy.

I note that the cost of the report was more than $168,000. I hope that the money was not wasted and that the government delivers an immediate and meaningful response. The fact that the government did not publicise the report or draw any attention to it leaves me concerned that it may be filed away like so many others. Labor believes that to make a real difference to Indigenous corporate governance the government must act to reduce red tape and consolidate and simplify its funding arrangements.

In conclusion, Labor is supportive of the bill. It has been a long time coming but it is important work. As I indicated, we retain a number of outstanding concerns. Given the numbers in the Senate, the government clearly will carry the day in terms of any amendments. We have not sought to try to greatly amend the act, in part because of its complexity and the inability of those who are affected by it to come to terms with that. Very few of the Aboriginal organisations I have spoken to understand the full complexity of the changes and how they will impact on them, so to have an intelligent conversation about this bill has not been easy. Those organisations just have not had the resources to deal with it as adequately as I think would have been useful. It is always good to hear the views of the consumers of the product, but quite frankly very few, if any, have come to terms with it.

We hope it is an overall improvement to the old regime and that the benefits will flow to the Indigenous corporate sector. We recognise and support the attempt to provide flexibility but note the complexity of the task it seems to undertake. We are trying to take a
constructive approach, we are trying to move forward and we hope that this will help.

Labor’s second reading amendment is designed to express our reservations. I still think there could have been some improvement in the process, but no-one can say that the government did not take time in delivering the product. Senator Scullion and I had similar concerns when it was originally introduced without the transitional arrangements, and I appreciate his help in making sure we dealt with it as one package even though it is frighteningly thick and frightening complex. I hope what we do today is a good thing. I cannot say that I am absolutely certain that that is the case, given that I do not pretend to be on top of the 600 pages of the detail.

In any event, we will be supporting the package more in faith than in certainty, and we will be moving a couple of amendments that we think might improve the bill. I commend the bill to the Senate. I move the second reading amendment standing in my name:

At the end of the motion, add:

“whilst welcoming many positive measures contained in this bill and the related bills, the Senate is of the opinion that:

(a) the Government should respond immediately and comprehensively to a recent report commissioned by the Office of Indigenous Policy Coordination, which found red tape and short-term, ad hoc funding arrangements were severely debilitating the Indigenous corporate sector. This legislative reform will not address these external causes of instability to corporate governance;

(b) the Government must ensure adequate funding for training and assistance for the Indigenous corporate sector to build their governance capacity and facilitate a smooth transition to the new regime, particularly as many Indigenous corporations deliver essential services—this was a unanimous recommendation of the Legal and Constitutional Affairs Committee’s inquiry into the bill;

(c) there are significant outstanding concerns in relation to the level of regulation and extent of the Registrar’s powers in the bill, particularly given the lack of full independence of the Registrar from Ministerial and political interference;

(d) for the next 3 financial years the Office of Indigenous Policy Coordination should include in its annual report a review of the operation of the new legislation and results of a statistical survey of stakeholder satisfaction to ensure that the impact of the legislation is closely monitored and with appropriate transparency; and

(e) the Government should ensure a review of the operation of the Corporations (Aboriginal and Torres Strait Islander) Act 2006 by a parliamentary committee within 3 years having particular regard to:

(i) the effective and proper use of the Registrar’s powers under the Act; and

(ii) the effectiveness and appropriateness of the Act as a regime of corporate law for Aboriginal and Torres Strait Islander people”.

Senator KEMP (Victoria—Minister for the Arts and Sport) (11.34 am)—My remarks bring the second reading debate to an end. It will not surprise Senator Evans that the government will not be accepting the second reading amendment. We welcome the support of the Labor Party for the Corporations (Aboriginal and Torres Strait Islander) Bill 2006 and related bills, albeit a trifle grudging at times. Nonetheless, we welcome that support and I acknowledge the contributions,
mostly thoughtful, that have come from senators who have made speeches in this debate. I particularly want to commend my colleague Senator Payne for her remarks and her hard work on this bill. I am very glad that Senator Evans also acknowledged the interest and work of Senator Scullion.

The Aboriginal Councils and Associations Act 1976 was passed 30 years ago to cater for the small number of landholding corporations linked to the first land rights legislation. There is broad agreement that the legislation no longer meets the needs of Indigenous corporations or their communities. One of the points that Senator Evans raised in his remarks concerned red tape. I think this issue has been of concern to a wide range of people, particularly to the corporations involved. The advice I have is that there will be less red tape for the majority of corporations. One of the express aims of the registrar is to administer the bill with a minimum of procedural requirements. The key compliance obligation is in the reporting area. The advice I have is that there will be less red tape for the majority of corporations. The reporting requirements for small and medium corporations will decrease. The reporting requirements for large corporations will increase and align with mainstream standards. This implements a key recommendation of the independent review, which found that large corporations can generally recruit competent personnel to carry out these requirements.

The bill has maximum flexibility built into it. This ensures that support and regulation can be tailored to the needs of particular corporations. I am advised that the registrar will use this flexibility to reduce red tape, which will be music to Senator Evans’s ears. The registrar’s office will offer assistance to make the required changes. There will be a number of tools and guides for corporations, members and directors, and the registrar’s office has a free telephone hotline for inquiries about this bill. This deals with one of the concerns that Senator Evans raised.

The new legislative package responds to the need for improved corporate governance in Indigenous communities in a number of ways. It aligns the government’s requirements for Indigenous corporations with modern standards of corporate accountability while at the same time allowing flexibility for Indigenous communities to design corporations that suit the diverse circumstances of the 2,500 communities located all over Australia. These corporations serve many different purposes, from holding land and delivering essential services through to operating health and legal services and running businesses such as Indigenous arts centres. Indigenous corporations are essential to the lives of many Indigenous Australians, and it is not appropriate for them to have lower standards of corporate governance.

The legislation ensures special support and a regulatory environment that is tailored to the risks and requirements of the Indigenous corporate sector. However, special support and regulation needs to be consistent with the practices and standards of other corporate regulators. The backbone of the bills is the application of mainstream governance standards to Indigenous corporations. For example, directors and senior officers who are running and managing corporations will now have the same obligations as mainstream directors and officers. However, I should say that the bill offers a flexible framework, allowing the special circumstances of individual corporations to be taken into account. For example, communities can structure their corporations in ways that suit their needs and aspirations.

The bill also provides a strong internal governance framework that offers transparency of operations for members and key stakeholders. Regulatory powers such as the
appointment of a special administrator allow the important services the corporations provide to continue in the event that these services are put at risk through corporate failure. Unlike the existing act, the appointment of a special administrator under the new legislation will carry with it the new rights of review that are currently unavailable. The new legislation, as I said, allows for red tape to be reduced.

Amendments made in the House of Representatives have led to improvements in the main bill. Some of these amendments were responses to feedback from a range of stakeholders, including, I might say, submissions made to the Senate Standing Committee on Legal and Constitutional Affairs. In its report, the committee considered that the bills will make a significant contribution to improved governance and accountability. The government has already responded to recommendations of the committee, but I note that the recent $28 million budget initiative to strengthen the capacity of Indigenous corporations will include funding associated with the implementation of the new act. This is in addition to the Registrar of Aboriginal Corporations existing funding.

With its core and additional funding, the Registrar of Aboriginal Corporations will provide support to Indigenous corporations through an information and complaints hotline, do-it-yourself tools, a new model constitution, fact sheets, troubleshooting sessions, governance training and capacity-building and compliance training. It will help corporations through the transitional process where it is needed. The registrar’s office has already embarked on some of these measures. The registrar will monitor the implementation of the new act for three years, which covers the two-year transitional period given to existing corporations to align with the new act. The registrar will do so by monitoring and responding to transitional issues that arise, through its suite of services provided to Indigenous corporations. The registrar will monitor the take-up rate by corporations under the new legislation, including special options for extra support and tailoring rules. The registrar will also monitor the rate of compliance and reasons for noncompliance. Details of the monitoring of the implementation of the legislation will be published in departmental annual reports and the registrar’s yearbooks for the three years.

The government also accepts the recommendation of the committee to report on this matter to parliament at the end of the two-year transitional period. We believe that the transitional provisions, which set out how corporations will move from the old regime to the new, will minimise the administrative burden on existing corporations. They will have up to two years to meet the requirements of the new act. The Corporations Act will also be amended to remove existing regulatory gaps.

These are essential and widely accepted reforms that complement other changes being implemented by the Australian government, designed to deliver a better future for Indigenous people in Australia. As I mentioned, we will not be accepting the second reading amendment. That will come as no surprise to Senator Evans and his colleagues.

Senator Chris Evans—It does.

Senator Kemp—It does, apparently, but I am surprised that it does—let me put it that way. I believe that this is legislation that enjoys widespread support and that should enjoy speedy passage through this parliament.

Question negatived.

Original question agreed to.

Bills read a second time.
CORPORATIONS (ABORIGINAL AND TORRES STRAIT ISLANDER) BILL 2006

Bill—by leave—taken as a whole.

Senator CHRIS EVANS (Western Australia—Leader of the Opposition in the Senate) (11.43 am)—I was going to ask the Minister for the Arts and Sport some detailed questions relating to clause 566-20, 'Privilege against self-incrimination not available to bodies corporate in certain proceedings', which I am sure he is on top of, but I will perhaps leave that for today and move on to some broader issues.

Senator Kemp—We would be happy to take that one on notice.

Senator CHRIS EVANS—I am sure you would. As I say, I have difficulty lifting the bill let alone dealing with it. I appreciate the minister made some remarks about the registrar reviewing the implementation of the act. That will be helpful. I also flag, though, as we did in the second reading amendment, that we want to ensure there is monitoring of the implementation. While I take what the minister said in good faith, we will be keen to make sure the monitoring is sufficient and also that there is some sort of independent assessment of that. If we are not satisfied with the level of monitoring, the opposition may well seek to pursue that at estimates or by a review of the bill by the Senate committee after some period of time. As I said, there is no motive other than to be assured that what we think we are doing today happens and to be very clear about the experience of those Aboriginal corporations with the new act, because it is designed to assist them and we do not want to find out too late if there are problems with that. I formally move amendment (1) on sheet 5096:

(1) Clause 246-25, page 195 (line 20), omit “2 years”, substitute “3 years”.

This is an amendment which seeks to extend the limit on the maximum term of appointment for directors from two to three years. There is no limit on the maximum term of appointment for directors in mainstream Corporations Law and, while it may be appropriate to encourage shorter terms to enhanced accountability, it is also important to encourage stability in corporate governance. Labor considers that three years would be a more reasonable limit to provide that stability. The point was made by, I think, the North Queensland Land Council in its comprehensive submission to the Senate inquiry.

The parliamentary amendments have made it possible for corporations to seek an exemption from this limit, so we are allowing exemption, but we are insisting on a two-year limit. Labor supports the option for exemption but thinks it would still be preferable for the limit to be increased so there are fewer organisations having to undergo an unnecessary exemption process. It may not seem a huge issue, but it is one of those issues that we thought was worth pursuing. One of the problems in these corporations is the issue of stability and corporate knowledge. We ought to be doing everything we can to build on that and not limit it.

Senator KEMP (Victoria—Minister for the Arts and Sport) (11.46 am)—We have listened very carefully to Senator Evans’s comments. In many ways they are on-balance decisions. The government’s view is that the maximum term of two years makes directors more accountable to members and reduces the chance of a corporation becoming a closed shop controlled by one particular group. But it is true that some stable corporations with well-established governance practices may benefit from longer term directors. We agree with Senator Evans on that point. As has been noted by Senator Evans, the government has responded to this feedback by making the two-year term exempt-
ibl. We think that deals with the problem. I do not think there is a big difference between us, but the government has looked carefully at this issue and will be opposing the amendment moved by Senator Evans.

Senator CHRIS EVANS (Western Australia—Leader of the Opposition in the Senate) (11.48 am)—I look forward to the government moving such an amendment for the appointment of directors in mainstream Corporations Law, given their concern about those issues.

Question negatived.

Senator CHRIS EVANS (Western Australia—Leader of the Opposition in the Senate) (11.48 am)—I move opposition amendment (2) on sheet 5096:

(2) Clause 487-10, page 392 (lines 7 to 11), omit paragraphs (1)(a) and (b), substitute:

(a) give the corporation notice in writing including the particulars of the grounds that would justify such a determination; and

(b) invite the corporation to show cause, within a reasonable period specified in the notice, why the determination should not be made; and

(c) consider any representations the corporation makes to the Registrar within that period.

Amendment (2) is intended to require that the registrar provide reasons for a determination to appoint a special administrator. This is an important issue. It is one we are concerned about and is something that I hope the government takes seriously. The bill improves on the Aboriginal Councils and Associations Act by requiring the registrar to give the corporation an opportunity to show cause why the registrar should not appoint a special administrator. Under the old regime it was at the discretion of the registrar to seek the corporation’s opinion, so I accept that that is a beneficial change. However, what is missing is an obligation on the registrar to specify the grounds that would justify such an appointment. It seems to me it is not unreasonable that someone knows why it is they are intervening in their management of a corporation and to justify that intervention.

The requirement to give reasons is common in administrative law to ensure procedural fairness. Outlining the registrar’s concerns would ensure that the corporation has a full opportunity to respond to those concerns. It also provides more transparency and inspires confidence in the process that can often be thwarted by misunderstanding. It is important to ensure that, in moving to the corporate model, as we are today, we do not actually seek to impose on Indigenous corporations requirements that are unreasonable or that are more punitive than we apply more generally, while recognising the differences in the way they operate. It is also important that we make sure that those corporations are treated with the same sort of procedural fairness and opportunity that we would expect for ourselves or for other corporations in the community. The lack of an obligation on the registrar to specify the grounds upon which they are intervening and appointing an administrator is a flaw in the legislation.

As I said, the opportunity to show cause is a good one, because a lot of Indigenous people have been concerned about the current system and the failure of the registrar to actually have to justify that very serious intervention. The requirement to give reasons is, as I say, very common in administrative law. It seems to me to be an issue of basic procedural fairness. I have not heard an argument as to why it should not be applied in this case. It is a very serious step to appoint an administrator—to take the corporation out of the control of the elected directors, out of the control of the people who are providing the services and managing the organisation. I am not saying that it would necessarily be used
arbitrarily, but it seems to me it is a basic element of procedural fairness that reasons are provided. So Labor would appreciate support for the amendment to ensure that those reasons are made and specified to the corporation before such an intervention is enacted.

Senator KEMP (Victoria—Minister for the Arts and Sport) (11.52 am)—Senator Evans, I have pressed my advisers on this issue. I note your concerns in this area, and the advice I have received is that the extra requirements in this amendment are really not necessary. It is the registrar’s current practice to provide particulars in a show cause notice—in fact, I understand this is required under administrative law—so these extra requirements you are proposing are simply not necessary. The current practice will, of course, continue as it is necessary, to pick up another one of your points, in order to provide procedural fairness. While we understand your sentiment and we understand your concerns, the advice I have received makes it very clear that your goals are already being achieved under the current arrangements and, therefore, this amendment is not necessary.

Senator CHRIS EVANS (Western Australia—Leader of the Opposition in the Senate) (11.53 am)—I thank the minister for his response, but, quite frankly, assuring me about current practice is not the same as this parliament determining on a new act. We have the capacity today to determine what the law ought to be, so the question of current practice, quite frankly, carries no weight with me. Our job today is to establish a new law, so it seems to me the practice argument does not wash.

The second argument you address is the question of admin law. There is some strength to that proposition, but there is a whole range of acts passed by this parliament, carried by this government, which have sought to stipulate those sorts of provisions. There are a range of provisions provided in this act which seek to regulate this area that you could also argue are supported by common law and that would not necessarily require a specific provision. And if you can have 600 pages of legislation—600 pages of regulation, requirements et cetera—I think a request to add one little bit that makes it clear that the registrar is required to stipulate on what grounds they intervene in an Indigenous corporation is not asking too much. It is not a big ask. It is a protection for the organisation that is warranted; it is a key part of procedural fairness.

As I said, there is some strength to your argument about current administrative law or common law providing support for that sort of process. But I would argue there is a fair bit in this that you could argue the same thing for but the government has sought to cover off on; the government has thought it worth stipulating. We think this is worth stipulating. We urge the government to give serious consideration to that. I do not find the government’s response convincing, and I think Indigenous organisations would prefer the assurance that that sort of procedural fairness is stipulated in the act.

In fact, there is a gap on page 573, so if we add that clause we will not even add a page; we will still only have 573 pages. Thankfully, we got the legislation on 572 pages, plus one little paragraph. So if we add this amendment we do not chop down any more trees, we do not add any great complexity to this new simplified version of the organisation, but we do tell Aboriginal people that they will get procedural fairness, that we will not be coming in and overturning democratic control over their organisations without ensuring procedural fairness. So why don’t you have a crack at providing some reassurance other than the reassurance you
provided in the committee stage by way of contribution, which of course may not be as widely read and heard as we would hope. I urge the government to think about making one small concession to being clear that Indigenous corporations and Indigenous people are treated with that sort of procedural fairness, which the minister assures me will apply but will not be explicit.

Senator KEMP (Victoria—Minister for the Arts and Sport) (11.57 am)—I can understand Senator Evans’s slight embarrassment: having berated us for the length of the bill, he now wants to add to the bill. I thought that was a clever ploy, actually; I rather enjoyed how you dealt with that issue, having complained about the size of the bill and then wanting to add to it. To be quite frank, I thought that was quite clever, if not persuasive.

What assurances can we give? People will look closely at what I have said in the second reading debate. They will look at administrative law, which you indicate does have some weight. It is true to say the minority report of the committee did not support this particular amendment, probably for the reasons I have stated. Senator, as I always say, we listen carefully to your arguments. We are a consultative government; we do listen to people, but we think the objectives you are seeking are in fact met. We think that people will have those assurances of procedural fairness and that reasons will be given on the show cause notice. After much deliberation, I am sorry to inform you that we will not be accepting your amendment.

Senator CHRIS EVANS (Western Australia—Leader of the Opposition in the Senate) (11.58 am)—I am disappointed the government could not make even one small concession to the concerns raised. I know they have absolute power, but a bit of respect for the parliamentary process would not go astray on occasions. And, if you are going to tell people you are listening, generally people regard that somehow, on occasions, one might change one’s behaviour if one is genuinely listening. But to be listening and never change one’s behaviour is not in accordance with my understanding of listening. As I said, we try to be constructive about this bill, as with all others, and we have tried to assist its implementation. I do not think it would hurt the government to occasionally listen to those concerns and to actually act rather than just reassure us they are listening.

I did want to say that I do not know what the minister’s point was when he said that the Labor senators did not support this. It was not explicitly a point made in the report if that is what he is trying to say, but I can assure him that Labor senators do support the amendment. But, as you know, in a short inquiry with a complex bill, Labor senators did not attempt—nor did government senators attempt—to deal with every issue in the bill. The overall recommendation of the committee was to monitor the new regime, and it also made known a number of other concerns in its report.

Anyway, it is clear that the government are not going to provide that reassurance. I am not sure that the minister’s broad reassurance regarding the amendment will be that widely circulated in Indigenous corporations. I think they will have enough trouble dealing with the 600 pages of legislation without adding to their reading. But I think it is an important amendment. I do press the point that it does make procedural fairness explicit. It seems to me that, if the government say that it happens anyway, it is not too much to ask that they actually provide that assurance in the legislation. I am disappointed that listening does not impact on behaviour.

Question negatived.
Senator CHRIS EVANS (Western Australia—Leader of the Opposition in the Senate) (12.01 pm)—by leave—I move opposition amendments (3) and (4) on sheet 5096 together:

(3) Clause 658-1, page 523 (after line 33), after paragraph (1)(i), insert:

(ii) to inform the Minister about any issues affecting the independence of the office.

(4) Clause 658-5, page 524 (line 28), at the end of clause 658-5, add:

; and (i) to maintain the independence and integrity of the office in the exercise of his or her functions.

Labor is moving to stipulate the independence of the registrar and the registrar’s office. Labor notes that the bill increases the independence of the registrar by transforming the position into a principle executive officer as opposed to a public servant, and that means that the remuneration and terms of conditions will be set by the Remuneration Tribunal, not by the minister. That is a small improvement in the sense of independence of the office. Labor also notes the structural reforms that have happened within the Department of Families, Community Services and Indigenous Affairs and that there are new reporting requirements for the registrar in terms of reporting to the corporate section of the department rather than directly to the OIPC. But these things changed quickly, and they may change back quickly. The one thing we know about Indigenous policy is that it is constantly changing.

More fundamentally, the registrar is still appointed by the minister and there is still scope for ministerial interference in the decision making of the registrar. There is serious unease on this side of the chamber about the Mutitjulu intervention. Although I do not want to go to the specifics of the case, I think we are all aware that there are court proceedings occurring in relation to that. I am not going to the circumstances of what is occurring in Mutitjulu, but there is concern about whether the registrar’s office has enough independence, particularly given this sort of activist minister with a hands-on approach, if I can put it in its kindest form. Labor are seeking to enunciate and clarify the independence of the registrar in the bill. We are seeking to include within the aims of the registrar a clause that says:

... to maintain the independence and integrity of the office in the exercise of his or her functions.

We are also seeking to include within the list of functions of the registrar a clause that says:

... to inform the Minister about any issues affecting the independence of the office.

This statutory function is identical to that of the Office of Evaluation and Audit (Indigenous Programs). The independence of that office is central to its integrity, so I think it is a useful point of reference. The Office of Evaluation and Audit (Indigenous Programs) is another part of the checks and balances within this area of policy. As I said, it is the statutory function that governs the operations of that office. We think it would be useful to have that same protection included in this bill. As I said in my speech on the second reading, this is not a reflection on the current registrar or previous registrars, but Labor want to make sure that the office’s independence is protected.

Senator KEMP (Victoria—Minister for the Arts and Sport) (12.05 pm)—I want to make a brief comment on what I thought was a somewhat unkind comment by Senator Evans. He queried the government’s listening and suggested that it required action to be taken. Of course, having consulted and listened, you make a judgement about whether this will lead to a change. But I draw your attention to no greater authority than yourself, Senator Evans, in your re-
marks in your speech on the second reading, where you indicated that the government had made some changes which you felt improved the bill. I feel that did demonstrate an ability to listen and consult.

We have listened to you again, Senator Evans, and perhaps I can shed some light on this and give some assurance to you. You are worried about whether the registrar, in carrying out his or her responsibilities under the act, will be independent of the government, and you seek to buttress that. But I suggest to you that, as far as we are concerned, it goes without saying that the registrar would raise with the minister any matters which might affect the registrar’s proper discharge of his or her duties. We are very keen, as you are, to maintain the independence and integrity of the registrar, and we believe the bill provides additional safeguards to ensure the independence of the registrar. The registrar will be appointed for the term set out in his or her instrument of appointment. Termination of the registrar’s appointment is limited to the grounds set out in the act—for example, misbehaviour or physical or mental incapacity.

We believe measures in the bill are consistent with the Uhrig review’s recommendations on governance arrangements for statutory authorities and office holders. So, again, we do not query what Labor is seeking to achieve, but, to be quite frank, we think this has already been achieved under the act. Noting your relentless berating of us for the size of the act, we are therefore loath to add to the act. We have listened to you on that score as well, Senator Evans!

Question negatived.

Senator CHRIS EVANS (Western Australia—Leader of the Opposition in the Senate) (12.07 pm)—I do not want to get involved in nitpicking with the minister, but he just said, ‘We’ve just added some amendments but we’d be loath to add any’—I am not sure which it is. As I say, with one small clause in 600 pages the minister could have been magnanimous. Clearly he is not able to make that decision; otherwise I am sure it would have been agreed to.

Senator Kemp interjecting—

Senator CHRIS EVANS—Yes, it is all his advisers’ fault, I am sure. I always found Senator Kemp to be much more reasonable and accommodating, so I was surprised by his refusal. Since he started making retirement plans he has been much more accommodating and relaxed! I move opposition amendment (5) on sheet 5096:

(5) Page 524 (after line 28), after clause 658-5, insert:

658-6 Exemption orders to be responded to expeditiously

For the purposes of paragraph 658-5(b), the Registrar must provide a response within a reasonable period to any application for exemption from the operation of this Act to ensure that the applicant corporation is not unduly burdened by uncertainty or ongoing and inappropriate compliance requirements.

This amendment requires that the registrar respond to exemption applications within a reasonable period to ensure that a relevant corporation is not unduly burdened by uncertainty. I am sure the minister will assure me that practice and other matters will ensure this happens, but forgive me for seeking more certainty.

The structure of the bill provides a default setting of regulation, part of which can be avoided by corporations through the exemption process, which we discussed earlier. The exemption process is the key to the bill’s strong flexibility, but obviously there may be other consequences. Depending on the level of applications, the exemption processes may create unnecessary bureaucratic layers for corporations or place a burden on the re-
sources of ORAC. They may also create some uncertainty for Indigenous corporations and prolong onerous or inappropriate requirements if their applications are not treated expeditiously.

The exemption order provisions in the bill enable the corporations to make an application to the registrar but do not require the registrar to respond unless he or she agrees to make an exemption order. Labor’s amendment seeks to ensure that the registrar provides a response, whether written or otherwise, within a reasonable period. It just ensures that the applicant corporation is not unduly burdened by uncertainty or inappropriate compliance requirements. It is a small change which we think would ensure that the registrar is required to respond within a reasonable period and it makes it clear that the corporation can expect a response within a reasonable period, which provides them with certainty and ensures that the efficiency of the office is guaranteed.

Senator KEMP (Victoria—Minister for the Arts and Sport) (12.10 pm)—Amidst the many talents of Senator Evans we can now add ESP. I think you have actually been able to predict my response, Senator, and for that I commend you, though it will not make you any happier. I have consulted closely with my advisers, whom you chanced to mention, and they assure me that this extra requirement is not necessary. The point is made that decisions of the registrar will be subject to judicial review in the Federal Court or the merits review and administrative appeals tribunals. These review rights include the ground that there has been an unreasonable delay in making the decision. I am further assured that the registrar’s timely responses will continue under this act, so I regret to inform you, Senator, we will not be accepting your amendment.

Question negatived.
Other Measures) Bill 2006 seeks to implement the second and third stages of the child support reform package. It follows on from the first stage of the reforms enacted in June this year through the Child Support Legislation Amendment (Reform of the Child Support Scheme—Initial Measures) Act 2006. I would like to acknowledge that a lot of work has gone into bringing forward the package of reforms sought by this bill and the earlier bill passed a few months ago. I particularly acknowledge the work of the ministerial task force on child support headed by Professor Patrick Parkinson, which developed the reform package.

The second stage of the package as contained in this bill comes into effect on 1 January next year and will in part introduce independent review of all Child Support Agency decisions by the Social Security Appeals Tribunal, broaden the powers of the courts to ensure that child support obligations are met, strengthen the relationship between the courts and the Child Support Scheme and allow separating parents more time to work out parenting arrangements before their family payments are affected.

The third stage of the reform package as sought by this bill comes into effect on 1 July 2008 and will introduce a new child support formula that will change the way that child support payments are calculated. That is the heart of the reforms. It will also change the treatment of income from second jobs and overtime, change the treatment of parents with dependent stepchildren when calculating their child support liability, simplify the change of assessment rules for altering the amount of child support that is payable and change the arrangements for parents who wish to make agreements for ongoing child support or lump sum payments.

Fundamentally, Labor accepts the need to reform the Child Support Scheme. The scheme, which was set up by the Hawke Labor government in 1988, has been a model for child support arrangements in other parts of the world. People seek to copy our scheme and to build on our model. But we also acknowledge significant ongoing concerns have developed about fairness, the assessment formula and compliance. While we are regarded as having one of the best schemes, there is still much more work to be done. There are divergent views about what the impact of this package will be, but Labor believes that there is a strong community acceptance for the broad need for change.

The belief that the interests and wellbeing of the children must always come first guides Labor’s approach to child support reform. The legislation before us today is the culmination of a process which commenced with the House of Representatives Standing Committee on Family and Community Affairs inquiry into family separation issues which led to the Every picture tells a story report. It is encouraging that a House of Representatives inquiry produced such good work. Normally, they rely on the Senate. That inquiry led to the establishment of a ministerial task force and reference group to examine the Child Support Scheme, including an examination of the costs of raising children in postseparation households.

The ministerial task force reported in June 2005 and its 30 recommendations form the basis of the reform package now before the parliament. Labor believes that in undertaking the first systemic evaluation of the scheme the task force has done the work that provides a very strong basis for reform. It found that changes in society and the circumstances of many families since 1988 necessitated change. The package of reforms developed by the task force is the result of expert research and analysis and uses sound intellectual principles to balance competing factors in an attempt to produce a balanced...
package of measures. We think that this intellectual rigour has been important in trying to build community acceptance of a new system, given the highly contested nature of child support.

The centrepiece of the reforms is the new child support formula, but the reforms also include increased compliance activity, use of courts for debt recovery, a new approach to parents understating income and administrative review access through the SSAT. The new formula for assessing child support payments has been developed by the task force based on evidence of the actual costs of raising children. To me, that is the key change: the fact that we have sought to base the new formula on the actual costs of raising children rather than on the disputed claims about those costs. Shared parental responsibility for those costs is now recognised, as is each parent’s level of care.

The task force identified several problems with the current formula. Firstly, the current formula uses fixed percentages of income, assuming people spend the same proportion of their income on children regardless of their level of income. This assumption is incorrect. Research shows that people with higher incomes spend more on their children in strict dollar terms than people with lower incomes. However, they spend less as a percentage of their income. None of that is counterintuitive. The current formula also fails to distinguish between the ages of the children and therefore fails to recognise the higher expense incurred in caring for older children—something I am just beginning to experience. The current formula treats the income of resident parents more generously than it does the income of non-resident parents and does not take account of contact by the non-resident parent with the children for up to 29 per cent of the time. Second families are also unfairly and inconsistently taken into account under the current formula. That has been a big bugbear and one which I have a great deal of sympathy for.

However, the new formula is explicitly based on the costs of children, varying according to their age and the income of the parents. A fairer income shares approach is used so both parents will have the same amount deducted as self-support and both parents’ incomes will be taken into account in establishing the costs of the children. The resulting costs of children will be apportioned between the parents according to their share of the combined income. In the new formula, parents who care for their children for 14 per cent of the time or more will be recognised as contributing to the costs of the children through that care. This will, we hope, encourage more non-resident parents to stay more actively involved with their children, which is a very worthwhile social objective. There will also be equal treatment between first and second families by using the actual costs of the children from the second family, rather than a flat amount, in working out child support payable for the first family. Where a non-resident parent has care of their child for less than 35 per cent of nights in a year, the resident parent will keep all of their family tax benefit—a balancing measure, if you like.

With its basis in research into the actual costs of raising children in separated families and with it taking into account levels and costs of care by both parents, Labor believes that the new formula has a stronger intellectual and evidence base than the current formula. Labor considers that on balance the new scheme will be fairer for both parents and more focused on the needs and costs of children, but we have to take that largely on trust at the moment, and I will come back to that later.

Labor has previously made it clear that our principal concern with the bill relates to
the potential financial impact on low-income households. This package will have winners and losers. Some people will benefit financially from the changes; others will have their income reduced.

Single-parent households are among the most financially disadvantaged group in our society. Single-mother groups have noted that 46 per cent of sole parents with dependent children live on very low incomes and that, of all family types, these families are at the highest risk of poverty. Labor is concerned that single parents who were disadvantaged by the recent welfare changes may now face the prospect of further cuts in income. Some of these people will get a double whammy. They will have their welfare entitlement reduced as a result of the so-called welfare reform and they may be losers out of the child support changes. There is responsibility on the government to ensure that the wellbeing of children does not suffer due to the combined impact of those policy changes.

Labor acknowledges the concerns of single-mother groups that many resident parents will receive lower child support payments under the new formula. We particularly note that the task force chair, Professor Parkinson, does not disagree that a significant proportion of single parents will receive lower payments as a result of the bill. In evidence to the Senate Standing Committee on Community Affairs inquiry he noted that around 55 per cent of assessments will decrease under the new formula.

Labor does, however, accept that reduced income due to the formula itself will be offset in part by other aspects of the reform package, including the revised family tax benefit arrangements, the introduction of minimum payments for parents who seek to deliberately minimise their income and the strengthened compliance regime. I will be particularly keen to ensure that the compliance regime is effectively strengthened; it has been a major weakness of the current system.

Witnesses to the Senate inquiry noted the real increase in family payments since the current formula commenced in 1989. Professor Parkinson sought to make this point in evidence to the Senate committee inquiry when he claimed that family payments now meet most or all of the cost of children in low-income families. We also note Professor Parkinson’s view that, under the existing formula many child support payments across the spectrum were too high, while others were too low. The fixed income approach used in the current formula and the failure of the scheme to take account of the fact that the cost of children differs substantially according to their age were reasons for that inconsistency.

The problem was a significant concern for non-resident parents in particular, many of whom felt that they were paying too much to support their children. The concerns of these parents were even more acute when there were children involved from second and third families. A more equitable and consistent formula was required, and Labor considers that the new formula contained in the bill is a useful start and, hopefully, will deliver better outcomes.

Labor accepts that there is an integrity of the package as recommended by the task force in its attempt to provide a balanced range of measures. We have looked at this very closely and decided that trying to unpick the package is not possible. In part, that is driven by the fact that the government has the numbers in both houses of parliament, so we thought that activity in that area would not be successful. But, equally, the task force did the work; they came up with a package. To try to unpick it—to change one bit, to
make an amendment in one area—would have implications for the whole package. A lot of our thinking was driven by the fact that we thought it was unwise to try to unpick the package.

We recognise that in establishing a new formula, based on fairer principles, some payments will go up and others will go down. Child support payers and payees will be affected in different ways according to their income, the number of children involved, who cares for the kids and how often they do so, the age of the children and whether or not second, third or even fourth families are involved. Labor accepts that there are significant difficulties in assessing the true impact of the change in the formula, and acknowledges the workload that the Child Support Agency, Centrelink and others now face in implementing new systems and undertaking new assessments. The best of British luck to them. It is our understanding that around 760,000 child support assessments will have to be reviewed. New information will need to be collected from families before assessments can be issued; obviously this is a time-consuming and extensive task.

However, Labor believes that these difficulties do not excuse the government from making provision to protect low-income single-parent families should they suffer financial disadvantage as a result of the changes sought in the bill. In fact, they probably strengthen the need for such protections and assurances, given the uncertainty that exists. This was something that was clearly contemplated by the report of the ministerial task force when it noted:

... the Government may wish to give consideration to the position of those whose liability or entitlement will vary to a large extent as a result of the recommendations, to avoid causing hardship in the short term.

That essentially encapsulates the concerns of me and the Labor Party. These concerns formed the basis of recommendation 25 of the report, which said that the government needed to comprehensively consider the management of transitional issues regarding the implementation of the new formula. I am very unconvinced that the government has taken that seriously. The government has provided no evidence that it has seriously addressed that recommendation, that serious concern.

While additional resources have been provided to the Child Support Agency to help manage the process, the bill makes no provision to protect families, particularly families on low incomes, who may suffer a large loss of payment or financial hardship as a result of the changes to the scheme. In that context, Labor will continue to press the government to ensure that families are protected.

However, we are caught in a catch-22 situation. The bill is being debated in October 2006 in order to be implemented in July 2008. The government says that it needs that time to put the administrative arrangements in place, change the systems and do the assessments. I accept that; it is a huge task. But we are being asked, in a sense, to take it on trust, because the government cannot provide specific information on outcomes—how people will be affected. We have a broad understanding, but we have no clear analysis of the impact of what we do today.

That concerns me. I find it very worrying that we do not know the full extent of the impact. That is why Labor is raising these concerns very seriously. In a sense, we are doing a lot of this sight unseen. We accept the argument for the change in formula. We accept the intellectual proposition. But without knowing the impact I cannot make a proper assessment. Until those assessments are issued in the first half of 2008, we will
not know for sure what the impact will be. We think the government has to take seriously the task force’s call for transitional arrangements.

While Labor is concerned about the government’s failure to make any attempt to quantify the impact of the bill and to make provision to protect low income families, we do note that work is in progress to establish robust monitoring and evaluation systems once the new formula is introduced. Ongoing monitoring and evaluation is critical to the successful implementation of the new scheme. If the changes do lead to significant income reductions for low-income families, it could undermine public confidence and reaction to the other aspects of the bill. It will certainly affect the attitude of many in this chamber. Labor will move to establish a Senate inquiry in 2007 to properly examine the impact of the bill on existing child support recipients. We have to try to get ahead of the game rather than just deal with a crisis, if it occurs, after 1 July 2008.

The enhancement of the Child Support Agency’s compliance capabilities is long overdue and is welcomed by Labor. The changes will better enable the agency to pursue non-resident parents who fail to provide any support for their children. That is at the heart of the Child Support Agency construct—both parents should contribute to the support of the children. Up to now, there has been no mechanism for external administrative review of child support decisions except through the courts, which is expensive and time consuming for parents and has been at the core of the concern of parents in the system. The new arrangements will improve the consistency and transparency of child support decisions and will provide a review mechanism that is inexpensive, fair, informal and quick. The fact that only half of all non-resident parents meet their child support obligations in full and on time is a problem that has needed to be addressed for some time. I reiterate: only half of all nonresidents meet their child support obligations in full and on time.

Compliance is a huge issue. The introduction of a minimum payment for parents who deliberately minimise their income to avoid paying child support is also welcome, but we have to deal with the real issue and make sure that those parents pay according to their capacity to pay. They should not get away with falsely minimising their income. Labor recognises the concern raised by Professor Parkinson in his submission to the Senate inquiry, and the provisions of the bill that go to these compliance issues may need to be strengthened. Again, we are keen to monitor these issues.

In conclusion, subject to the concerns I have raised today, Labor will be supporting the bill. We are trying to be constructive. We are trying to contribute to positive change, but we do express serious concern about issues of monitoring and about the need for transitional arrangements, to which the government has not made a commitment. I will be moving a second reading amendment which goes to those concerns. Nevertheless, we believe that the implementation of arrangements which are more firmly grounded in the evidence of the costs of raising children is sound and should be supported. We recognise the complexity of reforming Australia’s child support arrangements; the sound intellectual principles on which the reform package is based and that the opportunity for genuine public policy reform on this scale does not come along everyday. Labor recognises the work that the committee and the task force have put into this and the positive contribution that has made to the whole process. In large part, we are taking the government on trust in terms of the impact of these changes, particularly on low-income families. It will be a constant focus
for Labor. I hope it is our problem in July 2008. I move the following second reading amendment to the bill:

At the end of the motion, add “but while welcoming the many positive measures in the bill, the Senate expresses its serious concern about:

(a) The Government’s decision to proceed with the bill without providing any protection for low income families who may lose income as a result of changes to the child support scheme.

(b) The failure of the Government to properly manage transitional issues in circumstances where parents are worse off under the bill, as recommended by the Ministerial Taskforce on Child Support.

(c) The failure of the Government to make any attempt to quantify the financial impact of the bill on existing child support customers.

(d) The failure of the Government to provide up to date demographic information about existing child support customers.

(e) The unreasonably short timeframe imposed by the Government on the Senate Inquiry into the bill, particularly given the extent of the changes to the child support scheme and the potential financial impact on low income families.

(f) The overly-complex nature of the changes in the bill”.

Senator SIEWERT (Western Australia) (12.33 pm)—The Greens recognise that child support reform in Australia is overdue. We also recognise that the changes contained in the Child Support Legislation Amendment (Reform of the Child Support Scheme—New Formula and Other Measures) Bill 2006 make some significant progress in addressing reform. The current system has been in place since 1989 and creates injustices for many families, both for payees and payers. To that extent it creates conflict and despair and inevitably it is the children who end up losing out. While the bill does introduce changes that improve significantly on flaws in the current system, we believe there are some issues that need to be addressed via amendments to the bill. I will be moving amendments along those lines. Many of these issues were acknowledged in the Senate committee’s report, but the report did not go so far as to recommend amendments.

The Greens are putting forward sensible and non-controversial amendments based on recommendations by the chair of the Ministerial Taskforce on Child Support and Professor Parkinson. We propose to support the legislation subject to our amendments being accepted. Our children are our future, and the better we support them and ensure that they have the opportunity, the safety and the confidence to grow and to realise their full potential, the brighter their future can be. The Greens believe that our children must be our No. 1 priority. This is a fundamental principle that we will return to time and again in addressing this proposed legislation. The Greens support the majority of the legislation, but we hold serious concerns about the potential impact of the bill on low-income households, particularly when the impacts of the new formula are considered alongside the income cuts that many of these same households are already experiencing, or could experience, under the Welfare to Work legislation.

To the extent that growing up in poverty reduces the opportunities offered to our children and restricts likely outcomes, it diminishes us all. The Greens are particularly concerned about the over 10 per cent of Australian children who could be said to be growing up in poverty. This is across all family types, but single parents are the most likely to be living in poverty. We are worried that the new child support formula could have the effect of increasing the number of children
living in poverty and are suggesting changes that will address that.

We are concerned about the very short time frame that the committee had to consider this legislation. People who made submissions to or appeared before the committee commented on the extremely short time frame they were given to consider what we all acknowledge is an extremely complex piece of legislation.

The principle that should underpin our approach to child support is: the wellbeing of the child comes first. Children should be safe, secure, well fed, clothed and sheltered. Both parents have a responsibility to contribute to the wellbeing of the child. Also, where it does not compromise the safety of the child, parents should have the opportunity to maintain an active and ongoing role in the lives of their children. Shared parenting is beneficial to both the child and the parents. There should be a fair balance between parents in providing for a child’s upbringing. We believe this balance should include both the financial costs and the unpaid or ‘opportunity’ costs of providing care.

Finally, we believe that the CSA, Child Support Agency, needs to be competently administered and sufficiently resourced. In the past some problems have occurred because the CSA has lacked resources, particularly for enforcement of nonpayment. Strong enforcement and compliance measures are needed to ensure that obligations of parents are met and the needs and the rights of the child are defended.

As I said, the Greens are particularly worried about the potential financial impact of the new child assessment formula on low-income households. Low-income, single-parent households are among the most disadvantaged group in our society. Of all family types, they are most likely to be living in poverty. The Australian Housing and Urban Research Institute estimates that 46 per cent of sole parents with dependent children live on very low incomes. The Brotherhood of St Lawrence social barometer suggests that young people from low socioeconomic backgrounds are more likely to engage in smoking and substance abuse, to develop mental health problems, to fail or disengage from school and to be unemployed or worse off in the labour market.

NATSEM research shows a strong correlation between economic disadvantage and social exclusion. Kids growing up in disadvantage effectively miss out on many of the opportunities our society has to offer. This can lead to entrenchment and intergenerational disadvantage. It can produce an underclass and can greatly increase the level of disharmony and conflict in our society. Research by ACOSS released on Monday indicates that 77 per cent of Australians are concerned that the gap between rich and poor is growing.

A smart and caring society invests in its children. The big question we must ask ourselves about child welfare and child support policy is: what kind of society are we creating down the track? The ministerial task force that I referred to earlier admitted that most single-parent households would be worse off as a result of these formula changes. Professor Parkinson, who was the chair, said that it is estimated that between 55 and 60 per cent of low-income families or single-parent families may be worse off.

He presented the argument that previous child support payments taken together with other support payments, including child care and PBS et cetera, had been generous by world standards. However, this seems to contradict the statistics that show single parents in Australia make up a significant percentage of those living in poverty and it ignores the fact that welfare payments are also changing.
and single parents on welfare are losing many of the entitlements that were factored into the formula by the task force. The formula did not take into account accommodation, transport and education costs, because these were said to be too complex. However, the Family Court uses a different formula that does take these into account.

The overarching concern is the impact of the proposed changes on child support and the way it interacts with the wider welfare reform agenda, specifically Welfare to Work. The committee heard evidence that single parents can now expect to face further income cuts on top of the reductions that occurred when Welfare to Work was implemented by the government in July 2006. As far as we are concerned, this may be a double whammy. We are deeply concerned that some families may face further financial hardship.

During the inquiry, the Australian Institute of Family Studies indicated that no work had been done to model the combined impact of the welfare changes and the proposed reduction in child support payments on single parents. In other words, the impact of Welfare to Work has not been modelled in combination with these proposed changes. In his evidence to the committee, Professor Parkinson indicated that, while the task force was aware of the general direction of the government’s Welfare to Work reforms, they had not been aware of the details. Furthermore, he indicated that modelling took into account the already generous benefits given to single parents on welfare, which, as I said, included rent assistance and pharmaceutical assistance. However, under the new system, a parent who is with a half-time child and who is not designated as the principal carer cannot claim principal parent support and, therefore, is moved onto Newstart but loses the other eligibility criteria such as a pensioner concession card, telephone or pharmaceutical allowance. Only one parent in a shared parent arrangement can claim being the principal carer; therefore, one parent in this arrangement will definitely be worse off. They do not receive the support that they used to get as a carer or as a parent, and they may potentially be receiving less child support.

The National Council of Single Mothers and their Children suggested that up to 60 per cent of resident parents will receive lower child support payments under the new formula. The calculation by the National Council of Single Mothers and their Children took into account the reduced child support, the reduced Welfare to Work payments and the increases in the family tax benefits. That still came out as a lower payment to lower income families. This is extremely concerning to the Greens. We are very concerned that this modelling has not been undertaken and that we do not have a clear idea of the total impact on low-income families.

The committee was told that the CSA will assess all client payments under the new formula once the bill has been passed and before it comes into effect on 1 July 2008. We believe that a full and proper analysis that takes into account the complexities of the interaction between child support and the welfare systems should be done. We are proposing an amendment to that effect. We believe that, once this legislation is passed and before 2008, new calculations can be made on the combined impact of both the child support formula and the changes to the welfare system. The government needs to look at how it tops up or supports single-parent families that are going to be severely impacted by these changes.

Debate interrupted.

MATTERS OF PUBLIC INTEREST

The ACTING DEPUTY PRESIDENT (Senator Murray)—Order! It being 12.45 pm, I call on matters of public interest.
Private Health Insurance

Senator BERNARDI (South Australia) (12.45 pm)—I rise to speak today about private health insurance and an insidious practice that could be costing nearly nine million Australians up to $800 million every year. I refer to fraud and specifically to fraudulent misuse of the private health insurance industry. Fraud in any industry is reprehensible. It is a burden to business, it is a burden to taxpayers and it almost always costs innocent consumers, who end up paying for the greed of others. Nonetheless I would argue that there are few instances where the societal costs of fraud are as high as when it is perpetrated on our health system. Fraud in health industry speak is often called ‘unintended benefit leakage’—a bland description for a rotten practice.

Unintended benefit leakage, or fraud, occurs when claims are made for medical services not rendered. Generally this is done by medical practitioners but it also occurs when patients, members of the public or medical practice staff create false medical receipts to obtain the benefits. Regardless of how these frauds are implemented, fraudulent practices are inappropriate and unethical. They cost our health system and they cost consumers. They are quite simply a blight on our society.

Exactly how much fraud is costing the private health insurance industry is a matter of some contention but industry experts have identified the direct cost as potentially up to $800 million dollars every year. This is a hidden cost to health insurance premiums, which are already rising by around twice the rate of inflation each year. Over the past five years alone, private health insurance premiums have risen by more than 30 per cent. The Health Insurance Association say that the price increases are as a result of massive jumps in the cost of medical technology, an ageing population and increasing salaries. Individual claims certainly have escalated over the past decade. Ten years ago the most expensive claims were around the $5,000 mark. Today they can be $50,000 or more. The highest individual claim I could identify was for $276,000. But what if some of these current high-level payouts are actually ‘unintended benefit leakages’?

This raises the question: what percentage of the increases in premium costs can be attributed to fraudulent payouts? As you can imagine, the health insurance companies remain very tight-lipped about the direct cost of fraud upon their members. However, one large health fund identified $27 million of fraudulent activity last year alone, and this was identified without using the best fraud identification technology available.

If health insurance fraud industry experts are correct, we are looking at up to $800 million of fraudulent payments in the private health insurance industry every year. Imagine how many additional hospital beds could be provided with that $800 million—$800 million equates to around $250 in additional health insurance premiums per policy, per family, per year. How many families would welcome a $250 reduction in their private health insurance? How many more families would be able to afford private health insurance if it was reduced by $250?

I would like to make it very clear that the vast majority of members and health providers do the right thing. However, there is evidence that a small number clearly exploit the system to the tune of hundreds of millions of dollars per year. One recent audit of a major capital city hospital identified nearly $1.5 million worth of fraudulent claims. There are over 1,000 hospitals in Australia and, while this is just one example, one could be forgiven for asking: is this just the tip of the iceberg?
The public does not hear much about dentists who bill health insurance companies for the more expensive porcelain fillings rather than the amalgam ones they have just implanted in their patient. And there was no publicity recently afforded the dentist who claimed two identical high-cost dental treatments for two family members on the same day. When this was further investigated, the dentist’s clinical records could not be aligned with the claims. When forced to admit that he had not performed the services, he was asked to refund more than $6,000. The health insurance industry is also vulnerable to the practice of ‘cascading’. Cascading works like this: when the benefit limit for one family member has been reached and a further benefit is then denied, some medical practitioners will submit a claim in another family member’s name instead.

Cascading therefore results in the payment of a benefit that is often not legitimate. Suspicions of cascading prompted a review of one optical dispenser with a pattern of questionable claims and billing practices. This review resulted in a number of patients and health fund members being interviewed. Some of the patients billed by this optical dispenser did not even wear glasses and many were unaware of additional claims against their family members and their fund. The optical group provided refunds for all unsubstantiated claims and, through cooperating with the health fund, they avoided referral to their professional registration board and possible legal action.

This is simply not good enough. It should not be a matter of saying: ‘Fair cop, Gov; you got me. I’ll pay the money back but let me stay in business.’ Our medical providers need to be more accountable for their actions. And do not be fooled: these rotten procedures are not confined to small operators. I have already mentioned that fraud is occurring within our private hospital system. Let me give you an example of how it works.

In Australia’s private hospitals, you will receive some of the finest care that you will get anywhere in the world. This care comes at a cost. A bed in a private hospital typically costs around $500 per night. In the intensive care unit the cost can run upwards of $2,000 per night. Now imagine for a moment that the ICU of a private hospital has a couple of vacant beds in it. Is it beyond belief to consider that patients will be wheeled out of the general ward and relocated to the ICU ward whether or not it is necessary? It happens in the middle of the night, simply so that the hospital can claim an additional $1,500 or so for patient care. Stunts like these are what have resulted in an audit of one private hospital identifying nearly $1.5 million in leakage. It is not leakage; it is out-and-out fraud. And this is just one of the 291 private hospitals in this country that the private health insurance industry supports.

Across the medical industry, there is considerable evidence of cases where doctors are claiming for procedures that have never been performed, and there is growing evidence of unnecessary procedures being performed on unsuspecting patients. One medical provider was required to pay back $136,000, another was required to pay back $45,000. And the list goes on: $40,000; $35,500; $12,000. I could keep going. These individuals had all been billing for services they had not delivered. And just what happens to these fraudulent thieves? Quite frankly, not enough. In any other industry, if you steal from your employer or your patient, you are likely to lose your job, you are likely to lose your professional accreditation and you are likely to face criminal prosecution. However, in the case of the medical practitioner who was forced to repay $136,000 which they billed for services that they never delivered, there was no criminal
penalty, there was no action taken by their professional body and the entire penalty amounted to their no longer being recognised as a provider by the health insurance fund concerned.

This is simply not good enough. We should expect more. The integrity of our health system demands more. The public expects a higher level of accountability from those we trust with our health and the health of our loved ones. In fact, this lack of accountability often leads to even greater consumer pain. Where a provider is derecognised by a health fund, there is no obligation or commitment to communicate that information either to other industry health funds or to the patients of that particular provider. Unbelievably, this can lead to the outrageous situation where the health fund member is out of pocket.

Imagine visiting your dentist to have expensive root canal treatment, knowing—or thinking—that your medical benefit fund will pick up a substantial amount of the cost. However, after the procedure, when it comes to swiping your card, your medical provider says that there must be something wrong with your cover—your claim has been rejected. In reality, there is nothing wrong with your cover but there is something wrong with your medical service provider. Your health fund no longer recognises your medical provider because they have been involved in unethical and unscrupulous practice. How many Australians have unknowingly paid a bill because they have found themselves in a situation just like this? How many are out of pocket because they have had to pay for treatment that should have been covered? Australian consumers deserve better, and honest medical practitioners deserve better.

So, what can we do about this practice?
Firstly, the private health insurance industry needs to take a leaf out of this government’s book in combating fraudulent claims. This government has been rigorous in ensuring medical fraud is minimised in the public sector, and the health insurance industry now needs to do the same. When this government came to power, it was estimated that somewhere between seven and 10 per cent of all Medicare Australia claims were fraudulent. Through industry intelligence and data analysis, as well as tip-offs received from the public, that figure is now down to around one per cent, saving Australian taxpayers more than $1 billion every year.

I think we all agree that fraudsters in any industry need to be stamped out. It is time for the medical professional associations to apply the highest possible penalties when one of their members has been identified as being involved in medical fraud. A financial planner who defrauds a client or an accountant who fiddles the books can be banned for life from their industry by their professional associations.

Private health insurance fraud is a practice that should not go unaddressed any longer. Medical professionals involved in this activity should face removal of their provider number. They should be publicly named. They should face deregistration as a medical practitioner or as a health service provider, and wherever possible they should be pursued through the courts. This is the standard expected in other industries. The health insurance industry now needs to adopt the same approach. They need to be allowed to share information on discredited practitioners with other health funds. They need to report every practitioner identified as being involved in benefit leakage to their relevant professional association.

These professional bodies need to throw the book at these individuals that discredit their entire profession. If they do not feel
comfortable in being able to judge one of their own, there is a need to establish a multipractice disciplinary body to ensure transparent accountability. The good men and women involved in medical practice in Australia deserve this protection from the rogues in their industry. And the good men and women of Australia deserve to have the most affordable private health insurance possible. This is a matter of public importance.

Independent Contracting: Owner-Drivers

Senator HUTCHINS (New South Wales) (12.59 pm)—I rise this afternoon to speak about independent contractors in the road transport industry, usually known as owner-drivers. Many senators may be aware that over the last few weeks the Independent Contractors Bill 2006 has been listed for debate in the Senate, only to be withdrawn. That bill was passed in the House of Representatives. You would also be aware, Mr Acting Deputy President Murray, that the bill includes an exemption for owner-drivers from New South Wales and Victoria. That exemption allows owner-drivers in those states to continue to have access to the protections that have been put in place under the respective state jurisdictions.

Owner-drivers, through their exemption from the effects of the Independent Contractors Bill 2006, have been recognised as a group with particular vulnerabilities. The ability of existing arrangements to protect the financial viability of owner-driver small business people and their families has been placed on the record on a number of occasions. Instead of reiterating that, I want to focus upon the dispute procedures in place under New South Wales law in particular, which provide both owner-drivers and the companies for which they work with accessible and inexpensive resolution of industrial disputes. Any removal of access to that process would only see further financial burdens placed upon a group of small business people who already face tight profit margins in a very competitive industry.

Let me use the example of owner-drivers at Boral. In 2001, a number of owner-drivers in New South Wales who had paid goodwill to enter into an arrangement with Boral had their regular work terminated suddenly and without financial compensation for the significant amount of money they had paid in goodwill to gain access to regular work for the company. In that instance, a number of owner-drivers each had hundreds of thousands of dollars on the line in the form of goodwill. Had access to the independent umpire of the New South Wales Industrial Relations Commission not been available, the resolution of the dispute would have been drawn out in expensive court proceedings. Instead, a speedy outcome was arrived at which both improved productivity for the company and allowed the owner-drivers in question to continue performing regular work for the company.

In the ACT, however, where protections for owner-drivers do not exist, the circumstances were very different indeed. When the same company, Boral, made a similar decision to terminate the contracts of owner-drivers in Canberra, there was no availability of a speedy resolution to the decision of the company. Instead of being heard in an industrial relations commission within days of the emergence of the dispute, the matter continued unresolved for over three years. In fact, the matter went before the Federal Court on a number of occasions and it went before mediation. On all these occasions, it proved very costly for the lorry owner-drivers and no doubt for the company involved. One of the affected owner-drivers said at the time:

When the contracts were terminated by Boral, the stress at home has been unbelievable for most of us, the emotional stress plus the financial stress ...
Because we had lost our jobs and our goodwill
money we had to go out and had to get whatever jobs we could get, for some this meant a 40% drop in wages—we’ve had to reorganise our lives, and for those with kids, our kids’ lives. We had to renegotiate our loans to make ends meet. In my case I had to sell the house because I couldn’t make the payments with the new job that I have. For others, their wives had to go out and get a job.

In fact, one of those ex-Boral lorry owner-drivers works as a security guard in this place at the moment.

Let me highlight another example of an owner-driver who had had the protection of the New South Wales Industrial Relations Commission. Carl Calabro is an owner-driver with Patrick Autocare in New South Wales and has invested $206,000 in his business. In addition to truck repayments, Carl and his wife, Julie, are paying off a mortgage. Not so long ago Carl had his contract arbitrarily terminated. Under the New South Wales protections, Carl was able to work through the issues with his company and has been able to keep working and providing for his family. In his own words, Carl describes the effect that the removal of those protections would have had on him and his family. He says:

It will certainly cause added stress on top of those stresses we already face in running a truck and a business. It will mean our earning capacity will become quite a huge concern for us ... Also, our plan to hopefully have another child in the near future would have to be put on hold or forgotten.

We would definitely have to weigh up whether it would be worthwhile keeping the truck and trying to stay afloat, or just cut our losses and get out of the business altogether.

In spite of the clearly exceptional circumstances faced by owner-drivers such as Carl, where debt is an occupational hazard, I have been disturbed to hear rumours that the government is considering removing the exemption for owner-drivers when the Independent Contractors Bill is introduced into the Senate. But what makes this rumoured backflip so exceptional is that the government is denying a group it claims to represent—small business—the opportunity to thrive.

Owner-drivers are independent people. They are not only independent because of their jobs as owner-drivers; they are independent thinkers. Owner-drivers see themselves as small business people, and a significant group of them have voted for the government in the belief that the government purports to represent the best interests of the small business community. If the government backs down on its commitment to exempt owner-drivers from the Independent Contractors Bill, the government will prove once and for all that it does not understand small business people, particularly owner-drivers.

Over 100 lorry owner-drivers have spoken directly to government members and senators over the past year. In fact, a number of those people are active members of the Liberal Party. They have put their position and informed their representatives of the simple truth that, without the protections they enjoy at the moment, many of them would face the choice between going under and running their vehicle in an unsafe manner, putting the safety of all road users at risk. Does the government really want a situation where these owner-drivers are subjected to the same types of pressures that exist in the unregulated long-distance sector where drivers are forced by client pressure into unconscionable work patterns, with frightening effects? Take the following account given by an owner-driver in the long-distance sector in a recent court case. The owner-driver said:

On occasion my eyeballs would physically turn back in my head. I would notice that my vision narrowed down. When I was tired, I would find that I would wander across the lanes and my judgment of distance was completely off. I would
be nodding off behind the wheel and suddenly find myself on the tail of the truck in front of me. I would slap and pinch myself, open the window and sing along to the radio ... I will not let my dad drive up from Melbourne at night when he comes to visit me.

When I was required to perform excessive hours I would sometimes experience a state of mind that I can only describe as hallucinations, which I considered to be due to sleep deprivation. I would ‘see’ trees turning into machinery, which would lift my truck off the road. I ‘saw’ myself run over motorcycles, cars and people.

On one occasion I held up the highway in Grafton while waiting for a truck which was not there to do a three point turn (I was radioed by drivers behind me asking why I had stopped). I estimate that I had experiences like these roughly every second day. They were not an uncommon thing for me.

What government would want to preside over an increase in this type of horror story? What government would want to be cast as responsible for an increase in the already horrendous heavy-vehicle death and injury statistics? Because that is what will happen if the government does not honour its commitment and ensure that these owner-drivers are able to achieve cost recovery for their small businesses.

When the minister for workplace relations announced that the government had recognised the particular vulnerabilities of owner-drivers, owner-drivers did not rejoice. They took a collective sigh of relief that they would be able to continue running their businesses in the way they have for many years, with bipartisan support in New South Wales in particular. They also took the minister for workplace relations at his word. If the government does not keep its word and forces owner-drivers into a race to the bottom on rates of pay and safety, I think I know how they will respond. I have spent a fair share of my time with them, and I know how they will react to being misled.

I have been made aware of some interesting statistics in two electorates in New South Wales. I am aware that in the electorate of Dobell, held by the government, 0.23 per cent of the electorate are lorry owner-drivers and their partners. Fellow transport workers and partners comprise an extra 1.8 per cent of the electorate. In the electorate of Lindsay, 0.63 per cent of the electorate are owner-drivers and their partners, and fellow transport workers and their partners make up another 3.4 per cent of the electorate.

Throughout New South Wales and Victoria, owner-drivers, small business people and their families will react if they are deceived. I just hope that on this particular occasion the government can hold its nerve and do what it promised to do for those tens of thousands of small business people and their families—that is, maintain basic cost-recovery mechanisms for their businesses.

Water

Senator SIEWERT (Western Australia) (1.10 pm)—I would like to talk today about water and coming to terms with our drying environment. We need to come to terms with the fact that we live in the driest inhabited continent on earth, that we are living in a drying environment and that we have been for a while. Australia is an arid continent with old soils and highly variable climate that is becoming even more variable. Farming has always been hard, and our farmers have learnt to adapt to big variations in rainfall and temperature, year in and year out. The problem is that this variability makes it harder to identify a slower, longer term shift in climate.

Government to date—and, it seems, some in government—still continue to be in denial. They have ignored the indicators that have been there for a while. They have stifled debate. They have failed to collect and provide the necessary information to inform farmers,
decision makers and the broader community of the impacts of a drying climate and of climate change. We have had ‘drought’ in some areas in the country for six years in a row, and you really need to question whether this is an exception or is part of a longer term change. I believe that the indicators are there, staring everybody in the face, and that we have failed to take action. This has exacerbated the problems that we face in this crisis now.

To look at what is happening in the Murray-Darling Basin at present: we have heard from the director of the Murray-Darling Basin Commission, Wendy Craik, that the current season is far worse than their worst-case scenario, and it has been much worse than the worst year on record across the basin. Last week, Dr Craik gave evidence to the Senate Standing Committee on Rural and Regional Affairs and Transport, which has been widely reported in the media, that storages in the basin’s three main dams will hit rock bottom at the end of the irrigation season in April and May next year and that, if there is no substantial rain, water supplies of a number of towns and rural and regional cities within the basin will be in serious trouble. In fact, as I understand it, some towns may have to start carting water in the not too distant future. ABARE has been predicting that the drought will wipe $3.5 billion off our grain crop this year, and I am given to understand that some people regard that as fairly optimistic. The River Murray System—Drought Update says:

Rainfall over the nine months December to August 2006 has been in the lowest 10% of records for large areas of the Murray-Darling Basin ... River Murray System inflows over the autumn/winter period were the lowest on record for this time of year eclipsing records set ... in 1902 and 1967.

At the end of September 2006, the total River Murray system storage was 3 550 GL or 37 per cent of capacity, which is only half the long-term average for September ... With winter and early spring being extremely dry, the chance of significant improvement this year is low ...

It says that River Murray Water:

... has been planning the 2006/07 operation of the River Murray System from May 2006 with the expectation that inflows could be at the lowest recorded levels throughout 2006/07.

... the significance to the environment of the present extended drought is that it is being compounded by the effects of regulation and water extractions.

Under such conditions, water availability next year (2007/08) would be reliant on inflows received ... and releases from the Snowy Mountains Scheme.

Further, it goes on to say:

It is therefore conceivable that impacts on water availability could extend to high security water products, if the dry sequence already observed this season continues into 2007/08.

It is obvious from this information that we are facing a dire situation in the Murray-Darling Basin. When you look at our cities around Australia you can see that the dams for the major and regional centres are in a very poor state as well. In Brisbane, they are at 28 per cent capacity; Perth is below 30 per cent capacity; Sydney, 41 per cent and dwindling; Canberra, 49 per cent; Melbourne, 47 per cent; and Adelaide, 54 per cent.

It is interesting to note that the Water Services Association of Australia predicts that by 2030, if no conservation measures are taken and climate change and population growth continue as forecast, Australia’s largest cities will be consuming 854 gigalitres more water than they use now—nearly two times more water than the city of Melbourne uses in a year. The Water Services Associa-
tion also points out that 75 per cent of water used by Australians goes into agriculture and 16 per cent goes to our cities. It has also been pointed out that if Sydney were to recycle all the waste water and stormwater that goes out to sea they could supply the city for the next 18 months. So, while our cities are in some dire straits, it is our agricultural sector and regional centres that I believe we really need to worry about.

I am deeply disappointed by the approach and the denial by both federal and state governments which are exacerbating this problem. It is unfortunate that our current minister for the environment still seems to be in denial about the impact of climate change; in fact, in the past he has undermined our leading scientists when they have dared to suggest that our river systems are overallocated, that we need to look at how we handle our adjustment systems in Australia and that climate change may be having an impact on the Murray-Darling Basin. In fact, earlier this year the minister accused CSIRO of scaremongering when they raised concerns about the impacts of climate change on the Murray-Darling river system.

Just nine months down the track and we ‘suddenly’ have a crisis. The response to date, which I believe has been a fairly infantile debate about keeping our iconic farmers on the land, has been a disservice to our farmers. Regional communities do have a central role in the Australian psyche, which is why we need to be looking forward and planning how best to adapt and survive with our decreasing water supplies rather than trying to keep a ‘critical mass’ on the land. I believe this is playing politics with people’s lives.

We have seen a continuing attack on and denial of these problems, even when scientists very bravely spoke out about them. Mike Young was one of those scientists and was vilified last year for comments in which he dared to raise concerns and question the way in which we carry out adjustments in Australia. Mike Young recently said:

The Murray-Darling system is running on empty and starting to cough and splutter. The river is giving its last gasps and it is really scary, it’s scary everywhere. There are some communities that will be desperate due to a lack of water.

We have overallocated the water in many of our river systems during periods of better than average rainfall, particularly during the 1980s. We are now locked into unsustainable levels of extraction. Mike Young, from the Wentworth Group and CSIRO, said earlier this week:

... fear of a political backlash has created a permanent over-allocation of water to regional Australia.

Added to this in many areas is the failure to control, meter and limit our extraction of groundwater, treating it as an endless supply rather than a limited supply interconnected with our surface waters.

By continuing to talk about drought and denying the possibility that we are facing a combination—and I stress ‘combination’—of a dry cycle on top of a longer term climatic shift, we are sending the wrong signals to the bush; I believe we are effectively hanging our cockies out to dry. We are focusing on short-term responses while maintaining drought relief in exceptional circumstances payments, without a longer term plan. I stress that I am not saying that we should not be making them; I am saying that, in the absence of a longer term plan to address our decreasing rainfall and our water crisis, we are condemning our farmers to desperate situations, and we are condemning our environment to a desperate situation.

This is where we come to talk about structural readjustment. Very often structural readjustment is seen as the elephant in the
room that you do not mention. Yet we have had many waves of structural readjustment in this country which have been successful. Often we see structural readjustment in situations where we have declining industries and declining economies associated with those industries. But we should be getting ahead of the game, to the point where we can make some positive changes. We should be looking at the positives we can gain through structural readjustment.

In this country we need to have a debate about where we should water and what we should grow. It is important in this sixth year of drought to consider where it is appropriate to use large amounts of water and whether it is appropriate that we continue into the future to feed water-hungry crops, such as the rice, cotton and some broadacre agriculture that we continue to irrigate. We have to stop and ask ourselves whether these crops are appropriate to our environment. Are they really delivering on their incredible costs beyond the cost of water use—that is, the costs to the taxpayer and the costs to the environment?

I believe that we need to look at the real costs of water to these industries and to take into account the real costs they have for our environment. We need to make difficult and forward-looking decisions about how to justly and equitably share our natural resources. Fundamental to this is how we conserve them in a fashion whereby they can be used sustainably in the long term. We need to balance the growing need for clean water for our cities against their need for food and clean air. We need to be sensible about the level of agricultural exports that we can sustain. We should not be reliant on agricultural exports to balance our trade deficit. If we are living beyond our means in a way that runs the system into the ground, surely this is not sustainable or sensible long-term planning.

The long-term consequences are bound to wipe out any short-term gains.

I have been interested to hear Professor Peter Cullen’s comments in the media over the last week. Commenting on the current situation he said:

Well, I think Australia is going into a very dry period, and we’re going to have to readjust the way we use water and the way we manage our land.

Some parts of our farming land get reasonably regular rainfall, and they’re in very serious drought, and there is a good case to help those people.

But other parts of our farming land have been marginal for a long time, and appear to be getting much more marginal.

What we seem to be doing, by drip-feeding these people with drought relief, is keeping them there, maximising the misery and maximising the land degradation.

His comments on how we should help these people seem to me quite sensible. He went on:

Well, I think we’ve got to help some of them off the land, and those who do want to stay, if we can reduce some of the pressures on the landscape, by assisting them with payments for ecosystem services, for which they will provide the land management functions we need, we can take pressure off that landscape and allow that to regenerate.

... just drip-feeding money to maintain the status quo doesn’t let agriculture readjust to the new realities of the climate that we’re now seeing. I think Professor Cullen is right. If we fail to heed the warnings, if we fail to do some long-term planning now, we will not be dealing with the crisis we are suffering. This current water crisis will just continue to roll on and on. We have missed some very vital opportunities in the past to start addressing this issue. If we fail now, we are failing our
farmers and our community and we are con-
demning our environment to what we are
seeing in those dreadful images from the
Murray River.

Our ecosystems are suffering. There has
not been sufficient long-term planning for
ecosystem protection. While people often
quote the 1,500 gigalitres that are needed for
environmental flows in the Murray River,
people forget that that was a compromise
position in the first place. At the moment,
500 gigalitres are allocated for environ-
mental flows. People said 1,500 were needed
but that was a compromise to begin with. We
cannot even provide that 500 gigalitres. We
may be near 310 gigalitres but that has not
been delivered. So we are facing very sig-
ificant water issues in this country and we
are failing totally to deal with them.

State and federal governments bicker, lay
blame at the feet of each other and do not
acknowledge the impact that climate change
is having on our water supplies. This may be
our very last opportunity to get it right and to
help the environment, help our water sources
and help the people on the land who so des-
perately need it and not give them any fur-
ther false information or sense that things
may get better when they are only going to
get worse under the scenario of climate
change.

Sedition Laws

Senator BRANDIS (Queensland) (1.25
pm)—On 13 September, the report of the
Australian Law Reform Commission on its
review of sedition laws was tabled. The re-
port, No. 104, is called *Fighting words: a
review of sedition laws in Australia*. The re-
view was undertaken as a result of a com-
mmitment given by the Attorney-General to
members of his government backbench
committee late last year in the course of dis-
cussions concerning proposed antiterrorism
legislation, which eventually took the form
of the Anti-Terrorism Act (No. 2) 2005.
Government members, including Mr
Turnbull, the member for Wentworth; Sena-
tor Payne; Mr Georgiou, the member for
Kooyong; and me, among others, spent many
hours with the Attorney-General working to
shape legislation which, whilst responding
appropriately to the serious national security
concerns presented by a new era of terrorism
and by the rise of militant Islamic terrorism
in particular, nevertheless subjected those
new policing powers to safeguards appropri-
ate to a liberal democracy which respects,
among its core values, personal freedom and
the rule of law.

It was that same concern to ensure that, at
a time when the threat of terrorism is a clear
and present danger to our democracy, the
essential values which animate that democ-
racy are not lost sight of which inspired the
remarks of the Chief Justice of Australia,
Murray Gleeson, in his address to the Judi-
cial Conference of Australia on 6 October,
when His Honour said:

A test of public commitment to the rule of law
comes when the judiciary is required by law to
make decisions ... that may compromise the ca-
pacity of government to protect public safety and
security.

Although the problem is especially acute in the
face of a threat to public safety from terrorism, it
is not unique. Indeed, terrorism itself is not new.
Conventional warfare has always created tensions
between lawfulness and necessity; and govern-
ment of civil societies in time of war has brought
the need to resolve similar tensions.

Within executive governments, and their agen-
cies, there will always be some pressure to push
the exercise of power to its limits ... Public emo-
tions such as anger and fear, may create a climate
in which declaring those limits is an unpopular
task ... One of the responsibilities of those with
executive power is to protect public safety and
security. The law sets boundaries on that power.
The law limits the capacity of the government to
respond to threats to the public. In declaring those
limits, courts may attract executive frustration, political criticism and public alarm.

No doubt in saying that His Honour had in mind the great words of Lord Atkin, in one of the most famous judgements of the 20th century, during the darkest hours of the Second World War:

In this country, amid the clash of arms, the laws are not silent. They may be changed, but they speak the same language in war as in peace.

That same principle was reaffirmed in the United States on 29 June this year by the Supreme Court in Hamdan v Rumsfeld, when the court held by majority that the establishment of special military commissions to try terrorism suspects detained at Guantanamo Bay was unconstitutional.

The decision of the Supreme Court, the words of Lord Atkin and the recent remarks of our own Chief Justice all remind us that the core values of liberal democracy, such as the rule of law and respect for the rights of the individual, do not mean one thing at a time of peace and something different in a time of war. The values of liberal democracy do not alter or abate when liberal democracy is itself under attack; indeed, it is when liberal democracy is under attack that it is more important than ever that its values be affirmed.

They also remind us, just as importantly, that, while national security and public safety are, of course, paramount considerations for the governments of all nation-states, the governments of liberal democracies deal with such questions in a distinctive way. Unlike military dictatorships, theocracies or secular states ruled by totalitarian ideologies, liberal democracies recognise that fidelity to certain core values—the rights of the individual against arbitrary interference by the state, personal freedoms including freedom of political expression and freedom of religious association, democratic governance and the rule of law—demands that the power of the state be limited, and this may mean that considerations of national security are sometimes subordinated to those other values.

Liberal democracies will always be prepared to accept greater risks than other types of societies simply because their values do subjugate the power of the executive government and its agencies to constitutional checks and balances—in particular, parliamentary scrutiny and an independent judiciary—and do impose limits on how the executive powers, including the policing powers of the state, may be used against individual citizens.

So the primacy of the core values of liberal democracies sometimes limits their capacity to deal with terrorism. The debate on torture is a case in point. In Australia, torture is absolutely prohibited. Evidence obtained under torture is inadmissible in our courts. That is how it should be. Yet there is no doubt that, were we to be moved purely by utilitarian considerations, we might allow torture—as many states do—as an efficient means of extracting information from terrorist suspects which would potentially be very useful in the war against terrorism. But we do not do that, we deny ourselves that capacity, for the very good reason that the respect for the rights of every human being, including those suspected of grave crimes such as terrorism, is a greater value for liberal democracies than greater policing efficiencies or greater investigative capability, regardless of how beneficial that greater efficiency or capability might, for some purposes, be.

The debate we are now having in this country over freedom of political speech and its appropriate limits is another example of that selfsame principle. Liberal democracies value freedom of political discourse and freedom of religious observance. Our respect for those values does not abate, even when
terrorism threatens us. On the other hand, the law has always, rightly, prohibited the incitement of violence, including politically motivated violence. The criminal law’s prohibition upon the incitement of violence is merely a logical extension of one of the central purposes of the criminal law: to protect citizens from violence itself. If it is a crime to perpetrate an act of violence upon another citizen then equally should it be a crime to attempt to do so, to conspire to do so or to incite another to do so. And it should not make any difference whether the motivation for that violence is political, religious, or otherwise.

The current debate on terrorism laws frames in sharp relief the way in which we, as a liberal democracy, should deal with the problem of definition, of boundary drawing, which is presented by the tension between protecting freedom of political speech and religious observance, on the one hand, and criminalising violence, on the other. When does the aggressive denunciation of a government, a political opinion, a social custom or a set of religious beliefs become an incitement to violence? When does the utterance of hostile words against another citizen or a group of citizens defined by a common characteristic—race, religion, custom—become a call to take up arms against them?

This is an exceptionally sensitive issue in a multicultural, multireligious, multiethnic, plural society at a time when, as we must regrettably accept, there are those among us who would use words not merely to denounce but to incite; not merely to express anger but to encourage violence; not merely to proclaim the superiority of their own religious beliefs, political values or social customs but to urge the destruction of those of others. The manner in which we handle that issue will be a vital test of our sophistication as a society and our integrity as a liberal democracy.

So when we write laws which seek to define those boundaries we must do so with care. That is why I and others like me, including Malcolm Turnbull—who, in an earlier phase of his career, was a lawyer notable for his concern for civil liberties—expressed the view last year that in its current form, in section 80.2 of the Criminal Code, the crime of sedition is expressed in inappropriate, indeed obsolete, language which, in some of its resonances, still reflects the medieval origins of the crime in a pre-democratic, religious, monocultural society. In fact, the offence in its current form is practically obsolete, having only ever been prosecuted on a handful of occasions in the years immediately after the Second World War, most recently some 53 years ago.

The recommendations of the Australian Law Reform Commission, which are set out at page 21 of its report and in more detail at appendix 2, include the recommendation that the ancient offence of sedition be replaced with a new offence of ‘urging political or intergroup force or violence’. The ALRC also proposes new defences which, in my view, properly recognise the primacy of the freedom of expression which lies at the core of our liberal democracy. The report is a fine piece of work, carrying further and contemporising the work of the Gibbs review of Commonwealth criminal law, which examined this matter in 1991. I urge the government to adopt its recommendations and to give effect to them.

I believe that one day the war on terrorism will be won, but I also fear that that day will be a long time in coming. I also believe that throughout that time of trial—in some ways, as the Prime Minister recently pointed out, analogous to the long twilight struggle of the Cold War and yet in other ways presenting profoundly different challenges—Australia will continue to be a strong, robust liberal democracy. It is the particular obligation of
those of us who have dedicated our careers to advancing liberal democratic values to ensure that it remains so. That objective will never be served by compromising those values in the face of the very terrorism which threatens them. One practical way of advancing those values would be to give effect in this particularly sensitive area of law reform to the recommendations of the Australian Law Reform Commission by restating the law’s prohibition on politically motivated violence in language more contemporary and relevant than the existing offence of sedition.

Child Abuse

Senator KIRK (South Australia) (1.39 pm)—I rise this afternoon to talk about the matter of child abuse and to share with the Senate some of the latest findings on the extent of the problem on a global scale and, importantly, what we can do about it. This is what we know so far: one million children worldwide are in prison; almost six million children have been forced into work; over 220 million children have been sexually abused; two million children are used in prostitution or pornography; every year three million girls and women in Africa are subjected to genital mutilation; as many as 275 million children have witnessed domestic violence; and every year 50,000 children are victims of homicide. These are shocking figures, I am sure you would agree, Madam Acting Deputy President.

Just last week, on 12 October, the United Nations presented to the General Assembly in New York the results of its landmark four-year study on violence against children. This comprehensive report paints a sobering picture. It is significant in that it brings to light the scale of the problem of violence against children. It details the nature, extent and causes of violence against young people. It also sets out what all countries must do to stop it. According to the report’s author, independent expert Professor Paulo Sergio Pinheiro, violence against children is widespread and, more alarmingly, tolerated.

Children around the world live with violence and other forms of abuse. Much of this is hidden or ignored, and in some cases it is socially sanctioned. Traditional cultural and religious practices such as forced child marriages, dowries, genital mutilation and bonded labour are accepted and even commonplace in some parts of the world. Around the world, certain categories of children, for example those who are disabled or disfigured, who are from certain races or castes, who are living on the streets or who are affected by HIV or AIDS are subject to discrimination and may suffer particularly harsh treatment.

The UN study that I referred to is the first global study to engage directly and consistently with children, with children participating in all regional consultations, eloquently describing the violence they have experienced and their proposals for ending it. The report looks at the places children experience violence, including in the home, at school, in alternative care institutions, in detention and in their workplaces.

Before I move on to discuss some of the report’s recommendations and what Australia must do to address what I consider to be one of our most pressing social problems, I want to share a few more findings. I wonder whether senators are aware that in some countries children and young people are subject to the death penalty. There are 31 countries which permit corporal punishment in criminal sentencing of children, and in some places this can include caning, stoning or amputation. In at least 77 countries, violent punishments are accepted as legal disciplinary measures in penal institutions, and there are more than one billion children around the world who can be legally beaten by their
teachers. Trafficking in human beings, including children, is highlighted as another major area of concern in the UN report. Most children are trafficked into violent situations, including prostitution, forced marriage, slavery, servitude or debt bondage.

Professor Pinheiro acknowledges some of the progress that has been made. For example, he notes legislative and policy advances, and the fact that 192 member states have ratified the Convention on the Rights of the Child. The report makes a number of recommendations for action, and I urge the Australian government to examine and take these recommendations very seriously. The No. 1 recommendation is that all countries must develop a national plan of action with realistic and time-bound targets. This must be co-ordinated by an agency with the capacity to involve multiple sectors in a broad based implementation strategy.

Child advocates here in Australia have been calling for such a national strategy for a long time. The Australian Labor Party has recognised the need for a national approach, and indeed it has been part of our platform for many years now to establish a government office for children, as well as a national commissioner for children and young people. A national commissioner would be able to provide leadership and advocacy on children’s issues, and monitor the wellbeing and report regularly on the status of children in Australia. The national commissioner would work with the states and territories and develop a national code to protect children from abuse.

Today I want to call on the government to take the issue of child abuse seriously, to heed the recommendations of the UN report and to take on the challenge of putting a national strategy in place. We know that child abuse can happen anywhere. However, we also know that it is a complex issue and that factors including poverty, and educational and social disadvantage, all increase the risks.

I am the convenor of the cross-party group Parliamentarians Against Child Abuse and I have spoken here in the Senate and in the community on many occasions about many aspects of this serious problem. I have spoken about the complexity of the problem in Australia, as well as highlighting some of the local success stories. I have made speeches in this place on one of the most significant problems within our region—namely, child sex tourism in Asia.

Recently I spoke here in the Senate about police beatings, rape and torture of children in Papua New Guinea. I have to say I was shocked when I discovered the extent of this problem in PNG and that it was happening—and continues to happen—in a country so close to our shores. I raise this issue because I know that the Australian government, as Papua New Guinea’s largest foreign aid donor, is in a position to do something about it. Much of our foreign aid to PNG goes directly to its police force. Today, again, I call on the government to place conditions on the receipt of our foreign aid dollars directed towards the PNG police force.

Last month I hosted an event for National Child Protection Week. As convenor of PACA, this is something I have done for the past few years in conjunction with NAPCAN, a national organisation established to help prevent child abuse and neglect in Australia. According to NAPCAN, here in Australia a child is abused every 13 minutes. Suspected child abuse cases have doubled since the years 1999-2000, and proven cases of abuse and neglect of Indigenous children are six times higher than for the general populace. In its materials, NAPCAN talks about the importance of creating what it calls ‘child-friendly communi-
ties’. This ties in with the findings of the UN report on risk and protection factors. For example, two of the most important protective factors in preventing violence against children are strong and stable family units and high levels of community social cohesion.

In the time that I have available I am not able to cover all of the issues that I wish to, but I would like to mention the NAPCAN website and encourage people to go to the website and see the excellent work that they are doing. The address is www.napcan.org.au. This site has some very good information on it as to what individuals, communities and workplaces can do to address this serious issue of violence against children.

In the time that I have remaining, I would also like to reinforce the core message of the UN study—namely, that violence against children is preventable. There can be no excuses or justifications for abuse of or violence against children. The United Nations has recommended that every nation put in place a national strategy to prevent violence against children, and today I urge the Howard government to implement this recommendation and to put in place a national strategy to tackle this most disturbing social problem.

Sitting suspended from 1.49 pm to 2.00 pm

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 the minister to reports today that media moguls are positioning themselves to carve up Australia’s most important media assets. Does the minister recall telling Business Sunday earlier this year that the government’s media ownership laws would not lead to a wave of takeovers? Didn’t the minister say:

... it is difficult to see that there would be a real flurry of activity ... But my view is that, probably, all the low lying fruit here has been picked.

Does the minister also recall saying on the ABC AM program on 11 October:

... the cross-media arrangements that have been agreed to have very significant safeguards.

Haven’t the media moguls already worked out that these so-called safeguards are no barrier to their ambitions? Will the minister now admit that her media laws are just a recipe for a massive concentration of media ownership?

Senator COONAN—Thank you to Senator Conroy for the question. What appears to have escaped Senator Conroy and a lot of commentators is that the current media laws have not even been proclaimed yet. The government has not even set a date for the proclamation of the media laws. Any current activity would need to have regard to the existing old Keating laws passed under the Hawke government back in the 1980s.

The important thing when looking at media is that there will be some movement, but it will be subject to very stringent safeguards that affect not only the type of mergers but also the number of possible mergers. You only have to listen, for instance, to the comments of Mr Samuel, the Chairman of the ACCC, this morning to appreciate that he has said not only that he is keeping a very close eye on it but that the speculation should give rise to people having a cold shower. I would suggest that Senator Conroy, if modesty permits, also take a cold shower together with all of those currently hyperventilating over what might happen if these transactions proceed when the media laws are actually proclaimed. They have not yet been proclaimed.

I think people are getting ahead of themselves. I note that most of what is being reported, particularly about PBL, at least up
until the time question time started, has certainly not been clarified and you could fairly say it is speculative. The media ownership changes will not take effect until a date to be proclaimed sometime next year, so the changes being effected must have regard to existing laws or else those companies run the risk of having breached current laws. It is certainly the case that players may be trying to position themselves in certain ways prior to the laws coming into effect. But what their future intentions are is a question of course that has not been revealed. It is perfectly clear that the changes to the media ownership rules will allow for some movement, subject to the safeguards.

Senator Conroy obviously does not want to admit that the media laws have not even passed yet. If you look at what the speculation is about PBL, it appears to be more about financials and securing the position of PBL rather than any merger activity. Of course, the most revealing thing over the last few days is how the Labor Party still does not have a position on media policy that is not dictated by Mr Keating. We had Mr Beazley a couple of days ago saying that he had no idea what Labor’s position would be—that they would think about it. Senator Conroy just adopts a position of opposition for opposition’s sake. What the people of Australia might expect from Labor is that we will take a visionary leap backwards to the 1980s in accordance with Mr Keating pulling the strings of those who do not have the mettle to have a policy of their own, have no idea where they are going and are perpetually lost.

Senator CONROY—I ask a supplementary question, Mr President. Will the minister now apologise for misleading the Australian public about the impact of gutting the media ownership laws? Does the minister concede that the new media laws will deliver a massive windfall to some of the most powerful people in Australia? Isn’t Terry McCrann right when he says:

YOU only get one Helen Coonan in your lifetime. But boy, she’s even better than one Alan Bond if the name’s Packer. James Packer.

Senator COONAN—What these laws do, of course, which is the most important thing, is something for consumers. The beneficiaries of these media reforms are consumers, with new and innovative services—up to 30 new channels from next year—and investment that will enable consumers not to be left behind in an Australian backwater but actually be able to take advantage of what you can get in the rest of the world. I know that the Labor Party want to bury their heads in the sand and stay back in the 1980s with Mr Keating. It is too late. It is time to move into the 21st century with media.
Senator HEFFERNAN—Minister, are Dr Hamilton’s claims credible? I know what my response has been, but what is the government’s response?

Opposition senators interjecting—

The PRESIDENT—Order! Shouting across the chamber is disorderly!

Senator ABETZ—I thank Senator Heffernan for the question and note his very sensible and often robust contributions to this debate on support for our drought-stricken farmers. I am aware of the claims made by Dr Hamilton to which the honourable senator refers—claims which I can say the government categorically rejects.

OECD figures indicate that, compared to the rest of the world, the Australian government’s support for our farmers is relatively low. In other words: they are very, very efficient. In Japan, farm income from the government is 56 per cent; in the European Union, 32 per cent; in the United States, 16 per cent. In Australia, it is just five per cent. Yet Dr Hamilton would deign to tell us that we are propping up unviable farmers. The fact is Dr Hamilton’s claims are simply not credible.

This Dr Hamilton heads the so-called Australia Institute, a left-wing think tank—now there is an oxymoron if ever you have had one; but that is what he does. The institute acts as a stalking horse for the Australian Labor Party and the Greens and advances a number of nutbag propositions; any number of nutbag propositions come out of this institute.

The head of this institute is also the author of a book called *The Mystic Economist*, and it appears that mysticism informs his economic prognostications, such as those he made yesterday. Let me explain. Some time ago on the ABC Radio National program *The Search for Meaning*, Dr Hamilton said this—and I would invite all honourable senators to listen very carefully:

Out of the blackness appeared the figure of my shadow. He’d shown himself several times in dreams over the previous months I realised subsequently, especially in one where this figure appeared as a murderer and as an abuser of women ...

I entered into a dialogue with this figure who appeared before me. I spoke to him ... and he told me that his name was Jacob. And from his mouth spewed the most foul salvo of abuse that was imaginable, and I was wracked by overpowering emotion—almost more than I could bear ... And so I talked to Jacob and calmed him down and befriended him, and ultimately forgave him for being part of me.

Senator Chris Evans—Have you completely lost it?

Senator ABETZ—Mr President, I doubt the farmers of this country will be so quick to forgive Dr Hamilton for his Jacob inspired foul salvo of abuse against the farm sector in this country.

Senator Chris Evans—You have completely lost it!

Senator ABETZ—Senator Evans interjects and says have I completely lost it!

Opposition senators interjecting—

Senator ABETZ—The simple fact is this is the head of a left-wing think tank who used all of those words. When I quote the words of the stalking horse of the Labor Party, they think I have lost it. They are not my words; they are the left wing’s words. These are the people the Labor Party and the Greens rely on to develop their economic policy for this country, and when we quote back their words they laugh and scoff. They should be laughing and scoffing at Dr Hamilton, who has done a great disservice to farmers. *(Time expired)*

Opposition senators interjecting—
The PRESIDENT—Order! Senators on my left will come to order! I remind you that your own colleague has the call, and I would like to hear her in some sort of quiet.

Aged Care

Senator McLUCAS (2.12 pm)—My question is to the Minister for Ageing, Senator Santoro. Can the minister confirm that in August an agency assessment team found that the Elizabeth House Private Nursing Home failed 30 of the 44 care standards, including medication management, clinical care and infection control? Didn’t the assessment team recommend that the nursing home have its accreditation revoked? Can the minister confirm that despite this recommendation the facility’s accreditation was not revoked and no sanctions were imposed? What explanation can the minister give to families and residents for the decision to ignore the assessment team’s recommendation and not even impose a sanction on a nursing home that clearly was failing to provide proper care?

Senator SANTORO—I can provide Senator McLucas and the Senate with a very specific response to an issue that she has foreshadowed an interest in previously. I can advise the Senate that the Department of Health and Ageing has taken compliance action in relation to Elizabeth House Private Nursing Home in Victoria. The department has issued a notice of noncompliance, giving the approved provider until 22 December to rectify its compliance issues. This is the first step towards the imposition of sanctions, which may be imposed if the deadline is not met.

Elizabeth House was found to be non-compliant with 30 of the 44 accreditation outcomes when an Aged Care Standards and Accreditation Agency assessment team conducted a review audit in August 2006. The assessment team recommended to the agency that the home’s accreditation should be revoked. However, the agency decided against revoking the home’s accreditation in light of the immediate action that the home undertook to address the deficiencies. Since the review audit, the home has increased staffing levels, improved monitoring of staffing practices and conducted a review and reassessment of all residents’ needs.

The agency is satisfied that this action has immediately improved the care of residents at the home and has demonstrated the home’s ability to address the issues of noncompliance. The agency has, however, reduced the home’s period of accreditation, which is now due to expire on 1 June 2007. The agency has also placed the home on a timetable for improvement. It is obvious from the answer to this question and the answers to other questions that I have provided to Senator McLucas and others in this place that the Australian government has in place a comprehensive regulatory framework to ensure that any instances of poor care are quickly dealt with. This includes the commissioner for complaints, the accreditation agency and the Department of Health and Ageing.

All honourable senators in this place would be aware that we would never have become aware of the situation in those days 10 years ago before the Howard government introduced the quality and compliance procedures which residents and providers clearly benefit from. The agency and the department will continue to closely monitor the homes operated by Glenn-Craig Villages Pty Ltd, which oversees the nursing home in question. Contrary to what Senator McLucas has said, the nursing home in question has been dealt with in a very comprehensive and sensitive manner, with always the one dictum that guides us in terms of providing to our aged and our frail: that the care and the safety of all residents in aged-care homes
remains the highest priority of the Howard government.

Senator McLucas—Mr President, I ask a supplementary question. How can the minister expect the community to have confidence in a government system when it does not impose any penalty on a facility after finding that it failed 30 of the 44 care standards, including that residents were not getting the clinical care they needed, medication was not managed safely, the pain of residents was not managed effectively, families were intimidated when they complained and there was a shortage of staff? Just how bad does a nursing home have to be before it gets sanctioned?

Senator Santoro—Senator McLucas is simply the epitome of an outrage when she comes into this place and maliciously and insensitively seeks to disparage the industry. I suggest to Senator McLucas that she reads the Hansard again. I am not going to waste the time of the Senate. In case Senator McLucas wishes to ask me another question, she can avail herself of the time that I am providing and read the Hansard, because I have outlined precisely what the accreditation agency has done in response to the inspection. I again urge Senator McLucas, as I have done in this place very often, to adopt a non-scaremongering and constructive attitude to the welfare and the mental wellbeing of our residents. If there is anybody in politics who can be accused of abusing elderly people in our aged-care facilities, it is Senator McLucas, who constantly comes into this place and seeks to scare them out of their—

(Time expired)

Senator Chris Evans—I rise on a point of order. I have been loath to intervene when Senator Santoro has been abusing Senator McLucas over the last few weeks instead of answering the questions, but accusing Senator McLucas of abuse of elderly patients when she asks a serious question—

Senator Santoro—it is psychological abuse. You should sack her.

Senator Chris Evans—Do not try and intimidate me while I am making a point of order, you bully. He ought to be called to order for that kind of hectoring of a senator. He accused her of abusing elderly people. Mr President, I thought that you would have called him to order. I ask you to make sure that he withdraws those remarks. I also ask you to pay attention to the way that Senator Santoro is abusing the process of question time and to the way that he continually attacks those asking the question rather than addresses the issues.

The President—So far as your point of order is concerned, I do not believe that the language that Senator Santoro used was unparliamentary. But I do not think that it is right to be imputing improper motives to another senator. So I would ask you, Senator Santoro—

Senator Chris Evans—he accused her of abusing the elderly.

The President—Senator Evans, are you questioning what I am trying to do here? Are you going to continually interject, like you have all day?

Senator Chris Evans—What I was trying to alert you to, Mr President, was that he accused Senator McLucas of being an abuser of elderly people. That is not an imputation; that is a direct accusation, and it ought to be withdrawn as unparliamentary.

Senator Murray—Mr President, as you know, I do not often rise on these matters, but I took offence and I do not commonly. You might not have heard the exact way that it was expressed. I wonder if you could look at the Hansard record after this and make your ruling following that.
The PRESIDENT—I will certainly be looking at the Hansard, but before I was interrupted I was going to ask Senator Santoro to withdraw those remarks because I believe that they imputed an improper motive to Senator McLucas. That is where I was at before I was interrupted. Senator Santoro, would you withdraw those particular remarks.

Senator Santoro—Mr President, if you interpreted my remarks that way, I unreservedly withdraw them.

Mental Health

Senator NASH (2.20 pm)—My question is to the Minister for Ageing, Senator Santoro, in his capacity as the Minister representing the Minister for Health and Ageing. Will the minister outline to the Senate the mental health related measures that the government is introducing to support people in rural Australia under increased stress at this time of severe drought?

Senator SANTORO—First of all, I would like to thank Senator Nash for the question and recognise the close affiliation that Senator Nash has with rural Australians and the good work that Senator Nash continues to do on their behalf in this place specifically in relation to drought matters. I thank Senator Nash for her continuing interest in these vital issues. In this time of severe drought across much of rural Australia, a real concern of the Howard government is the disadvantages experienced by rural and remote communities. We hold particular concern for the mental wellbeing of those rural Australians whose livelihoods and incomes have been affected by this drought.

A key initiative of the Howard government’s $1.9 billion mental health reform package is the $51.7 million rural mental health services measure launched by the Prime Minister recently. This initiative will provide more allied mental health services in rural and remote communities throughout Australia. This will include services provided by social workers, psychologists, mental health nurses, occupational therapists and Aboriginal health workers. Commencing on 1 November 2006, the first phase of this measure will target areas of need where there are suitable organisations with existing infrastructure and capacity able to deliver the services and where average per capita payment made for Medicare Australia mental health services were in the bottom 30 per cent of all areas for 2005-06. These suitable organisations may include organisations such as divisions of general practice, Aboriginal medical services and the Royal Flying Doctor Service.

A number of other measures in the mental health package will have positive impacts on rural and regional communities. For example, under the telephone counselling, self-help and web based support programs measures, the Howard government will provide $18 million to Lifeline Australia over five years to expand its support services. In addition to these measures, the 2005-06 federal budget committed an additional $39.6 million in funding to beyondblue, who are raising awareness of depression across Australia’s rural press. In June this year beyondblue launched a rural advertising campaign to tackle depression in men in conjunction with a new information line: 1300224636. I would urge any of our fellow Australians who are experiencing tough times in the bush and want to have a yarn with someone about it to give beyondblue a call. The government will also spend more than $8 million over the next three years on 17 projects that will target suicide prevention in rural and remote communities.

In the time that I have been in my current role, I have had the pleasure of visiting a number of rural communities across Australia, such as the drought affected town of
Charleville in south Queensland, and I am always amazed by the resilient and good-spirited nature of the people I meet in such places—people who often are personally touched by the severity of this drought. The Howard government understands the enormous strain that this drought is putting on rural communities. I would like to tell these communities that there are government programs available to help them in their time of need and that they should not shy away from taking advantage of them.

**Aged Care**

**Senator McLucas** (2.23 pm)—My question is to the Minister for Ageing, Senator Santoro. Is the minister aware that two other facilities operated by the provider at Elizabeth House Private Nursing Home also failed to meet care standards in visits by the agency this year, including Plumpton Villa, which failed 22 out of 44 care standards? Didn’t the report on Plumpton Villa find that there were insufficient qualified staff and that at times the assessment team itself was unable to locate any staff? Over the three days of the visit, didn’t the assessment team hear a resident moaning in pain and observe a high number of skin tears amongst residents? Does the minister recall defending his decision not to impose a sanction on this facility because ‘it was getting its act together’? Can the minister explain why frail residents suffering substandard care had to wait while the provider was given time to get its act together?

**Senator Santoro**—There is one thing that I will not allow to happen in this chamber as far as I am concerned: I will not be verbally abused. If people doubt what I am about to repeat, they should read the *Hansard*. Senator McLucas asked me why I failed to impose sanctions. Senator McLucas, if she in any way wishes to be treated as a serious shadow minister for ageing, would understand and would be able to clearly state to this place that I do not impose sanctions. It is not within the province of the minister’s ability or jurisdictional capacity to impose sanctions on an aged-care facility. I will take Senator McLucas through Ageing 101. Once an inspection is undertaken—

**Senator McLucas**—Mr President, I rise on a point of order. I quote from the *Age* of 29 August, where Senator Santoro says:

The accreditation agency is satisfied that these homes are getting their act together.

**The President**—That is not a point of order; that is reading from a quote. I call the minister.

**Senator Santoro**—I wish to thank Senator McLucas for quoting, although Mr President is quite correct in his ruling that it is not a relevant point of order. That quote that she has just read from has in no way substantiated the major point in her question that I refused to impose a sanction. Ageing 101 should tell Senator McLucas, if she cares to read the textbook, that in fact it is the accreditation agency that conducts the inspections and then, always with the best interests of the people who are aged and frail within a facility, will make the decision.

So what Senator McLucas is again doing is seeking to verbal me and verbal the government and, through you, Mr President, seeking to again scare the living daylights out of the elderly, aged and frail Australians, is somehow in a crisis. I have always said in this place and outside that no system is perfect.

**Senator Chris Evans**—Mr President, I rise on a point of order. It goes to relevance. Senator McLucas asked a serious question about care standards at Plumpton Villa and
the decision by the department, supported by the minister, not to impose a sanction.

Government senators interjecting—

Senator Chris Evans—I think when you check the Hansard you will find that is right, but in any event I would ask you, Mr President, to draw the minister’s attention to the question. Another three minutes of abuse of Senator McLucas is not dealing seriously with the question. I would ask you to pull him into order to address the questions asked of him.

The President—On many times I have said this. The minister has two minutes left to answer his question. He was being relevant, I believe, and I would ask him to continue and return to the question.

Senator Santoro—If Senator Evans does not want me to tell the truth to the Senate, he is failing to understand that it is my intention to always do so. What I am saying—

Senator Forshaw—That is a classic verbal!

The President—Senator Forshaw, come to order!

Senator Santoro—Just keep on asking me the questions and I will just tell you how ageing in Australia operates. Through you, Mr President, I invite senators opposite to keep on asking me the questions, because this government is proud of its record within aged care in Australia. As I suggested to Senator McLucas in answer to her previous question, if it were not for the Howard government, there would not have been a compliance commission and there would not have an accreditation agency. Funding for the aged-care sector would not be at a record level of just under $8 billion. What does this government have to do in terms of looking after the interests of aged and frail Australians to just get one modicum of recognition from Senator McLucas? Just one modicum of recognition—

Senator Carr—Mr President, I have a point of order on the question of relevance. The minister was asked a direct question about the failure of this nursing home in 22 of the 44 care standards. He has failed to address the question which went to him as to why he has not taken action.

The President—I have reminded the minister of the question, but there are continued points of order. It does not help a minister or anybody else to answer a question if they are continually being interrupted.

Senator Chris Evans—Mr President, I rise on a point of order. I want to query with you what that ruling means. If you are suggesting—

The President—I was not ruling at all.

Senator Chris Evans—you made a criticism of people taking legitimate points of order, and I raise concern about that because we have legitimate—

The President—I have ruled previously on this and I have asked the minister to return to the question. What more can I do?

Senator Chris Evans—I am raising with you a separate point of order, which is the critique you made about people raising legitimate points of order. We have the ability to do that. It is your role to rule on them. But it is not unreasonable for senators to raise the question of relevance when the minister has made no attempt in four minutes to actually address the question. I am concerned by the suggestion by you that we somehow should restrict our capacity to raise points of order.

Senator Santoro—The opposition obviously do whatever they can to gag me because they do not like the answer—

Opposition senators interjecting—
Senator SANTORO—You will do whatever you can to interrupt my flow, to interrupt the outpouring of truth. As I said through you, Mr President, the whole lot of them are the epitome of an outrage. No wonder they have so little credibility in the aged-care sector of this country.

Senator McLUCAS—Mr President, I ask a supplementary question. Can the minister confirm that many of the problems identified at Plumpton Villa were clearly long running, some dating back to when the facility was accredited in September 2005? Why has this facility been given a further eight months to get its act together with no threat of any sanction in the meantime? Should residents in this facility have to wait that long to get the quality care they deserve?

Senator SANTORO—What I can guarantee Senator McLucas and the Senate—I can guarantee it—is that the residents of that facility today are receiving the top quality care that they deserve. Senator McLucas’s question is again phrased along the lines of ‘how long do they have to wait?’ I give the Senate today the guarantee that all residents in that community are receiving top-quality care. If Senator McLucas has any evidence that today—I stress today—the residents of that facility are not receiving the top-quality care that they so richly deserve, Senator McLucas should table it. She again has been hoist with her own petard. She should come into this place and table the evidence—

(Time expired)

DISTINGUISHED VISITORS

The PRESIDENT—Order! I draw the attention of honourable senators to the presence in the chamber of a parliamentary delegation from Denmark led by Mr Christian Mejdahl, Speaker of the Folketing. On behalf of all senators, I wish you a warm welcome to Australia and, in particular, to the Senate. With the concurrence of honourable senators, I invite Mr Mejdahl to take a seat on the floor of the Senate.

Honourable senators—Hear, hear!

Mr Mejdahl was seated accordingly.

QUESTIONS WITHOUT NOTICE

Crime in the Community

Senator PARRY (2.33 pm)—My question is to the Minister for Justice and Customs, Senator Ellison. Will the minister inform the Senate of Australian government initiatives to address the problem of crime in our communities?

Senator ELLISON—The issue of crime is of course a matter of concern to all Australians. With the Commonwealth’s National Community Crime Prevention Program, we have a $64 million national program which seeks to provide communities with the resources to come up with their own solutions to the problems they have in their midst. This is, after all, where it works—at the grassroots level. I announced today that round 4 of this program will open, and we have invited applications from across a range of areas—the Indigenous stream, the community partnerships stream, the community safety stream and also the security related stream.

When I travel around Australia I see much good work being done by volunteers in relation to crime prevention. We have funded over 172 applications during the life of this program, and it is really fantastic to see the breadth of the work that is being done. Just the other day in Tasmania I saw a fantastic program, the big heart program, dealing with young mothers, many of them single, who are at risk of offending. I spoke to one in particular who said that the program had offered her a new window on her life and that her previous problem with alcohol and offending had ceased and she was able to embark upon a much more constructive life, particularly in relation to her role as a
mother. This is an example of community work being done in a very constructive way and just one of the many crime prevention programs that we have funded.

As well as that, we have the security related stream. I have seen firsthand where such things as a closed-circuit television can offer a community a great deal of assurance in relation to crime prevention. That is another aspect of that. The Indigenous program offers many opportunities for people in the community to deal with crime prevention, not only in those remote regional communities but also in our urban areas.

It is no secret that the issue of illicit drugs has great relevance for the rate of crime in this country. The DUMA program, which we administer, tests those people who are arrested. As soon as they are arrested, they are tested and interviewed. Across the 11 major lockups, the statistics are that 42 per cent of those detainees reported that they had used illicit drugs prior to their arrest. In fact, over a third of them attributed illicit drugs—that is, drugs other than alcohol—as the reason for their offending. That is why it is so important that in our grants for community crime prevention we address the issue of illicit drugs.

Forty-one of those grants have gone to diversionary or drug prevention programs, and that is an essential part of crime prevention in this country. Whilst we have a strong approach to law enforcement, and whilst we endorse the actions of Customs, the Australian Federal Police and the Australian Crime Commission in the fight against crime, we also have to look at the other end of the spectrum, and that is crime prevention. This is a national program which is delivering the runs on the board. I urge all senators and members to avail themselves of it and to encourage the take-up of it in their areas.

Nuclear Energy

Senator MILNE (2.37 pm)—My question today is addressed to the Minister representing the Prime Minister, Senator Minchin. Does the government consider Russia’s record in nuclear facility safety, nuclear waste management and nuclear nonproliferation to be exemplary?

Senator MINCHIN—I feel somewhat constrained to comment on that question in any detail, given my lack of a brief and the sorts of issues that that question raises—and certainly, as Minister for Finance, I do not want to cause any diplomatic offence to anybody. I am not sure where Senator Milne is coming from, but I suspect that she may be talking about Chernobyl; I suspect that is the basis of her question.

Many of us have read and studied the circumstances surrounding the Chernobyl nuclear reactor disaster. I have certainly read a very instructive book by a Russian journalist and have seen a documentary on that particular episode. The matter has been exhaustively studied and looked at by world authorities. I think it was a great tragedy. Indeed, it really was one of the factors that led to the collapse of the Soviet Union, because it exposed the shortcomings of due diligence, transparency and good governance in the Soviet Union in that a reactor could be built in that fashion without any of the proper safeguards and checks that would be normal in Western democracies. That is in stark contrast with the proud record of nuclear power station operation and construction that is the norm in Western countries. France gets most of its power from nuclear power. There are nuclear power reactors operating around the world very satisfactorily. There is no doubt and no denying that Chernobyl was a complete and utter disaster with dreadful consequences for Western Europe.
I am sure that Senator Milne, if she is interested in this subject, will have studied the particular causes of that disaster, the disasters and the tragedies surrounding the construction and operation of that reactor and the nature of the type of reactor that was involved and that is no longer built and/or operated in any other country in the world, as I am advised. I am not an expert on the current situation with Russian management of the construction and operation of nuclear reactors and I do not want to make glib comments on the run about that subject, but I think one should draw a very big distinction between what occurred in the then Soviet Union with the construction and operation of nuclear reactors and the very proud record that is the case in most Western democracies, where the governance, transparency and safety standards that apply to reactors are exemplary.

Senator MILNE—Mr President, I ask a supplementary question. In view of the government’s lack of due diligence in regard to nuclear facility safety and nuclear waste management, as exemplified by the government’s answer, can the minister explain why the government is meeting Russian officials and nuclear industry representatives this week to negotiate the necessary arrangements to facilitate the export of uranium from Australia to Russia? When does the government expect to conclude the export agreement, and how many and which countries will access Australian uranium via Russia as part of this agreement?

Senator MINCHIN—Australia probably has the strictest standards with respect to the export of uranium of any uranium-exporting country in the world. We only export to those countries that are signatories to the nuclear nonproliferation treaty and those countries with which we have bilateral safeguards agreements that, as I say, meet the strictest standards in the world, which are those we apply to the export of uranium.

Immigration

Senator McGAUrán (2.41 pm)—My question is addressed to the Minister for Immigration and Multicultural Affairs, Senator Vanstone. Will the minister inform the Senate of the benefits to Australia of current immigration policies, especially the impact that immigration has on creating jobs? Is the minister aware of any alternative policies?

Senator VANSTONE—I thank the senator for his question. The difference between the government and the opposition in the conduct of immigration policies is very clear. The coalition government has always favoured skilled migration because skilled migration builds and secures Australian jobs and secures Australian business. Labor has always had a different focus. What they have done is tried to build constituencies to get re-elected. They have not had an interest in whether the people coming into Australia would be good for Australia and would be able to get a job. Barry Jones let the cat out of the bag when he said:

The handling of—immigration—by the previous Government was less than distinguished...

He went on and said this was:

partly because immigration was seen as a tremendously important element in building up a long term political constituency. There was that sense that you might get the Greek vote ‘locked up’, or the Chinese vote ‘locked up’...

So there is the difference. We bring in people that will help business grow and help generate Australian jobs, and the Labor Party has always sought to bring in people who they think will get them re-elected. Skilled migrants have always done better under us. Sixty-four percent of primary skilled migrants arriving between 1993 and 1995 had a
job within six months. If you look at what happened to the group that came in between 2004 and 2005, Mr President, you will see that 84 per cent had a job within six months. In other words, we bring in people who we believe will be able to get a job. Mr Beazley, in November 2005, tried to tell Australian parents that they were right to worry about ‘foreigners coming in’ to take their children’s jobs—because the foreigners were not coming in to vote for him. In 1995-96, which was Labor’s last year, they brought in 24,000 skilled migrants; now we have nearly 100,000 skilled migrants bringing in skills to build Australian companies and to build Australian jobs.

You might notice, Mr President, what has happened to the unemployment rate while we have been bringing in skills. The unemployment rate has been going down. Under the coalition we have had record employment. There are now 10.3 million people in work. Since 1996 we have created more than 1.9 million jobs—more than one million of them full time. Let us go back and compare our record on employment to that of the previous government. That is what immigration is about—it is about building business and building jobs. In February 1992 Mr Beazley was the employment minister. He said it was heartening that unemployment was 10.2 per cent. He was heartened that 10.2 per cent of Australians could not get jobs!

Unemployment got worse under the previous government. It peaked at 10.9 per cent in December, when Mr Beazley was still the employment minister. In 1996, when we took over, the unemployment rate was 8.2 per cent. It is now 4.8 per cent. Skilled immigration has played a role in the unemployment rate being the lowest it has been in 30 years. Skilled immigration increases our competitiveness. We only have to look at the World Economic Forum’s global competitiveness report to see how immigration policies can make a tremendous difference. With a well organised skilled migration visa—with the flexibility of, for example, a 457 visa—we can build our competitiveness to our advantage over countries that do not have that. What should that tell Labor? It should tell the Labor Party—

Government senators interjecting—

Senator VANSTONE—Oh no, I have plenty more to say on this. In particular I have quite a bit to say about the interests of the states in this matter. Skilled migration, both temporary and permanent, builds Australian jobs. As I said the other day, Mr Clin- ton used to say—(Time expired)

Senator McGAUrán (2.46 pm)—Mr President, I ask a supplementary question. Will the minister further inform the Senate of the benefits of the current migration policies of the government.

Senator VANSTONE—I thank Senator McGauran. The benefits of the current system, where we work not in cooperation with ethnic communities to build our vote but in cooperation with the states to bring in the people they need to get their factories and their businesses going well are that we have cooperative federalism. The states and territories—all with Labor governments—are working in close cooperation with the Australian government in this matter. At the moment we have some skills expos in London, Manchester and Dublin. Mr President, you might be surprised to know, given what you hear from Labor opposite, that every Labor state and territory has a booth at those stalls. They are up there saying: ‘Come on down!—and come quickly; come in on a 457 visa. We need you. We want our factories to churn out the goods. We want our people to get more jobs.’ They are all there. It is a fair bet that the state and territory governments went to the skills expo we had in India,
which I am sure the federal opposition would not have done. *(Time expired)*

**Military Justice**

**Senator MARK BISHOP** (2.47 pm)—My question is to Senator Abetz, the Minister representing the Minister for Defence. Is the minister aware that the High Court has given the green light to a constitutional challenge to the military’s disciplinary powers? Is it the case that such a challenge is likely to freeze the military justice system until the case is heard some time next year? Given this likelihood, can the minister explain how Defence will be able to uphold military discipline until the High Court challenge is heard and a decision is handed down? Doesn’t the challenge also mean that 62 accused personnel currently in the system will have to be relieved from duties on full pay whilst awaiting the chance to defend themselves?

**Senator ABETZ**—I do not have a brief in front of me today, but I do recall reading a brief earlier in the week about it, anticipating that when it was in the news a question might have been asked, rather than quite a few days after the event. But allow me to try to recall the brief. Somebody has made a challenge to the High Court. I understand that the Chief Justice, on receiving it, asked the Full Court, or more members—a fully constituted High Court—to consider the claim. That claim will be, for want of a better term, stalled until such time as the High Court makes its determination. The other 62 cases—I think it is 62, from recollection, and I think that was the figure Senator Bishop referred to as well—will continue on the basis that, unless the High Court is challenged by the individual people, it will be business as usual.

If I am wrong as to my recollection of the brief in that regard, I will come back to the chamber, or possibly to Senator Bishop as quickly as possible, but that is my recollection of it. There will not be a freeze in relation to the other cases. Those cases will keep on, as planned, and those who are seeking justice under the current regime will be able to progress through that. However, if they want to avail themselves of their right to challenge the procedural system then that is their entitlement. We live in a country where we have the rule of law, and people are entitled to make these challenges—albeit that that does stall the inquiry in relation to those particular matters wherein people seek to avail themselves of those avenues of appeal.

**Senator MARK BISHOP** (2.50 pm)—Mr President, I have a supplementary question arising out of the minister’s response. Doesn’t the High Court challenge expose the government’s failure to implement critical reform of the military justice system, as recommended by the Senate committee last year? Isn’t it the case that, had the government accepted the Senate inquiry’s recommendations, it would not now have to face the problem posed by this challenge, which leaves Defence with no means of upholding military discipline in the meantime?

**Senator ABETZ**—With great respect, that is not the case. I think the conclusion Senator Bishop would like to come to is not open to him on the facts and the circumstances. With great respect, whether or not an Australian citizen in the Australian military avails himself of a High Court challenge will not necessarily be related to the pontifications—albeit undoubtedly very good ones—of a Senate committee. To suggest that if all of these things had been adopted it would have avoided any High Court challenge is an attempt to look into a crystal ball, which is not an appropriate suggestion for the honourable senator to make. It is before the High Court. The High Court will determine the matter. The other matters will proceed, as I understand the situation, on the basis which
would have been anticipated prior to the High Court challenge.

Media Ownership

Senator MURRAY (2.52 pm)—My question is to the Minister for Communications, Information Technology and the Arts, Senator Helen Coonan. The minister said that she is aware of media and market speculation that the presently Australian owned PBL, one of the two largest media companies in Australia, may be selling off its major media assets, including Channel 9, to United States private equity investors. Is the minister aware of the restrictions surrounding foreign media ownership in the United States? Is it true that United States precedents indicate that if—and it is an ‘if’ because approval is not easy—an Australian or an Australian corporation wanted to buy a major TV channel in the United States, they would be unlikely to get approval for more than a 25 per cent holding? What rules, regulations or laws do you have in place that ensure American buyers of our media assets are treated in the same way that Australian buyers of American media assets would be? What reciprocal rights are there for us in the USA, or are you just going to give their carpetbaggers a free rein?

Senator COONAN—I thank Senator Murray for the question—although, I note the certain pejorative tone to it, which is certainly not his usual style. Since giving an answer earlier to Senator Conroy, I have received a release from the Australian Stock Exchange regarding PBL relating to some clarification of what it proposes. It certainly does not appear to be proposing what is contended in Senator Murray’s question. The arrangements clearly relate to some financial arrangements on behalf of PBL and to securing a cash flow. It says:

The transaction is conditional upon any regulatory or other approvals that may be required by PBL.

In another part of the statement, it says:

In announcing the transaction, Mr Packer said, ‘Over the last 12 months, we’ve strongly indicated our desire to invest in new opportunities—there does not seem to be any crime in that—The restructure will provide the capital and flexibility necessary for the company to achieve its ambition to expand its gaming interests. A clear benefit of the restructure will be that the foreign teaming of the gaming and media businesses with the latter’s use of non-recourse debt protecting PBL shareholders from additional capital risk incurred in the funding of any expansion through acquisition.

Senator Conroy interjecting—

The PRESIDENT—Order!

Senator COONAN—The statement goes on to say:

For PBL, it releases cash at a time when there is a land grab underway for gaming and entertainment assets around the world. In response to Senator Murray, I would not describe this transaction, if in fact it is approved under the FIRB rules—and, I note, relaxation of the FIRB rules appear to be unequivocally supported by the Labor Party—as a grab for media assets. As to speculating about what is going to happen in the United States or in any other jurisdiction around the world, I decline the invitation, thank you, Senator Murray. What I am about here is putting in place some media rules for this country that are going to benefit consumers, that are going to take us into the 21st century, that are going to give us an opportunity to take advantage of new technology and new opportunities and that are going to allow companies to invest so that consumers can get the benefit of what you can get in other parts of the world.
Far from considering this as some media grab, I urge you to have a look at the clarification provided by the company about what it intends to do. It is clearly about providing a quarantining of media assets and, in those circumstances, protecting the PBL shareholders.

*Senator Conroy interjecting—*

**The President**—Order! Senator Conroy, I have called you to order a dozen times today.

*Senator Murray*—Mr President, I ask a supplementary question. Is the minister aware that it can be difficult to identify the beneficial owners that would have an influence over our media lying behind a consortium of foreign private equity funds? Is the minister concerned that investors in such funds do not appear on the register and are not readily identifiable? Does the minister know that private equity funds do not just come from legitimate sources but that there is literally hundreds of billions of dollars in criminal money looking for an investment home, sourced from gambling, drugs, prostitution, people trafficking, pornography and criminal activity? What rules, regulations or laws do you have in place that ensure Australia knows exactly who the beneficial owners of our media will be? Can you assure us that none of our media could end up controlled by funds that are influenced by criminal money, money sourced from anti-democratic groups, from theocratic or fundamentalist groups or from proscribed organisations?

*Senator Ferguson interjecting—*

*Senator Carr interjecting—*

**The President**—Senator Ferguson and Senator Carr, talking across the table is disorderly.

*Senator Coonan*—Thank you to Senator Murray for that supplementary question. The tone of Senator Murray’s question and the paranoia inherent in it is quite extraordinary. Senator Murray, I would have thought you would have been better served by addressing your question to Senator Ellison, because he in fact has CrimTrac and traces such matters as money laundering and transactions if they are illegitimate. It is entirely inappropriate to be attributing to a transaction that has been announced as a possibility and one that would be subject to all of the regulatory safeguards that we have been talking about for weeks and months on end some nefarious purpose and some nefarious source. I do not think it does you any credit, Senator Murray. What you need to do is look at the stringent safeguards that we have in place— *(Time expired)*

*Senator Murray*—Mr President, I rise on a point of order. The reason why I shouted is that, with the racket, it is just about impossible to hear, including the minister’s answer, at the end of this chamber. It might not be apparent to you at that end of the chamber but it is getting really difficult at this end, and I draw your attention to that.

**The President**—I call Senator O’Brien.

**Civil Aviation Safety Authority**

*Senator O’Brien* (3.00 pm)—My question is to Senator Abetz representing the Minister for Transport and Regional Services. Does the minister recall asserting on Monday:

> The new MPL has not been adopted by Australia; it is subject to a review ... this government will not agree to anything that sacrifices the safety of passengers.

Will the minister now correct the record and confirm that CASA knew in February that Boeing’s training arm, Alteon, would start Australia’s first MPL course in Brisbane next month and produce its first batch of so-called qualified pilots by January 2008? Was not the syllabus of this course in fact given to so-
called ‘industry partners’, which, according to Alteon, include CASA, as early as April this year? How can CASA maintain an appropriate arms-length relationship with the industry at the same time as being considered an industry partner? Can the minister guarantee that no multi-crew pilot licence training will be conducted in Australia until the promised consultative process is completed?

Senator ABETZ—I am pleased to report to the Senate and to Senator O’Brien that I did not mislead the Senate the other day. In relation to the specific matter that Senator O’Brien now raises, I can advise that CASA is still reviewing Alteon’s training package documentation and has yet to approve the commencement of the trial. The trial is an opportunity for industry and CASA to further develop the competencies that underpin improved licensing arrangements. I understand the minister supports the aviation industry’s efforts to ensure that focused and targeted training is in place before any regulations are implemented. I also understand that no changes to current licensing arrangements will take place during the trial period and the 12-month consultation period will ensure that CASA is well placed to take into account any suggested improvements. Therefore, I can confirm that we as a government are not prepared to risk the safety of air travel in this country and I stand by the answer that I provided on behalf of my colleague the Minister for Transport and Regional Services earlier this week.

Senator O’BRIEN—Mr President, I ask a supplementary question. Do I understand the minister to be saying that there will be no course conducted in Brisbane commencing in November this year which is part of the multi-crew pilot licence training program? Is the minister saying that those courses have been cancelled, notwithstanding the fact that CASA was aware of them in February and was familiar with the syllabus in April?

Senator ABETZ—For the benefit of the honourable senator—and clearly he is trying to verbal me to get any hairy-scary type of headline—the simple fact is that what I indicated to the honourable senator was that CASA is still reviewing the training package documentation. I indicated that there is a trial and an opportunity for industry and CASA to further develop the competencies that underpin improved licensing arrangements, and the minister for transport supports the aviation industry’s efforts to ensure that focused and targeted training is in place before any regulations are implemented. There is no contradiction to that which I said previously. I would suggest to the honourable senator that he watch this space carefully and develop policies of his own rather than simply relying on the old lazy habit of oppotunity—that is, trying to be an opponent for opposition’s sake.

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

QUESTIONS WITHOUT NOTICE: ADDITIONAL ANSWERS

Military Justice

Senator ABETZ (Tasmania—Minister for Fisheries, Forestry and Conservation) (3.03 pm)—Mr President, I have some further information in relation to the question Senator Bishop asked me. Spooky as it is, I was right, Senator Bishop. I am advised that the issues to be tested by the High Court centre around whether courts martial are constitutionally valid and that this question appeared settled by High Court judgements between 1989 and 1994. In this instance, the member’s case has been suspended until a determination by the High Court that the member is still on active duty. There will not be an automatic suspension of the other approximately 60 cases before tribunals pending the High Court ruling.
QUESTIONS WITHOUT NOTICE:
TAKE NOTE OF ANSWERS

Answers to Questions

Senator O’BRIEN (Tasmania) (3.04 pm)—I move:

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

In the contribution I am about to make, I want to deal with the last answer first. It was very interesting that, while the minister was reporting what the minister in the other place asked him to say on his behalf, there was I believe an attempt to suggest that we were not going to go down the path of multicrew pilot licensing until this process of review—this consultation—had taken place. But no, in answer to my supplementary question what is being made clear is that the training is starting now. The only thing is that they are calling it a trial and that at the end of the training they will have completed the trial. So those who have completed the training will be able to be licensed under the regulations. That is in fact what the minister was saying. Let us get away from the cant we were given on Monday about this government putting this on the backburner until consultation has been considered.

The truth of this matter was revealed back in February—you can see it on the internet today at Alteon’s website. Alteon is the training arm of Boeing that is running this simulator based training. Alteon has been saying from as early as February this year that Alteon:

... will present the proposed training syllabus to industry partners in April—
which it did—
and finalise the programme by June—
which it did, and—

the first MPL training course would take place in Brisbane, beginning in November and producing the first batch of qualified pilots—qualified in its terms—by January 2008.

How can you commence a course before you know whether the qualification exists? But the fix is in, because CASA, according to Alteon, is one of its industry partners, and there is general agreement that, ‘We’ll go through the process and we’re going to approve this multi-crew pilot licensing system, so let’s get on with the training now; let’s have Alteon start the course in February this year.’ I think Alteon believes it will have six to eight cadets start this program next month in Brisbane, and I understand there are other courses being contemplated on the eastern seaboard of Australia. Alteon is saying, ‘Let’s start that process, let’s get it underway.’ Despite what has been promised about consultation, and despite what has been promised about the standards expected, there is an expectation by Alteon and by CASA that by January 2008 people who will have gone through the course will be able to get the tick, because the fix is in and these multicrew pilot licences will be approved.

The multicrew pilot licensing proposal from ICAO has not been approved in the United States or Europe. It has not been adopted as the alternative standard. It is still in contemplation. So how do the proponent and CASA get around that? How does the government get around that? Ultimately, it is responsible. What is being said is, ‘We’re going to call this training a trial.’ So what do we say about the people who have participated in the trial? Are they really undergoing training? Are they qualified pilots who are being tested against the standards they already have or are they, as I understand it, cadets who are not experienced pilots and who will be undertaking this sort of training
for the first time? At the end of that period in January 2008, they will be expecting to come out of it with a qualification so that they can sit in the second officer’s seat at the front of one of the larger aircraft flying around in whatever part of the world they seek to fly in, and that could well be Australian airspace.

I do not know who will be engaging these pilots when they are qualified, but clearly CASA and this government believe that they will be qualified. Certainly, Alteon does; it would not be starting the training if it did not have that expectation. Frankly, we have had a very slippery answer from the minister’s counterpart in the other place, because he has been representing what has been said to him. Frankly, the Australian public should be very concerned because it is clear that we have been given a bit of spin about a process that will be followed. But, at the end of the day, the fix is in and this multi-crew pilot licence will get the big tick.

Senator ADAMS (Western Australia) (3.09 pm)—I rise to take part in this debate on the motion to take note of answers, and in particular I refer to the answers given by the Minister for Ageing, Senator Santoro. It is important to remind those opposite of the system that the Australian government has in place for the monitoring of residential aged-care homes for compliance with their obligations under the Aged Care Act 1997. The act states that approved providers are responsible for meeting the accreditation standards, which include meeting the individual care needs of their residents.

It is very important that the resident must come first. Issues of concern are acted upon promptly and monitored until compliance is achieved. On occasion, for example, due to management issues or staff changes, there can be unexpected lapses in care. However, poor care is never acceptable, whatever the circumstances, and in these cases sanctions must be taken.

The department may impose sanctions in a range of circumstances, including where there is a continued failure to comply with the obligations of the Aged Care Act 1997 or where there is an immediate and severe risk to the health and safety of residents. In determining whether there is an immediate and severe risk to the safety, health and wellbeing of residents, the department must consider the information that the agency has identified during their visit to a home. In most instances where immediate sanctions are imposed, the agency has determined that the noncompliance is a serious risk.

During 2005-06 the department imposed 12 sanctions. There are currently six homes under sanctions. Five of the homes are operating and one no longer has any care recipients. Information on sanctions imposed is available on the Department of Health and Ageing sanctions website once all residents and relatives have been advised of the sanctions being imposed on their homes. This is a very practical way of dealing with things, because no-one likes to see headlines in the newspapers regarding homes that do not qualify under the standards having sanctions put on them without their first being notified.

At the end of June this year, 2,937 residential aged-care homes were accredited Australia-wide. The majority of the homes—2,727, which is 93 per cent—received at least three years accreditation. During 2005-06 the agency and department undertook 5,495 visits to homes, including 1,070 unannounced visits. Since 2000 the agency and department have conducted in excess of 22,000 visits to aged-care homes, which includes over 4,500 spot checks. When I visited a frail aged facility in Port Hedland the spot check assessors had arrived just before me, so it was a really good opportunity for...
me to be able to discuss what they were doing and, to the delight of the authorities and the residents of that home, it passed with flying colours. They were very happy to have the assessors there because they could learn from other people who may have different ideas. You can speak to the assessors and probably obtain information that you may not otherwise have been able to get. So it is a win-win situation for both parties—for the assessors to take ideas to another facility and for the facility that is being spot checked to be given information that may help it in the future.

Recently announced measures will provide greater protection for residents and improve the overall quality of care delivered in Australian government subsidised aged-care services. These measures include more frequent unannounced inspections of aged-care homes by the Aged Care Standards and Accreditation Agency, in order to provide for about 3,000 unannounced visits each year, and ensuring that all homes will receive at least one unannounced visit each year. This is a very valuable tool and, as I said, it can be a reciprocal arrangement in that information—

Senator McLUCAS (Queensland) (3.14 pm)—I do not think that the residents and the families of residents at Elizabeth House or Plumpton Villa will have found any comfort in the responses that we received today from the Minister for Ageing, Senator Santoro. There are 30 residents in Elizabeth House, most of whom are high care, and 90 residents in Plumpton Villa. If those residents or their families had the opportunity to hear the minister today, I do not know that they would have a lot of confidence in the operation of the aged care that Senator Adams has quite eloquently described. I hope Senator Santoro has an opportunity to listen to it; he might learn something.

The facts are that earlier this year Plumpton Villa failed 22 of the 44 care outcomes that are applied by the Aged Care Standards and Accreditation Agency. As I said in my question, no sanction was applied, and they had a reduced accreditation of a number of months. Elizabeth House, a larger facility, failed 30 out of 44 care outcomes. It is one of the worst reports that I have seen in my time as shadow minister for ageing. But once again we had no sanction applied and a reduced accreditation of five months. A sister agency, Berwick House, failed nine care outcomes this year as well.

As I said earlier, I do not think those residents or their families will take any comfort in the aggressive and defensive behaviour exhibited by Senator Santoro today. They will have no comfort in his attacking me for performing my legitimate role to ask him questions about the actions of the agency, of his department or of him himself.

Elizabeth House was found to be compliant with only 14 out of 44 outcomes. Senator Santoro is quoted in the Age—and I had to bring it to his attention—as defending that situation. He defended the fact that there was no sanction implied, and he said that no-one was at risk. If you read the report, look at the comments on medication management. The report says:

There is no system in place to ensure that residents’ medications are managed safely and correctly. Management have not conducted medication management audits for some time. Not all registered staff are aware of safe and/or correct practices when administering medication.

That sounds pretty risky to me. In terms of nutrition and hydration, the report says:

Residents’ nutrition and hydration needs are not monitored. Residents identified with unexpected weight gain or loss are not referred to appropriate health professionals.

In terms of pain management, the report says:
Management cannot demonstrate that they are assisting residents to be as free as possible from pain. Maybe those residents are not at risk, but it sounds like risk to me.

Then we move to Plumpton Villa, which failed 22 care standards. Senator Santoro, the Minister for Ageing, jumped up and said that he would not be verballed by my asking a question. My question was pretty straightforward. I said that Plumpton Villa was a sister facility of Elizabeth House, that it failed 22 care standards and didn’t the report say that there were insufficient staff and at times the assessment team could not locate any staff—straight out of the report—that the assessment team heard people moaning in pain and observed a high number of skin tears amongst residents—straight out of the report. Then I asked if the minister recalled defending his decision to not impose a sanction on this facility because it was getting its act together. I said that he was defending his decision, and that is when I think he suggested that I was verballing him.

The Minister for Ageing then gave an absolutely unequivocal guarantee that the facility was providing top quality care. A colleague of mine rang a family member of a current resident since the minister gave that unequivocal commitment. Last week when that family member arrived at Plumpton Villa they could not get in, there was no-one at reception and there was no staff member in sight. When they got in, the staff were chatting to one another for about 10 minutes. They did say it does smell better, and that is good. But it is still understaffed, according to the family member of the resident in the facility. (Time expired)

Senator HUMPHRIES (Australian Capital Territory) (3.20 pm)—I am happy to take part in this debate and to indicate that I was also somewhat dismayed by the answers that Senator Santoro gave in question time today. I was dismayed because I was distressed that, as the Minister for Ageing, Senator Santoro was obliged to have to raise and talk about, on the floor of the Senate, the circumstances of individual residents in Australia in a way that would not be conducive to the welfare and to the peace of mind of those people, should they happen to have been listening to this debate.

We have the privilege of raising in this place the circumstances of individual citizens—in this case, individual aged care facilities in this country. With that privilege comes the obligation to ensure that we handle the issues with sensitivity and in a way that does not put the individuals concerned, particularly vulnerable citizens of Australia, in any distressing situation. I do not know how they are going to react to the debate that has taken place in the Senate today on these matters, but I suspect that, to the extent that their cases are publicised by these circumstances, they are not likely to be very happy.

What we do know is that the circumstances of both Plumpton Villa and Elizabeth House have been investigated appropriately by the organisations responsible for maintaining standards in those places. We know because the minister has told us very directly that, in the case of Elizabeth House, the assessment team recommended that the home’s accreditation should be revoked but that the Aged Care Standards and Accreditation Agency decided against revoking the home’s accreditation in light of immediate action the home undertook to address the deficiencies.

A number of issues were raised in that dialogue between the accreditation agency and the home concerned. For example, the period of accreditation has now been reduced in order to put them on notice that they have to meet a higher standard. In the case of Plumpton Villa, similarly the review audit led to the
agency reducing the home's period of accreditation by 20 months, and the home has again been placed by the agency on a timetable for improvement.

Those are appropriate steps to be taken to reassure those who live in those homes and their families that the government and its agencies have not ignored clear indications of problems or clear deficiencies in the way in which those homes have been operated, but the issues have not been escalated to a point which is not in the best interests of those residents—and this is the point. Senator McLucas clearly seems to think that the government should have organised for its agencies to shut down those facilities. That would not see a perpetuation of those bad standards, but it might well throw those residents out into the street and force them to find other accommodation, which as we know is not plentiful around Australia at the moment. In my opinion, that would potentially be an overreaction. Quite appropriately, the minister said that his agencies have properly taken stock of these circumstances and are gauging the best response to those situations.

I make the point first of all: what would these residents have done if these incidents had arisen 12, 14 or 16 years ago? Of course, in those days there was no accreditation agency. In those days, under the Hawke-Keating government, there was nowhere to turn to have these sorts of issues remedied. We have put in place the kinds of mechanisms which bring to light these problems, and we provide fuel for Senator McLucas and others to raise these sorts of cases in this place. I do not resile from that. We are bringing these problems out into the open, and we have engineered higher standards in Australian nursing homes by virtue of having taken those steps. An inquiry in 1995 revealed that there were appalling circumstances applying in many nursing homes across Australia, and that of course was a period that reflected on Labor’s stewardship of this issue.

The other point is that the minister indicated in his answer today that he is at arms-length from these issues. In blaming Senator Santoro, the Minister for Ageing, for these deficiencies, Senator McLucas overlooks the point that we have put in place mechanisms at arms-length from the minister to make these decisions. It is not his decision to shut down individual homes. It should not be politicised, but of course in this place, in the course of question time, it has been. *(Time expired)*

**Senator CAROL BROWN** (Tasmania) *(3.25 pm)*—I too rise to take note of the answers by the Minister for Ageing, Senator Santoro. When the minister took on the Ageing portfolio earlier this year, I posed the question:

Is he going to be a minister who fudges and hides behind his bureaucrats or is he going to be a minister who is prepared to call a spade a spade and decry mismanagement and scandal? Is this a minister who will seek to sweep things under the carpet, as so many of his predecessors have done? It appears so. Sadly, this minister continues to fail the test. Older Australians and their families—indeed, the Australian community—expect that our government will ensure that aged-care facilities are held to the highest standard and that the community can have confidence in the residential aged-care assistance for their loved ones in their greatest time of need.

We have seen previously—and earlier this year there have been more—revelations of elder abuse and failures in our aged-care facilities. Today we have seen the minister again refuse to act, refusing to impose any penalty on an aged-care facility reported to have failed 30 of the 44 care standards. Elizabeth House Private Nursing Home failed 30 of the 44 care standards—70 per
cent of the care standards put in place to ensure that frail older Australians receive quality care and are treated with dignity. The care standards failed included residents not getting the clinical care they needed, medication not being managed properly, pain not being effectively managed, intimidation of families complaining about the quality and standards of care, and staff shortages.

Australians in aged care deserve more than this. Working Australian families deserve more than this for their loved ones. The Herald Sun reported on the matter:

A MELBOURNE nursing home has been allowed to remain open despite failing to comply with basic standards.

The article goes on to say:

The decision comes after two other homes run by the same company—Glenn-Craig Villages—were also accredited despite major failings.

In the latest case, auditors were concerned the home’s high-care residents—and I remind senators that high-care residents are some of our most vulnerable and frail residents in aged-care homes—were not getting enough food and fluids and those showing unexpected weight loss were not referred to medical professionals.

Auditors found medications were “not managed safely or correctly”, while residents may have been left in unnecessary pain.

The report goes on to say:

The audit team that examined the home said its accreditation should be revoked.

So why, despite this recommendation, despite this facility’s almost complete breach of care standards, has the minister failed to act? As I have already said, Elizabeth House Private Nursing Home is not the only facility that has failed to meet standards. This aged-care provider operates two other facilities, both of which have failed to meet care standards and many of the problems of which are clearly long running—some, as we have heard, dating back to 2005.

We are getting no answers or solutions from this minister in this place. All we get from this minister is failure: his failure to boost confidence in the sector by taking on a Labor amendment that would have provided for one unannounced annual spot check on all residential aged-care facilities in Australia on all 44 care standards. This government needs to do more than just concede that standards are not being met. It needs to ensure that they are met and that those facilities that are not meeting their obligations, not meeting standards of care, will be dealt with properly. How can the Minister for Ageing allow the continuance of substandard care in aged care when he has the capacity to stop it? How can he, on his watch, allow identified substandard care providers—and I do not wish to be accused of verballing the minister—time to get their act together, when poor care of the elderly is happening here and now? How does the minister live with the knowledge that frail Australians suffer whenever there is any delay in addressing the serious issues surrounding the abuse of the elderly in aged care?

Every day of delay in dealing with these serious issues continues the suffering of needy Australians, suffering that is completely unnecessary. Residents should not have to moan in pain for days because staffing levels are inadequate. The elderly do not deserve to be treated in such a manner as to ensure numerous tears to their fragile skin as an everyday matter of living in these places. The elderly do not deserve to be shunted aside and forgotten in this deplorable way. The minister has the capacity to change this, but it appears he does not have the will. Australians in aged care are an important part of our community. (Time expired)

Question agreed to.
Nuclear Energy

Senator MILNE (Tasmania) (3.30 pm)—I move:

That the Senate take note of the answer given by the Minister for Finance and Administration (Senator Minchin) to a question without notice asked by Senator Milne today relating to the sale of uranium to Russia.

We know that Prime Minister Howard emulates all things done by Prime Minister Menzies, who of course was better known as ‘Pig Iron Bob’. It is quite clear that Prime Minister Howard wants to be ‘yellowcake John’. What is clearly happening is that, whilst the Prime Minister is talking up nuclear power in Australia, behind the scenes his real agenda is being enacted—that is, increasing uranium mining and exports and uranium enrichment in line with his desire for Australia to be a nuclear supply centre in President Bush’s Global Nuclear Energy Partnership. Senator Minchin did not come clean today. Whether he did not know what was going on or not remains to be seen. It has been widely reported that we have representatives of Russia’s state owned nuclear fuel maker in Australia this week and they are meeting with the Australian safeguards—

Senator Kemp—I rise on a point of order. Mr Deputy President. There was an unfortunate reflection by Senator Milne on Senator Minchin suggesting that he did not come clean. To be quite frank, I do not think that is fair to Senator Minchin and I think Senator Milne should withdraw that most unfortunate comment.

The DEPUTY PRESIDENT—I hear what you are saying, Senator Kemp, but I do not think that comment has crossed the line. Senator Milne, you should be careful in the language that you do use.

Senator MILNE—Certainly, Mr Deputy President, and I take on board Senator Kemp’s remark. If Senator Minchin did not know the answer then that is due to a lack of a brief and I acknowledge that. What I want to say here is that it has been widely reported that Russian nuclear agencies will be meeting with officials from the Australian Safeguards and Non-Proliferation Office and they will be meeting with the Prime Minister’s task force on nuclear energy. The deal is to develop an agreement to sell Australian uranium to Russia. Currently that cannot happen because Australia and Russia do not have an agreement to facilitate that occurring—and that is precisely what the Russians are doing here this week: trying to expand uranium mining.

We all know that the agenda the Prime Minister has, as a result of his visit to the US earlier this year, is to be part of the gatherings at George Bush’s table. President Bush has said that unless Australia has an enrichment industry it will not have a place at the table of the Global Nuclear Energy Partnership—and that is clearly where Prime Minister Howard is going. We all know that nuclear power is not economically viable in Australia. It certainly is not economically viable without massive government subsidies, and several ministers have already said that there will be no subsidies. They have said that there will be no price on carbon and they have said that, indeed, they will not be subsidising other aspects of the nuclear fuel cycle. The fact is that without subsidies this industry cannot fly.

So why are we having the distraction this week of a discussion about nuclear power in Australia when behind the scenes in government agencies we have the Russians here talking about accessing uranium from BHP Billiton and from Rio Tinto? They have both said that they cannot proceed in driving this uranium push into Russia without the government facilitating this agreement. We have already had the government facilitate an expansion of uranium mining through selling
uranium to China. We have heard the Prime Minister’s shift in recent times to consider selling Australian uranium to India even though it is outside the non-proliferation treaty and now we find that the Russian officials are here organising an agreement with Australia to sell Australian uranium into Russia in spite of Russia’s appalling safety record on uranium. There is the issue not only of Chernobyl but also of the Russian waste facilities, which are shocking. The Russians have a terrible record of dumping nuclear waste into the Arctic. The Russians also have a shocking record in terms of proliferation and facilitating the spread of nuclear technology, particularly into Iran.

So I think the Australian government has a fair bit of answering to do on what is actually going on. How advanced are the discussions with the Russians about an agreement to export Australian uranium to Russia? Which countries will access Australian uranium via Russian enrichment programs? Just how widely will Australia be spreading uranium? Just how much risk are we increasing in terms of proliferation and dirty bombs by expanding uranium sales into China, possibly India and now possibly Russia? This comes at a time when North Korea has had a nuclear test only this week. That nuclear test came about from plutonium from the reprocessing of fuel rods from nuclear power. If ever there was an example of the link between nuclear power and nuclear weapons, it is the fact that the North Korean bomb came from plutonium. I think the Prime Minister owes Australians an explanation. Why is he talking up something he knows is unviable?

Question agreed to.

NOTICES
Presentation

Senator Mason to move on the next day of sitting:

That the time for the presentation of the report of the Finance and Public Administration Committee on the transparency and accountability of Commonwealth public funding and expenditure be extended to 7 December 2006.

Senator Patterson to move on the next day of sitting:


Senator Bartlett to move on the next day of sitting:

That the following bill be introduced: A Bill for an Act to remove unfair restrictions on applications for review of refugee visa decisions, and for related purposes. Migration Legislation Amendment (Appropriate Review) Bill 2006.

Senator Bartlett to move on Tuesday, 7 November 2006:

That the Senate—

(a) recalls its resolution of 25 March 1998 calling on all state and territory governments to ban the practice of recreational duck hunting;

(b) notes that:

(i) since that time, the Australian Capital Territory has joined New South Wales and Western Australia in having banned the practice, and

(ii) the Queensland Government has now introduced legislation to ban recreational duck and quail hunting in that state;

(c) congratulates the Queensland Government on its action; and

(d) reiterates its call for the remaining states and territory to follow suit.

Senator Ludwig to move on the next day of sitting:
That there be laid on the table by the Minister for Justice and Customs and the Minister representing the Attorney-General, no later than 4 pm on 6 November 2006, the Organisation for Economic Co-operation and Development foreign bribery survey response by AWB Limited (then represented by Mr Cooper), to the Attorney-General’s Department in reply to correspondence by the First Assistant Secretary, Criminal Justice Division, received by the department on 20 June 2005 as was not supplied by the department in answer to the Legal and Constitutional Legislation Committee estimates question no. 63 of 24 May 2006.

Senator Ellison to move on the next day of sitting:

That—

(1) In the week beginning Monday, 6 November 2006:
   (a) the days and hours of meeting and routine of business be varied as set out in paragraphs (2) to (4);
   (b) immediately after prayers on Monday, 6 November 2006, the general business order of the day relating to the Prohibition of Human Cloning for Reproduction and the Regulation of Human Embryo Research Amendment Bill 2006 be called on;
   (c) consideration of the bill shall take precedence over all government and general business until proceedings on the bill are concluded; and
   (d) in addition, the bill shall take precedence over all other business and be considered:
      (i) on Monday and Tuesday, from 9.30 am to 2 pm and from 7.30 pm to 11 pm,
      (ii) on Wednesday, from 9.30 am to 12.45 pm,
      (iii) on Thursday, from not later than 4.30 pm to 6.30 pm and from 7.30 pm to 11 pm, and
      (iv) on Friday, from 9 am to 3.30 pm.

(2) On Monday, 6 November 2006 and Tuesday, 7 November 2006:
   (a) the hours of meeting shall be 9.30 am to 6.30 pm and 7.30 pm to 11.40 pm; and
   (b) the question for the adjournment of the Senate shall be proposed at 11 pm.

(3) On Thursday, 9 November 2006:
   (a) the hours of meeting shall be 9.30 am to 6.30 pm and 7.30 pm to 11.40 pm;
   (b) consideration of general business orders of the day relating to government documents and consideration of committee reports, government responses and Auditor-General’s reports not be proceeded with;
   (c) divisions may take place after 4.30 pm; and
   (d) the question for the adjournment of the Senate shall be proposed at 11 pm.

(4) The Senate shall sit on Friday, 10 November 2006 and that:
   (a) the hours of meeting shall be 9 am to 4.10 pm;
   (b) the routine of business shall be:
      (i) notices of motion, and
      (ii) general business only; and
   (c) the question for the adjournment of the Senate shall be proposed at 3.30 pm.

Senators Siewert and Milne to move on the next day of sitting:

That the following matters be referred to the Rural and Regional Affairs and Transport Committee for inquiry and report by 30 June 2007:

(a) the long-term impacts on Australian primary producers, rural communities and the environment of reduced and increasingly variable rainfall, increased temperatures and higher evaporation rates as a result of climate change; and

(b) potential adaptation strategies to mitigate these impacts to ensure the security of Australian food production and maintain the viability of rural communities.
COMMITTEES

Rural and Regional Affairs and Transport Committee

Extension of Time

Senator FERRIS (South Australia) (3.37 pm)—At the request of Senator Heffernan, I move:

That the time for the presentation of the report of the Rural and Regional Affairs and Transport Committee on Australia’s future oil supply be extended to 27 November 2006.

Question agreed to.

Foreign Affairs, Defence and Trade Committee

Meeting

Senator FERRIS (South Australia) (3.37 pm)—At the request of Senator Johnston, I move:

That the Foreign Affairs, Defence and Trade Committee be authorised to hold a public meeting during the sitting of the Senate on Monday, 6 November 2006, to take evidence for the committee’s inquiry into the provisions of the Australian Participants in British Nuclear Tests (Treatment) Bill 2006 and a related bill.

Question agreed to.

Environment, Communications, Information Technology and the Arts Committee

Meeting

Senator FERRIS (South Australia) (3.37 pm)—At the request of Senator Eggleston, I move:

That the Environment, Communications, Information Technology and the Arts Committee be authorised to hold a public meeting during the sitting of the Senate on Monday, 6 November 2006, to take evidence for the committee’s inquiry into the provisions of the Environment and Heritage Legislation Amendment Bill (No. 1) 2006.

Question agreed to.

Environment, Communications, Information Technology and the Arts Committee

Extension of Time

Senator FERRIS (South Australia) (3.37 pm)—At the request of Senator Eggleston, I move:

That the time for the presentation of reports of the Environment, Communications, Information Technology and the Arts Committee be extended as follows:

(a) provisions of the Environment and Heritage Legislation Amendment Bill (No. 1) 2006—to 21 November 2006;
(b) Australia’s national parks—to 28 February 2007; and
(c) Australia’s Indigenous visual arts and craft sector—to 22 March 2007.

Question agreed to.

Treaties Committee

Meeting

Senator FERRIS (South Australia) (3.38 pm)—At the request of Senator Mason, I move:

That the Joint Standing Committee on Treaties be authorised to hold private meetings otherwise than in accordance with standing order 33(1) during the sittings of the Senate.

Question agreed to.

50TH ANNIVERSARY OF THE HUNGARIAN REVOLUTION

Senator FERRIS (South Australia) (3.38 pm)—At the request of Senator Ian Macdonald and Senator Alan Ferguson, I move:

That the Senate—

(a) commends the people of Hungary as they mark the 50th anniversary of the 1956 Hungarian Revolution, which set the stage for the ultimate collapse of communism in 1989 throughout Central and Eastern Europe, including Hungary, and 2 years later in the Soviet Union itself;

(b) expresses condolences to the people of Hungary for those who lost their lives
fighting for the cause of Hungarian freedom and independence in 1956, as well as for those individuals executed by the Soviet and Hungarian communist authorities in the 5 years following the revolution, including Prime Minister Imre Nagy;  
(c) welcomes the changes that have taken place in Hungary since 1989, believing that Hungary’s integration into the North Atlantic Treaty Organisation and the European Union, together with similar developments in the neighbouring countries, will ensure peace, stability and understanding among the great peoples of the Carpathian Basin;  
(d) reaffirms the friendship and cooperative relations between the governments of Hungary and Australia and between the Hungarian and Australian people; and  
(e) recognises the contribution of people of Hungarian origin to this nation.

Question agreed to.

LEAVE OF ABSENCE  
Senator SIEWERT (Western Australia) (3.39 pm)—by leave—I move:  
That leave of absence be granted to Senator Bob Brown for 18 October and 19 October 2006, to enable him to receive an international award.  
Question agreed to.

NOTICES  
Postponement

The following item of business was postponed:  
General business notice of motion no. 601 standing in the name of Senator Nettle for today, relating to the conflict in Iraq, postponed till 19 October 2006.

CRIMES AMENDMENT (VICTIM IMPACT STATEMENTS) BILL 2006  
First Reading  
Senator LUDWIG (Queensland) (3.40 pm)—I move:  
That the following bill be introduced: A Bill for an Act to provide for victims of crime to be heard as part of criminal proceedings, and for related purposes.

Question agreed to.

Senator LUDWIG (Queensland) (3.40 pm)—I move:  
That this bill may proceed without formalities and be now read a first time.  
Question agreed to.  
Bill read a first time.

Second Reading  
Senator LUDWIG (Queensland) (3.40 pm)—I move:  
That this bill be now read a second time.

I seek leave to have the second reading speech incorporated in Hansard and to table an explanatory memorandum relating to the bill.

Leave granted.

The speech read as follows—  
It gives me great pleasure to introduce the Crimes Amendment (Victim Impact Statements) Bill 2006.  
The bill seeks to amend part 1B of the Crimes Act 1914 to establish a means whereby victims of federal crimes against the person can make a victim impact statement to the court as a part of the sentencing process.  
At some point in the evolution of our criminal justice system, the victim fell out of the process and became somewhat marginalised in proceedings.  
That is highly unfortunate, because when we are dealing with criminal offences against the person, if there is anyone who deserves a say it must surely be the victim.  
A Victim Impact Statement is broadly “a statement containing particulars of any personal harm suffered by a victim as a result of an offence.”  
Given the proliferation of offences against the person in Commonwealth legislation, Labor believes it is time for a federal scheme of victim impact statements, so victims can be heard.
The genesis of this bill arose from the Senate’s work on the Criminal Code Amendment (Trafficking in Persons Offences) Act 2004, which dealt primarily with crimes of sex trafficking and sexual servitude.

Labor drafted an amending provision to the Crimes Act 1914 to provide for Victim Impact Statements for victims of sex trafficking offences. The Howard Government, through Senator Ellison, indicated they did not support the amendments as they stood and Labor withdrew them, promising to revisit the matter at a later date.

That is exactly what Labor has done, and the bill before us presents a comprehensive approach to installing a system of Victim Impact Statements across the federal criminal regime, for offences where harm is suffered by a person.

**Need for Victim Impact Statements**

While the Commonwealth has no general head of power over crime or criminal laws, there are a number of specific areas of federal law that cover crimes against the person and the coverage of these areas have significantly expanded in response to increasing globalisation and terrorist activities.

Many of these offences cover the range of human suffering and misery including slavery, child sex tourism, trafficking of persons for sexual servitude, war crimes, genocide and terrorism.

Federal criminal jurisdiction is vested in state and territory courts by the Judiciary Act 1903, while Part 1B of the Crimes Act 1914 (henceforth “the Act”) provides for the sentencing, imprisonment and release of federal offenders. The provisions arose from an amendment to the Act by the Crimes Legislation Amendment Act (no.2) 1990, and create a separate regime for federal offenders. This legislation has not been significantly revisited or updated since that time.

Part 1B of the Act does not make explicit provision for victim impact statements and the like, instead State and Territory law fills the gaps.

This is an unhappy situation for consistency in federal sentencing. Not all state jurisdictions have a formalised scheme of victim impact statements and there is wide variation across those that do—not only in form but on matters of substance, such as:

- the definition of victim,
- the types of offences in respect to which a statement may be made,
- whether there is provision for the victim to be cross examined in relation to the content of the statement, and;
- whether the victim can express an opinion in relation to the matter in which the offender ought to be sentenced.

In the view of federal Labor, the present situation is not good enough. To ensure consistency in treatment of federal crimes (at least in respect of the issue of victim impact statements), it is therefore necessary to amend part 16 of the Crimes Act 1914.

**Background to Federal Victim Impact Statements**

Labor’s drive for a scheme of Victim Impact statements has not been conjured from thin air. There have been several well established milestones that have pointed the way forward towards a federal scheme of victim impact statements.

The UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985) endorses this approach.

The Parliamentary Joint Commission on the Australian Crime Commission (PJCACC)’s Response to Trafficking in Women for Sexual Servitude, June 2004 at page 52 also states:

Given the nature and effect of sexual trafficking offences on the victim, there is a compelling reason to require that victim impact be considered when sentencing offences.

Further at 4.36 the Committee:

… recommends that the following matters be examined in the legislative review announced as part of the Government’s package:

(including)

… Adopting the use of victim impact statements in sentencing.

The Senate Legal and Constitutional Legislation Committee’s Report into the Criminal Code
Amendment (Trafficking in Persons Offences) Bill 2004 includes:

3.27 The Committee’s view is that consideration should be given to the greater use of victim impact statements in the sentencing of federal offenders for certain types of offences, especially sexual offences involving children.

The ALRC Report, Same Crime Same Time: Sentencing of Federal Offenders (Report 103, released in April 2006) considers the issue of implementing a federal Victim Impact Statement scheme and recommends a model in which the federal scheme would apply to all federal sentencing irrespective of whether the offence is summary or indictable and irrespective whether the victim is an individual or a corporation.

In addition, the ALRC favoured an approach whereby:

(a) federal sentencing legislation makes comprehensive provision for the use of Victim Impact Statements in sentencing federal offenders; and

(b) if States and Territories have laws about the use of victim impact statements that comply with specified federal minimum standards, those would be applied to the exclusion of the federal provisions.

Labor does not favour the ALRC scheme as it appears unnecessarily complex. The rationale for the report as a whole was to adopt a uniform system for the treatment of offenders across jurisdictions. Making the federal sentencing legislation a minimum standard would seem to run contrary to this premise.

To summarise the present position then: at the moment, use of victim impact statements for Federal criminal offences depend upon what State or Territory court the case is heard in. This is inadequate because the different states have different models.

It has been this government’s practice to leave the matter to the States.

It is a general principle of justice that like are treated alike, but because federal offences are prosecuted through the State court hierarchy this is not being achieved. Only a federal scheme will achieve consistency.

Therefore Labor has proceeded to advance the victim’s rights agenda with this bill, which I shall now deal with in detail.

Provisions of the bill

Clauses 1 though 4 set out some technical requirements of the bill—the short title, date of Assent, objectives of the bill and the amendments to the Crimes Act.

If we now turn to the Schedule, Item 1 inserts a new subsection into section 16A to include victim impact statements or victim reports in a list of matters to which the court may have regard when passing sentence.

Item 2 inserts a new section 16AA into the Crimes Act 1914. This section provides the basis for the new regime of victim impact statements.

Subsection 1 sets out the definitions for the section.

A victim impact statement is an oral or written statement prepared by the victim of a crime for the court’s consideration in sentencing, setting out details of the harm suffered by the victim arising out of the offence. A victim report is a similar statement, but prepared by the prosecutor.

Harm is defined to include:

(a) Physical injury;
(b) Psychological or emotional suffering, including grief;
(c) Contraction or fear of contraction of a sexually transmissible medical condition;
(d) Pregnancy suffered as a result of criminal activity (e.g. rape, sexual servitude);
(e) Economic loss.

It should be noted that a rape victim, or a victim of child-sex tourism or a sexual servitude offence may consider a pregnancy suffered as a result of criminal activity to be a harm, regardless of whether they later decide to keep the offspring children who may result.

It is intended that victim impact statements may only be received by a court where the offence involves an element of harm to a person, as per this definition and ss14.
Victim is defined to include:
(a) a natural person who suffers harm arising from an offence; or
(b) where the person referred to in paragraph (a) dies as a result of the commission of the offence, a person who was a relative of, or who was financially or psychologically dependent on the person.

Access to the Victim Impact Statements regime set out in the bill is therefore restricted to natural persons.

Relative includes a relative according to Aboriginal tradition or contemporary social practice, a spouse or a de facto partner.

Subsection 2 provides that the victim of a crime will be notified that they are entitled to file a victim impact statement and given sufficient time for a statement to be prepared and ss3 provides for the creation of information guides for this purpose.

Subsections 4 and 5 provide for conditional contingencies where the victim may not be able to make a victim impact statement, while ss6 allows for the court to give permission for a person other than the prosecutor to present the statement. A Victim Impact Statement must either meet these requirements or be signed as per the proposed ss12.

Subsection 7 provides that the court shall take each victim impact statement and victim report into account in determining sentence, subject to the conditions of subsections 11, 12, 13 and 14. This is of course complementary to the amendment in item 1.

Subsection 8 allows the statement or report to refer to harms caused to the victim arising out of other offences in certain circumstances. This is necessary where for example the victim has suffered harm as a result of offences committed under both federal and State/Territory law. Both offences may be derived from the same harmful act and tried simultaneously, thus this provision is needed.

Subsection 9 provides that the statement or report may contain a statement as to the victim’s wishes in respect of the order that the court may make in relation to the offence. This scheme is about hearing the victim’s voice so it is natural that such provision be made.

Subsection 10 provides that the court cannot draw inferences from the non-presentation of a statement or report, either in favour of an offender or against a victim. This ensures that presentation of a victim impact statement is a genuine matter of choice for the victim.

Subsection 11 provides that a Victim Impact Statement may be excised in whole or in part. It is intended that this discretion not be used to silence victims, but rather to maintain the dignity of the court and its proceedings. Examples could include where the statement is manifestly irrelevant or obscene or offensive in its content. In such instances, the court may strike out as it sees fit.

The offender should be made aware of the adverse impact of his or her actions on the victim, so accordingly ss13 ensures the offender gets the message. If the statement is oral, then a written or oral summary of the contents of the statement must be provided to the offender.

Conclusion
Labor is proud of its work in strengthening Commonwealth legislation against criminals and terrorists but it is only half of the equation. The expansion of federal criminal legislation has naturally turned the focus of Federal Labor to the victims of crime and victim’s rights.

Labor has always been about building a caring society. It is a fundamental tenet of our philosophy that we do not believe in discarding people when their usefulness is finished.

Perhaps more than anyone else, it is the victims of crime who deserve a voice in the process of justice, yet that is not guaranteed for the victims of federal crime. Federal Labor has quietly been working away on this proposal for the best of a year to deliver a voice to the victims.

Labor cares about the victims of crime and commends this bill to all Senators, but particularly to the Minister for Justice, and those Government senators who served on either the Legal and Constitutional Committee on the Trafficking in Persons inquiry and those members of the Parliamentary Joint Committee on the Australian Crime Commission on the Sex Trafficking inquiry. Your recommendations were in part the impetus for
this bill so, I urge you to support its adoption in the Government party room and look forward to the Howard Government’s agreement to assist passage.

With those words, I commend the bill once again to the Senate.

I table the explanatory memorandum, and seek leave to continue my remarks later.

Leave granted; debate adjourned.

CHILD PROTECTION

Senator MURRAY (Western Australia) (3.41 pm)—I, and also on behalf of Senator Heffernan, move:

That the Senate—

(a) notes the fundamental human rights and protections contained in the United Nations (UN) Convention on the Rights of the Child, and notes in that regard:

(i) the release on 11 October 2006 of the UN Secretary-General’s ‘Study on violence against children’ report, which sheds light on the scale and impact of violence done to children across cultures, classes and ethnic origins,

(ii) that the report states that the majority of violence perpetrated on vulnerable children around the world is carried out by people who are part of their daily lives, and

(iii) that the Human Rights and Equal Opportunity Commission urges the Federal Government to consider the report’s recommendations to counter violence against children;

(b) having regard to their respective areas of responsibility, calls on the Commonwealth, state and territory governments to invest heavily to protect children in Australia from violence, including:

(i) investing in violence prevention programs that address immediate risk factors, such as lack of parent-child attachment, family breakdown, abuse of alcohol and/or drugs, and

(ii) developing economic and social policies that address in a substantial way significant economic and social circumstances such as poverty, income gaps and other forms of inequality that negatively affect children, and

(c) calls on the governments concerned to keep progress under review through the Council of Australian Governments’ processes.

Question agreed to.

GLOBAL POVERTY AND THE MILLENIUM DEVELOPMENT GOALS

Senator SIEWERT (Western Australia) (3.42 pm)—by leave—I move the motion as amended:

That the Senate—

(a) notes that on 18 November and 19 November 2006, the Treasurer (Mr Costello) will host a meeting of the Group of Twenty (G-20) Finance Ministers and Central Bank Governors in Melbourne; and

(b) calls on the Treasurer to ensure that the G-20 meeting discusses making progress toward ending global poverty and achieving the Millennium Development Goals.

Question agreed to.

SIEV X

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

That there be laid on the table by the Minister representing the Attorney-General, no later than 11 am on 19 October 2006, the three lists held by the Australian Federal Police which detail passengers purported to have boarded the vessel known as SIEV X, those that disembarked the vessel shortly after it commenced its journey and those that survived the tragedy.

Question negatived.

MATTERS OF PUBLIC IMPORTANCE

Skills Shortages

The DEPUTY PRESIDENT—The President has received a letter from Senator Wong proposing that a definite matter of
public importance be submitted to the Senate for discussion, namely:

The Government’s decade-long neglect of training, resulting in the failure to build a modern, competitive economy to ensure the prosperity of future generations of Australians.

I call upon those senators who approve of the proposed discussion to rise in their places.

More than the number of senators required by the standing orders having risen in their places—

The DEPUTY PRESIDENT—I understand that informal arrangements have been made to allocate specific times to each of the speakers in today’s debate. With the concurrence of the Senate, I shall ask the clerks to set the clock accordingly.

Senator WONG (South Australia) (3.44 pm)—I rise to speak on the matter of public importance which has been submitted in my name, which relates to:

The Government’s decade-long neglect of training, resulting in the failure to build a modern, competitive economy to ensure the prosperity of future generations of Australians.

The fact is the skills crisis is an inconvenient truth for the Prime Minister. Australia’s skills crisis is hurting Australian families and Australian businesses, and now we know it is hurting the Prime Minister. It is hurting the Prime Minister and that is why he has been forced to act. It is an inconvenient truth that he has had to address, not through conviction, not out of a desire to implement good policy and not out of a desire to ensure more young Australians have the opportunities that they deserve but because he is conscious that the public is highly concerned about the skills crisis and the shortage of training opportunities for so many Australians.

The fact is that, while this inconvenient truth of a skills crisis may not be something that the government wants to acknowledge, it can hardly argue that it is a truth of which it has had no warning. I want to briefly go through some of the warnings that we know our own Reserve Bank of Australia has issued on the issue of skills over some time which for some reason this government has chosen to ignore for so many years. Let us start with the Reserve Bank’s November 1997 Statement on monetary policy, in which was the following statement:

This judgment is consistent with persistent reports of skill shortages and pressure on wages in the construction sector.

The November 1999 statement talked about the fact that there was ‘evidence that the strength of the labour market may be generating skills shortages in some areas’ and referred to the fact that a Department of Employment, Workplace Relations and Small Business survey demonstrated that skills vacancies were ‘at historically high levels’. In a statement on 5 April the governor said:

Pressure for higher wage rises appears to be building ...

The November 2004 Statement on monetary policy said:

... business surveys suggest that a broad range of firms are finding it increasingly difficult to find suitable labour ...

It went on to say:

These developments are consistent with survey data showing that firms are finding it increasingly difficult to attract suitably skilled labour, pointing to the possibility of stronger wage pressures emerging in the period ahead.

Perhaps what is most concerning is that last year we started to get from the Reserve Bank further discussion of the potential macroeconomic impacts of labour shortages. For example, in the May 2005 Statement on monetary policy the following statement was made:

... labour shortages are becoming increasingly broadbased across industries and skill levels. Consistent with this, business surveys indicate
that difficulty finding suitable labour has become a key factor constraining output.

So what we have from those persons who are charged with the conduct of monetary policy in this country is an indication that the lack of suitable skilled labour was constraining economic activity. This was continued later that year in the August 2005 statement:

Shortages are becoming more widespread across industries and occupations, but remain most pronounced among skilled workers in the non-residential construction and resources sectors ...

In the May 2006 statement there was reference to an NAB survey as follows:

The ... survey suggests that labour scarcity remains a greater constraint on activity than the more traditional concerns about lack of demand ...

The Reserve Bank’s August 2006 statement said:

Business surveys report that firms are experiencing difficulty finding ... labour, and employers note that this remains a key factor constraining their output.

So it does seem extraordinary to note, if you track back through the various statements on monetary policy from the Reserve Bank, the repetition of warnings to this government about skills shortages in this country and, just as importantly, their effect on economic growth: the fact that skills shortages were constraining output and were reducing firms’ opportunities to exercise their capacity.

What has the Prime Minister done? In the other place, the Leader of the Opposition, Mr Beazley, indicated there was really only one key statistic that people listening to the debate needed to recall: the comparison between Australia and our competitor economies in terms of public investment in education. He referred, as have many Labor people, to the OECD’s Education at a glance report. It is interesting to note that when the OECD says something that the government want to talk about the government certainly trumpet it all over the parliament and in the media, but, when it says something that they do not like, ministers somehow slip away from the topic.

The OECD’s report has shown us that Australia has the rather extraordinary honour of being the only advanced economy in the world that has reduced its public sector investment in education since 1995. On average, other nations, our competitor economies, have increased their investment by how much? It is 48 per cent. What has Australia done? We have reduced our investment by seven per cent. So, over the 10 years of the Howard government, public investment in education has gone backwards while that of our competitor economies has gone forward very significantly on average.

We also know that since the Howard government was elected it has turned away from TAFE 300,000 young Australians—that is, 300,000 people who could have had the opportunity to learn a trade, to learn a skill, have been turned away because of this government’s budget cutbacks in 1996-97, the restrictions on TAFE spending up until 2000 and of course the slashing of university budgets. It was rather extraordinary to hear the Prime Minister’s statement on skills last week. It was one of the more brazen attempts to paper over an issue. On the one hand, he says there is no skills crisis; on the other hand, he throws a whole heap of money at some aspects of the skills shortage in his so-called Skills for the Future announcement.

What needs to be emphasised is that this government has had 10 years where it has presided over an underinvestment or, worse than that, a going backwards in public investment in education. It has ignored warnings from the community, from senior economists and from the Reserve Bank. And now it expects us to believe that there is actually no skills crisis while, on the other
hand, it needs to spend all of this money on skills. This is catch-up politics that is driven not out of a belief that education and skills development are essential to a productive, high-wage, high-growth economy but out of the recognition that the community no longer believes the government when it says there is no skills crisis. That is the motivation for the government’s approach last week.

The government deny there is a skills crisis but they know the public do not believe it, so they had better throw some money, belatedly, at an area that they have consistently underinvested in over the 10 years of the Howard government. What we saw from the Prime Minister last week was, frankly, nothing more than a desperate attempt to catch up and deal with an issue that Labor has been talking about for years. It is quite extraordinary, as I said, that the Prime Minister says there is no skills crisis yet still provides $800 million to fix a crisis that he does not believe exists.

What is the government’s answer to the productivity challenge of this country? We know what they want in their workplace relations policies. Their idea is to drive wages down and, if workers refuse to work for those lower wages, to bring in more people from overseas. That appears to be the Howard government’s approach to the productivity challenge facing this country.

What is Labor’s answer? We have been saying for years now, particularly on the skills front, that you have to invest in the skills of Australians. The answer to the demographic and economic challenges this country will face in the future is to invest in the skills of our people now. That is because the key mismatch in our labour market is not simply about participation and not simply about demand and supply. The key mismatch is skills. We have over two million people in this country who are officially unemployed, who want more work than they can get, who are underemployed or who are out of the labour market but still want to work. Many of those people simply do not have the skills to fill the available vacancies, and yet we have a government that has continued to ignore the warnings from so many people in this country about the need to invest in skills—a government that has presided over a reduction in public investment in education and has turned away from TAFE 300,000 young Australians. That is the government’s answer to the labour market challenge and the demographic challenge that the country faces.

It is somewhat extraordinary that the package that was announced last week had nothing in it for people under the age of 25. There is absolutely nothing in the government’s skills package that is going to address the issues that affect the people who are the country’s future—the young people of this nation. There is nothing in this package to invest in their future and nothing to help them complete their training. One of the more shameful statistics under the Howard government is the 40 per cent drop-out rate of apprentices in training. The government needs to take responsibility for that. Forty per cent of apprentices drop out of their training. There are a range of reasons for that, and one of them, of course, is the fact that, for many people, those wages are so low.

I do want to congratulate the Howard government for picking up the policies Labor has been arguing for for some time. The government has actually picked up a number of the policies Labor has been putting forward for some time in terms of suggesting additional funding for apprenticeships and additional funding for—I cannot recall the name that the government used for it—the business skills aspect of the funding for apprenticeships. These are the sorts of things
Labor has been talking about. I suggest to the government: why don’t you go a little bit further and pick up a whole heap of things that Labor has suggested, because they are good ideas? Why don’t we have specialised trade schools in each school district, making sure that young people in years 11 and 12 have the choice to go to the specialist trade schools? Instead, the government has 25 technical colleges around the country. How many of them are actually up and running? I think we are still in the single digits—is it three, four or five? Every estimates we come to, this great centrepiece of the government’s trades training policy is inching along tortoise-like in terms of actually delivering an outcome. What about Labor’s suggestion of a skills account—$3,200 in the skills account for apprentices to use to make sure they do not face up-front TAFE fees? What about Labor’s suggestion in relation to investment in the traditional trades—that is, things like a trade completion bonus, which would assist in lifting the appalling rates of completion of apprenticeships that have come to pass under the Howard government?

But, no, the government are not interested in this. You might see something before the next election, if they realise that the skills funding they announced last week for the crisis that does not exist actually has not fixed the crisis that does exist. We might see more funding then. One of the suggestions that Labor has been putting on the table for some months now is a trade completion bonus to try and lift the rates of apprenticeship completion, which are so poor in this country.

The AIG, the Australian Industry Group, says we need 270,000 extra tradespeople in this country. The Prime Minister’s proposal is to give a wage subsidy to 10,000 people. That is his answer to Australia’s skills crisis: let us address 10,000 people at a time when the AIG says we need 270,000. Isn’t it interesting that that is around the same number of people who, under the Howard government, have been turned away from TAFE as a result of the budget cuts the government made in 1996-97 and what the government did to growth funding over the decade. The fact is that not only has this government presided over a skills crisis but it is a skills crisis of the government’s making. (Time expired)

Senator TROETH (Victoria) (3.59 pm)—I actually feel very sorry for Senator Wong in trying to put forward the Labor Party’s view on this topic, because she just does not understand. On almost every statistic and every aspect of this debate that she has mentioned, I have an answer. If we can gauge that her ideas are the ideas or policies of her leader, Mr Beazley, could I point out the attitude of Mr Beazley, which he evidenced in 1993, when he had responsibility for education and training. In his biography, which was published in 1999, he said:

… I had sort of finally got to accept that I would never be Defence Minister again, so I lost a lot of ambition and I stopped straining. … I thought that there was less capacity to achieve in that portfolio—

That is, the education portfolio—than just about any I have had.

What damning words they are, and most of the Labor policies since that time bear out that comment. I would remind you, Mr Deputy President, that that comment was made at a time when Australia had between 10 and 11 per cent unemployment. What capacity did the then Labor government have to ensure that students were trained, whether they went to university or to TAFE, in order to fit them for the years ahead? Those years under the coalition government have seen not only a boom in the economy, maintained for 10 years now, but also a boom in the money and the attention that is devoted to apprentices and in the amount of funding that is put to-
wards training. When Mr Beazley was minister for education—when he finally, we assume reluctantly, took up that portfolio—the number of apprentices in training was 122,600. Today, under the coalition, there are more than 403,000 Australian apprentices in training—

_Opposition senators interjecting—_

**The ACTING DEPUTY PRESIDENT (Senator Brandis)**—Order! Senators on my left, let Senator Troeth be heard in silence.

**Senator TROETH**—Thank you, Mr Acting Deputy President. So that amazing leap in the number of apprentices, which has been buoyed by incentives provided to apprentices and their employers when they start their apprenticeship—money for tools, and mid-term and later payments to both employers and apprentices—means that we are very well attuned to the sort of training that should be provided in this country.

The Leader of the Opposition, I point out, was not the only guilty party. Recently, the Victorian Minister for Education and Training, Lynne Kosky, confessed the sins of the Victorian Labor Party, when she admitted the mistake of closing that state’s technical schools in the 1980s. I taught in a state technical school in Portland, western Victoria, where I lived—a town with a great mix of manufacturing and heavy machinery, which was to lead to the establishment of the Alcoa aluminium smelter. That town desperately needed apprentices and people to train in those skills, and the technical school provided it. The schools were merged into a secondary college. I am not saying that the secondary college did not provide them with adequate training, but there is no doubt in my mind that technical schools, particularly in a more advanced stage, such as the ones we provided in last year’s budget, make that difference and will continue to do so. Labor, state and federal governments have a track record of failure and a lack of commitment to do this.

The Prime Minister recently announced a major package of skills initiatives, worth $837 million over five years and, appropriately, it is called Skills for the Future. I will start at the chronological end of this package, and I will go into the details of some of that in a moment. It includes a major investment in improving the basic skills of Australia’s workforce. It refers to assisting adults to gain literacy and numeracy skills that are basic requirements in the workforce. New financial incentives can help more Australians take up a trade apprenticeship mid career, and apprentices in traditional trades—I am sorry that Senator Wong is not still here to hear this—will also receive support to help them gain the necessary skills to run their own businesses. Not only do graduating apprentices work for bosses but some also run their own very successful small businesses. That is a substantial new investment. Not only does it aid the apprenticeship level but it also funds more university engineering places.

Of course, we must never forget that vocational and technical education is a joint responsibility of the Commonwealth on the one hand and the states and territories on the other hand. For instance, the states and territories run TAFE colleges, about which I will have more to say later. They should also invest in workforce education and training to complement the Commonwealth’s initiatives. I was interested to see that, after our budget initiative of 25 Australian technical colleges last year, again, in a very ‘follow my leader’ type of move, the Victorian Labor government is now announcing, as part of its election policy for the forthcoming election, that it will also look at providing technical colleges. So we have incentives for a whole range of initiatives there.
Senator Wong said that we had come very late to this debate. In the 1990s, unless I am mistaken, almost as soon as we attained government, we provided many prevocational training places in the trades, through group training arrangements. I think as far back as 1998, two years after gaining government, we worked in partnership, again with group training organisations, to provide an additional 7,000 Australian skill based apprenticeships. We have worked on this all along, because we know that 70 per cent of secondary exit students do not go to university. They seek a job or a career in other areas.

I would be the first to admit that there is a skills shortage in Australia, partly due to the resources and mining boom in Western Australia, which is sucking many, many qualified tradesmen into Western Australia to work in that industry. As a consequence, the eastern states are feeling the shortage. But we have seen this coming and we are moving to address it. It is not a question of discovering you have a shortage one day and the next day being able to provide apprenticeships and trained people. This process takes time. We want apprentices and trainees to be trained properly, and that can mean anything up to four years training. We have had many goes at this and we will continue to bring forward many more initiatives.

As I said, the state and territory governments are responsible for TAFE, and the 2005-08 Commonwealth-state agreement provided a contribution of almost $5 billion in recurrent and capital funding for the vocational and technical education system. The states do not necessarily make their own arrangements or look after their own people. We as a federal government come to the party and do that, but the states and territories are responsible for all aspects of training in their jurisdictions. The decisions on what courses are offered and the level of fees charged are made by the relevant authorities in each state and territory. There is a great deal more to be said about that.

I would like to remind senators that at the time we came into office, after five consecutive budget deficits, we had an Australian government debt of $100 billion. Labor managed that while they also privatised Qantas and the Commonwealth Bank. How bad is that? Interest rates peaked at 17 per cent for home owners and averaged 12 per cent under Labor, with unemployment at 11 per cent and inflation at more than 5 per cent. We have now had a number of years of economic expansion. We as a government have paid off that $100 billion. From the interest saved, of course there is more money for education, roads, health and infrastructure. The average interest rate under the coalition has been just over 7 per cent. Do not let anybody ever forget that. Unemployment has dropped to a record low of 4.9 per cent. Around 40 per cent of Australians hold private health insurance and have choice in the delivery of their health needs. Average annual inflation well below three per cent has been maintained. On every point, we have provided an answer to the untruths that Senator Wong has put in her statement for this matter of public importance. It is a matter of public importance, and we accord it its due priority.

Senator NETTLE (New South Wales) (4.10 pm)—I am not going to spend the five minutes that I get here talking about whether or not we have a skills shortage. It is quite clear to everyone that we do, including the government. I am not even going to spend my time talking about how that has been caused, because I think that is quite clear too when you look at the nearly $2 billion that would have gone into the TAFE sector if this government had not changed the funding formula in 1997 to take away the growth funding that was provided for vocational education and training, under which the more
students you got in, the more funding you were provided with. I think that is there on the record for everyone to see.

What I want to talk about is the way in which the government should be responding to this situation. Just last week we had the announcement by the government of their so-called Skills for the Future package, which was about providing people with $3,000 vouchers that they could use at any range of providers, particularly the vast number of new small private providers that this government has encouraged to flourish in the vocational education and training sector. These small providers can go nowhere near competing with the strong public system of TAFE that exists throughout our country and that provides so much value to the Australian community.

It is worth mentioning the TAFE futures report that has been launched today by Dr Peter Kell, which talks about the way in which the Australian community values the TAFE sector in this country, which recognises that two-thirds of employers want training done through the TAFE system. I have just had in my office a number of TAFE teachers from across the country—from Western Australia and from New South Wales—who spoke with me about an example of where private providers had been set up in Perth. Apprentices had done their full training course with the private provider. Alcoa had to send the whole cohort of apprentices back through the TAFE system because, under the private provider, being run by the Chamber of Commerce and Industry, they had not learned the skills they needed to do the job. Alcoa had to put them back into the public system that this government has taken $2 billion out of in the last 10 years so that they could get the quality education and training that they needed in order to be able to do the job. That is what we have seen in this government’s approaches. Rather than recognising the value of the public system that exists through TAFE, they have supported the propagation of all these private providers that simply cannot provide the same quality of training that exists in our TAFE sector. The $3,000 vouchers that were announced last week are a further example of that.

If you get a $3,000 voucher from the government, clearly you can only spend that somewhere where you are going to be charged $3,000 worth of fees. For example, if you are a Sudanese refugee who has recently arrived in the town of Goulburn and you want to gain some English language skills and you go to the public TAFE in Goulburn, you will find that the TAFE does not charge for its English language courses. So you can do the course there, but that $3,000 does not go into providing support to the public education system through the TAFE in Goulburn that teaches you English language skills. So this system that the government is introducing encourages people to charge fees for the courses they are currently running that do not require fees in order for them to be able to get any support from the government. That $3,000 for that Sudanese refugee studying an English language course at Goulburn TAFE could have gone into Goulburn TAFE. But, no, this government has decided it wants to put that $3,000 into a private provider who will all of a sudden up their fees to $3,000 to get that money and who just cannot provide the same quality of English language courses that the TAFE sector can provide.

Through DIMIA funding, Goulburn TAFE have the contract to provide the AMEP program that exists there and other programs because they are recognised as a quality provider. But they cannot get the $3,000 referred to in the Prime Minister’s announcement, because they do not charge the fees. What his announcement does is encourage them to
charge fees. What the government should be doing is investing in the quality vocational education and training system, the public system that already exists in our country—the TAFE system—that desperately requires support. This study, *TAFE futures*, indicates that the greatest problems the TAFE system across this country face are underfunding and under-resourcing from the federal government and, indeed, state governments, who are failing to ensure there is a quality educational service that will fuel the economy in regional sectors of this country. Those economies suffer because they are not supported. *(Time expired)*

**Senator McEWEN** (South Australia) (4.15 pm)—I also wish to speak on this matter of public importance, and I thank Senator Wong for bringing this matter to our attention. There cannot be too much attention given to the skills crisis in Australia. It is the single biggest issue holding back Australia’s future economic progress. The skills shortage has arisen despite this government’s claim during the last federal election that only they could be entrusted with managing the economy. They have mismanaged and neglected this crucial component of Australia’s economic and social future. But we should not be surprised that the government has neglected the nation’s training imperatives during its decade in office. After all, they have spent the same 10 long years neglecting the environment, neglecting our defence forces, neglecting our future energy needs, neglecting the future security of our water supplies—and the list goes on.

When you have spent 10 years working on how to implement long held vendettas against trade unions and student unions, I guess you do not have too much time to worry about things like the future of Australia’s skills needs or how we are going to have enough skilled people to make sure that we are a prosperous country with the industries and infrastructure we need to be competitive with other nations. This government, under the Prime Minister, has spent 10 long years finetuning its extremist, low wage, American style *Work Choices*—or no choice—legislation and no time building Australia’s skills base. The government apparently thinks that the future for Australia is to compete against other nations on the basis of who can pay the lowest wages, when we should be competing on the basis of how much better educated, how much more highly skilled, how much more innovative and how much more competitive and productive our workers are—not on how cheap their labour is. We are, after all, talking about a government that has spent a decade working out how to kick single parents and people with disabilities off welfare and onto the dole—so it has not had time to worry about the skill shortages.

The government also spent the last decade addressing some issues to do with education, including the crazy notion that teachers in our schools are somehow closet Maoists who need to be retrained and re-educated in Latin. So instead of working out how to get people trained for the jobs that need to be done, we have some bizarre teacher bashing exercise perpetrated by the minister for education and the Prime Minister. It is a classic example of how this government fails to address the things that really matter to Australians.

The government’s neglect of Australia’s training needs came despite Labor’s continued warnings about the skills crisis—and not just Labor’s warnings, as we heard from Senator Wong. As we know, the Reserve Bank has been ringing the alarm bells since at least 1997, when the bank’s November statement on monetary policy noted that there were persistent reports of skill shortages and pressure on wages in the construction sector. Again, in November 2004, the bank noted that a broad range of firms was
finding it difficult to obtain suitable labour. In 2005 the bank noted skills shortages in industries including construction, engineering, accounting, information technology, the resources sector and the business services sector. So the Reserve Bank and other commentators and organisations have been noting since at least 1999 that skills shortages would, if they were allowed to continue, push up inflation and put upward pressure on interest rates. We saw the interest rate prediction come true this year. There are strong suggestions of another interest rate rise before Christmas. That will be an unwelcome Christmas present, I am sure, for those Australian families who are already wondering how they can afford to pay their mortgages.

Maybe it was the interest rate rise that finally made the government do something, or maybe the Prime Minister smelled the winds of electoral change, but now we have the recently announced desperate, cobbled together attempt by this government to buy its way out of a crisis and back into public favour. Maybe the government read the tea leaves and saw that Australians were becoming increasingly suspicious of the use of 457 visas to fill a skills gap that we should never have had in the first place—270,000 people have had to be brought into this country under the Skilled Migration Program to fill skills gaps, while we have denied 300,000 people access to TAFE courses. Maybe the 25.7 per cent of teenagers in metropolitan Adelaide, in my state, who are unemployed have been asking why they could not get into an apprenticeship and why they could not get into TAFE. Why are the doors of that ATC down at Kingston electorate still closed, and how many enrolments are there at the moment? Not many, I would think, if any at all. So at this late and desperate stage we have the government reaching into its budget surplus to buy the Prime Minister some favour with an increasingly sceptical Australian public. It is a desperate plan that borrows heavily from Labor’s ideas announced earlier this year. Indeed, the wage subsidy for mature age apprentices goes back a lot longer than that. It was an initiative of Labor’s Working Nation plan, which this government dumped when it came to office.

Still, as the Labor Leader Mr Beazley said this week, we do not mind the government resurrecting our old ideas and pinching our new ones. We are concerned about the future of the nation. We are not precious, in the Labor Party, about sharing our ideas. I will talk more about Labor’s plans for our skills future in a minute, but let us go back to the government’s recent announcement. We can see just how this is going to go from here on in until the next election. Having built up a budget surplus—in part by slashing investment in and spending on Australia’s education system by denying our young people opportunities to go to TAFE and by increasing university fees to the second highest in the world—the Prime Minister is now going to plunder that budget surplus to buy himself some electoral advantage. Having taken the money out of skills development over the last 10 years, he is now going to put a bit of it back in. We can expect some sort of glitzy advertising campaign to accompany the government’s too late, too little response to the nation’s skills crisis. But the Australian people will not be deluded by this strategy, because they have already seen and suffered the consequences of the complete failure of this government to plan a skills future for Australia.

Senator Wong mentioned earlier the OECD figures which clearly illustrate how Australia’s investment in education compared to that of the rest of the developed world has gone backwards. It has gone backwards to the tune of eight per cent while other nations are investing upwards of 48 per cent more in their education systems. How
can we possibly hope to compete on the international stage when our investment in education is going backwards? It beggars belief.

The nation’s HECS debt has almost reached $20 billion. No wonder our young people are thinking twice about enrolling in university. I mentioned before the ATCs that the government announced with much fanfare, and I think five of them are open at the moment. That is a woeful record. Under this government, the non-completion rate for trades apprenticeships, as we heard earlier, is higher than 40 per cent. There are no measures in the government’s latest desperate attempt to address the skills crisis to tackle the high attrition rate for our young tradespeople. I note that, when Mr Beazley was minister for education, the completion rate for trades apprenticeships was 80 per cent. It is half that under this government.

The Australia people can tell the difference between a plan for the future and a shambolic, cobbled-together, desperate attempt to address the skills crisis. Labor have real plans for our training future—plans that include HECS relief for degrees in areas of skills shortages, expanding associate degrees to address the national shortage of technical skills, creating extra university places in areas of skills shortages and scrapping full-fee degrees for Australian undergraduate students at public universities.

In the area of the traditional trades, we have a plan for a future as well. It includes a skills account for every trades apprentice that will give each of them $3,200 towards offsetting TAFE fees and other costs associated with their training. That will benefit some 60,000 people per year in our TAFE system. We will reward people who complete their apprenticeship with a trade completion bonus of $2,000. Labor has other plans to get young people into well-paid, meaningful jobs in the traditional trades areas with our trade taster program for years 9 and 10 secondary students and a national system of specialist trades, science and technical senior high schools.

The differences between the government’s neglect of the training needs of the nation over 10 long years and Labor’s plans for the development of Australia’s skills for the future are stark. Once again, I thank Senator Wong for allowing us the opportunity to debate this important issue.

Senator Johnston (Western Australia) (4.25 pm)—There is one major devastating skills crisis in Australia, but it is not in industry—it is in the federal Labor opposition. It is chronic! It has a chronic skills shortage. Not three months ago, not four months ago, the opposition was screaming about Work Choices, about the sky falling in and about conditions of employment being eroded and unemployment going through the roof. The Howard government has created almost 200,000 new jobs since 30 March this year. What does the opposition do? As they have to do, they must change tack. What do they change tack to? Where else can they go? Oh! Unemployment is at a 30-year low in Australia, thanks to the Howard government, so let us complain about that. It has to be a skills shortage.

Here is the leader of the most underskilled opposition this nation has ever known, who, when he was minister for training, presided over the most paltry number of apprentices in Australia’s employment history. As the minister for training in 1993, Mr Beazley presided over 122,000 apprentices. The current level is 403,600 apprentices acquiring trade skills under the Howard government. It is absolutely amazing that Labor can suddenly go from screaming about workplace conditions and terms under Work Choices to thinking about and turning turtle onto a skills
shortage. You have got to take your hat off to them—duplicity and disingenuousness is the principal skill they bring to the party.

The Howard government has contributed $43.7 million to apprentices in the form of a living away from home allowance to enable them to be more mobile so that they can acquire their skills in various parts of the country. We have also provided the Commonwealth Trade Learning Scholarship. We have provided $28.2 million for tools of trade initiatives for Australian apprentices so that they can acquire assistance in getting top level tools of trade. As I said, 403,600 apprentices is in stark contrast to the achievements of the now leader of the most under-skilled federal opposition this country has ever known, when he could only preside over 122,000 apprentices in 1993. Labor cannot have it both ways.

This is the lowest level of unemployment in 30 years. The economic management of the Howard government has achieved the modern miracle in the OECD in growth, stability and low inflation. That is the galling thing. It is the thing that galls Labor. They cannot believe that, whilst they were in power, real wages rose by a paltry, insulting 1.3 per cent and, in the 10 years that John Howard has presided over this economy, their constituents have benefited to the tune of a 16 per cent increase in real wages. It really has to stick in their craw. It really has to hurt them.

Let us have a look at what they are saying about 457 visas. Western Australia, with an unemployment rate of about 3.1 per cent, has been the huge beneficiary of Minister Vanstone’s initiatives on 457 visas, and what a great job she has done. My state is absolutely humming with the assistance of skilled migrants. None of those migrants would have come into Australia unless the state Labor governments specifically made a request for them. So Mr Beazley is utterly at odds with his state Labor colleagues. A divided opposition, a divided Labor Party: it is a wonder to behold.

Mr Beazley claims that 300,000 young Australians have been turned away from TAFE at the same time that the government have imported 270,000 extra skilled workers. Here we have a situation where the economy is booming, unemployment is at a 30-year low and Labor is casting around like a drunken sailor to complain about something. This is the opposition of whinging and bleating. This is the opposition of nothing to contribute but, ‘How can we attack the government?’ Since 30 March, 200,000 new jobs under Work Choices say that that reform is one of the truly great reforms of the labour market in Australia, ever. All Labor can do is hope and pray that their Chicken Little predictions will come home to roost, but they will not. This economy is on a firm foundation. It is on a firm footing and is doing very well. So what do they complain about? They complain about the skills shortage.

Turning back to how well Work Choices is doing, the other day I received a press release from the Master Builders Association in Western Australia, which states:

The Master Builders Association rates the first six months of the federal government’s Work Choices industrial relations reforms in conjunction with the construction industry reforms introduced in October 2005 as a huge success.

Bear in mind that Western Australia was ravaged under the CFMEU, who the Labor Party defended. Industrial strife, extortion—name it, we had it.

The Master Builders Association Construction Director Kim Richardson said the initial six months of these reforms and the specific construction industry reforms have seen a welcome turnaround in the behaviour of the CFMEU and its officials on major construction projects with them now conducting themselves in a responsi-
Only a reasonable and lawful manner which contrasts greatly with the unions' behaviour prior to these reforms.

Well, six months later the reforms that the opposition in this chamber shrieked about, predicting that the sky would fall, have not come to fruition—surprise, surprise. They have a track record of screaming about things that do not come true. Just look at the GST. Here is the interesting point:

Another positive spin identified by the Master Builders Association since March involved the changes to the unfair dismissal laws which have seen builders now confident enough to employ more building workers directly rather than through labour hire agencies.

A huge turnaround. (Time expired)

Senator BARTLETT (Queensland) (4.33 pm)—This is an important area of debate and there can be no doubt that there is a significant skills shortage in Australia. Like many political debates, there are a range of perspectives and it is not as black and white as either side thus far has presented. It is clear that one of the reasons there is a skills shortage is the extra employment places due to the health of the economy, but it is also beyond denial that there has been massive underinvestment in training, higher education, skills development and knowledge development across the board by this federal government over a 10-year period. Even to use the argument that the skills shortage is a sign of economic success is to ignore the fact that there has been a failure to plan adequately to ensure as much as possible that significant and problematic skills shortages did not develop in the Australian economy through underinvestment. We cannot have an honest debate about this issue without acknowledging that basic fact. To that extent, the Democrats strongly support the suggestion put forward by Senator Wong that the government must bear a lot of culpability for its failure to adequately invest in training as well as other areas of skills development.

It simply cannot be avoided in this debate. The linkage with skilled migration and skilled visa categories is raised continually. It has been raised again today and is intertwined in a public debate. While it is totally valid to criticise this federal government for their lack of forward thinking, their lack of investment in skills development, in training and in higher education, it is completely invalid to use that as a reason to attack the skilled migration program and the 457 visa category. There are certainly issues there, as I have acknowledged a number of times. One reason there has been that dramatic increase is the government’s failure to adequately invest in skills development among Australians, but I get very uncomfortable with juxtaposing the two and saying that we need to be training up Australians or else foreigners will be coming in and taking our jobs. They are not saying that that specific statement has been made by people in this chamber today, but that is part of the political debate and the argument out in the community. Any notion that migrants are coming here to take Australians’ jobs is not only very dangerous, with a long historical legacy which we need to avoid, but on the whole it is not borne out by the facts. The skills migration program, as long as it is administered properly, is an important component.

I draw the Senate’s attention and the attention of people who are interested in this issue to the survey done in a report by Graeme Hugo, Peter McDonald and Siew-Ean Khoo from the ANU titled Temporary skilled migrants’ employment and residence outcomes. It makes positive findings about the overall gains to Australia as well as to migrants themselves from the skilled visa categories. Developing the skills and the knowledge base of Australians will not just mean that they are all going to immediately jump into
jobs in Australia and fill those gaps here. In the same way, having a liberal—in the proper sense of the word—migration program that allows people with skills into Australia, within appropriate protections and frameworks, means that Australians have the opportunity to go overseas and utilise their skills elsewhere. That is often portrayed negatively as a brain drain, but in many cases there are long-term benefits for Australia. It is part and parcel of the global economy and the free flow of skills and labour around different parts of the world. While some people are uncomfortable with that, I think that is a very positive thing. It always needs to be managed well, but it is certainly better than trying to prevent that from happening or curtailing it.

The core of this MPI is one that I support. I think it is a very valid point that needs to be continually made. I think the fact that the Prime Minister made his sudden announcement about this matter is a recognition of the failure of this government to date to do more. Frankly, I think the federal government needs to do more again. But at the same time it should not be intertwined with unreasoned attacks on the underlying substance of migration programs.

Senator LIGHTFOOT (Western Australia) (4.38 pm)—People on this side who have been listening to the debate this afternoon, notwithstanding the lack of enthusiasm that often comes from the other side, would be surprised at the lack of cogent argument that has come from the opposition, the Greens and the Democrats. The facts are that there have never been more student places in Australian educational history. They have never been better off. Senator Johnston said there are chronic skills shortages in the Labor Party. Of course there are. When you have such a small pool of people to choose from, other than the union movement, to augment the benches on the other side, you must be at a disadvantage.

It is true that the union movement, in which the ALP is a satrap, covers only, in rounded figures, 10 per cent—maybe a little more but certainly below 11 per cent—of the private sector. How can you pick the best people on that side when you have such a small gene pool, if I can put it that way, from which to choose? How can you then add the problems of further dilution by having a quota for females? This means you must have a certain number of females, whether they are better or not. Some are delightful and some are in fact intelligent women. Some are not as good as the people who could be chosen if they were chosen on merit rather than on their sex.

I know something about the union movement. I have been a member of the Australian Workers Union, the Plasterers Society, the police union, the actors union—which is now the media and actors alliance—the Waterside Workers Federation for a short period when I was 13 years old, and even the meat-workers union when I worked in an abattoir when I was 12. I know what the union movement is about. The union movement can only survive if it uses propaganda and untruths to try and entice people to join. It can only survive if it uses those things in order to stack branches and to convince people to join. That is what is being done today with this bill.

Senator Robert Ray—What bill?

Senator LIGHTFOOT—This matter of public importance; thank you. I will pick you up when you get up to speak shortly, I hope.

Senator Robert Ray—You hope! You’re going to have a long wait, Ross!

The ACTING DEPUTY PRESIDENT (Senator Brandis)—Order, Senator Ray! Let Senator Lightfoot be heard in silence.
Senator LIGHTFOOT—I appreciate your assistance.

Senator Robert Ray—It only takes two—

The ACTING DEPUTY PRESIDENT (Senator Brandis)—Senator Ray, please let Senator Lightfoot be heard in silence.

Senator LIGHTFOOT—Thank you, Mr Acting Deputy President. Senator Wong, who introduced this matter of public importance today, said, ‘It’s a truth that the government has chosen to ignore over so many years.’ She was talking about the dearth of education, students and so on. She went on to ask: ‘What has the Prime Minister done? Government investment has gone backwards by seven per cent and 300,000 students have been turned away from TAFE.’ These were generic references by Senator Wong but there were nothing specific, apart from those erroneous examples. She said that over two million people are unemployed—or underemployed; she corrected that statement some time later.

It is not that Senator Wong was perhaps misleading the Senate in the sense that we should take the matter further, but let me read from a grab by the ABC, quoting a Dr Kell, who said:

The skills shortage is no accident when ... underinvestment for 10 years. I think the key issue is resourcing needs to be contextualised differently. As we explain in the report, it’s not more of the same; it’s about shifting the resources in a different way to enable and energise the system.

I am not quite sure what that means, but it was a criticism of the government and its education policy. But it was a union, the Teachers Federation, that commissioned that report. That is the trouble: the truth is not necessarily contained in union organised reports of this nature.

Senator Wong talked about investment sliding backwards and she referred to a figure of 300,000-odd students. Let me read out the facts quickly, in the short time remaining to me. Australian government funding for VTE in 2005-06 was $2.6 billion. That represents, in comparison with the figure in March 1996, a real increase of 88 per cent. Total Australian government funding for VTE over the four years from 2006-07 to 2009-10 will be $11.3 billion. Total funding over five years was $837 million.

Under the 2005-08 Commonwealth-State Agreement for Skilling Australia’s Workforce, there are 128,000 places. There will be 7,500 places in Australian technical colleges in 2005-08, and 20,000 places under the Australian Apprenticeship Access Program. The figure for group training in the trades program is 11,500. This gives a total figure of 167,000 places. With respect to training, in the year ending June 2006 there were 403,600 Australian apprentices.

The major reason that apprentice numbers are down is that we are going through boom conditions never before seen in my 55-odd years of work and probably never to be seen again—certainly in my lifetime. One of the other reasons is simply this: when I was in the union movement it was illegal for a lot of people to employ apprentices unless they had a ratio of tradesmen to fit that particular request. It was not so much a request as an obligation for employers to make sure that where they had one apprentice they also had one skilled tradesman. In some cases, it was two skilled tradesmen for one apprentice. The reason that we do not have enough apprentices and we do have a skills shortage today is simple because the apprentices did not pay full union fees, if they paid union fees at all, and the union movement wanted full fee paying, skilled tradesmen before they would agree to apprentices coming along and taking their places.
The ACTING DEPUTY PRESIDENT
(Senator Brandis)—Order! The time for
consideration of the matter of public impor-
tance has expired.

COMMITTEES
Scrutiny of Bills Committee
Report
Senator ROBERT RAY (Victoria) (4.46
pm)—I present the ninth report of 2006 of
the Senate Standing Committee for the Scrut-
iny of Bills. I also lay on the table Scrutiny
of Bills Alert Digest No. 12 of 2006, dated
18 October 2006.

Ordered that the report be printed.

Senator ROBERT RAY—I move:
That the Senate take note of the report.

In tabling the committee’s Alert Digest No.
12 of 2006, I would like to draw senators’
attention to the committee’s consideration of
the Environment and Heritage Legislation
Amendment Bill (No. 1) 2006. The fact that
the committee’s comments on this bill run to
some 12 pages should speak for itself, but I
would like to take a few moments to high-
light some very significant concerns raised
by the committee.

Amongst other things, this bill seeks to
expand the range of enforcement powers and
penalties which can be applied under the
Environment Protection and Biodiversity
Conservation Act 1999. These include more
than 30 strict liability offences, a great many
of which are accompanied by periods of im-
prisonment and fines well in excess of the
accepted cap of 60 penalty units for these
types of offences; provisions for the deten-
tion of suspected foreign offenders; the
power to search individuals and their cloth-
ing without a warrant; and the power to con-
duct strip searches, again, without a warrant.

By any standards these are significant and
intrusive powers and should only be con-
ferred in exceptional and specific circum-
stances. The committee expects that propos-
als for the inclusion of such powers in legis-
lation should be accompanied by detailed
explanation and justification in the explana-
tory memorandum and also by appropriate
safeguards. The explanatory memorandum
for this bill falls well short of this expecta-
tion.

The committee notes that in many in-
stances, the proposed provisions appear to be
consistent with model provisions set out in
the Crimes Act 1914. However, what is fre-
quently missing is the justification for apply-
ing those types of provisions in these particu-
lar circumstances. In other instances, such as
in the case of the search powers to be in-
cluded by clauses 8 and 17 of new schedule
1 to the act, the explanatory memorandum
advises that the provisions are modelled
closely on sections of the Migration Act
1958 and the Fisheries Management Act
1991. Again, what is missing is a detailed
justification of why these exceptional powers
are required in these specific circumstances.

This is a source of some frustration to the
committee, as it commented in detail on the
legislative proposals which inserted these
powers into the Migration Act. In comment-
ing on the Migration Legislation Amendment
(Immigration Detainees) Bill 2001 and the
Migration Legislation Amendment (Immi-
gration Detainees) Bill (No. 2) 2001, the
committee expressed its longstanding con-
cern about the appropriateness of conferring
police powers on persons other than police
officers and the appropriateness of applying
a power to search persons under arrest to
persons under detention. On that occasion,
the risks that the committee perceived were
partly tempered by the development of a
draft protocol for strip searching of immigra-
tion detainees by the then Minister for Immi-
gration and Multicultural Affairs and the At-
torney-General. The committee has found no
reference to similar safeguards in the explanatory memorandum to this bill.

To borrow exceptional powers from another regulatory context and to seek to apply them without due rigour or detailed justification in a different regulatory context is simply not sustainable, and there is no excuse for it. There is ample advice available to those charged with drafting legislation and, more significantly in this case, explanatory memoranda. The Office of Parliamentary Counsel publishes its drafting instructions, and these highlight many areas of concern to this committee and the parliament and how to address them. The committee has set out its views on offence, penalty and enforcement provisions in its fourth report of 2000, which dealt with entry and search provisions in Commonwealth legislation, and in its sixth report of 2002, which dealt with the application of absolute and strict liability offences in Commonwealth legislation.

More recently, in February 2004, the Minister for Justice and Customs issued *A guide to framing Commonwealth offences, civil penalties and enforcement powers*. This guide consolidates policy, principles and advice relevant to framing these types of provisions. It draws on a broad range of sources, including Commonwealth legislation, Model Criminal Code reports and the committee’s own reports and *Alert Diges*.

The committee is aware that this guide is underpinned by a consultative process aimed at ensuring that offence, penalty and enforcement provisions are framed in a sound, effective and coherent manner. This process requires the explanation and justification of the proposed amendments in order to secure the agreement of the Minister for Justice and Customs.

Unfortunately, on this occasion, little of this explanation and justification has made its way into the explanatory memorandum for the benefit of the committee, the parliament and the general public. The committee has therefore raised its concerns with the minister and sought his advice. Pending the receipt of this advice, I draw this particular bill to the attention of everyone in the Senate.

**Senator JOHNSTON** (Western Australia) (4.52 pm)—I also speak to Senator Robert Ray’s motion. This explanatory memorandum is probably one of the most appalling I have ever seen in the short time I have been in the Senate. It discloses no motivation, no reasoning and no justification for some of the most draconian powers that this parliament can conceivably and possibly enact: rights of search and seizure without warrant and rights of personal frisking without warrant. This is under the umbrella of a piece of environmental protection legislation, the Environment and Heritage Legislation Amendment Bill (No. 1) 2006. The draftsman discloses an obliviousness to the conventions, formalities, reports and guidelines that have been laid down over a very long period of time with respect to the propriety of the administration of powers and penalties. We have some 31 strict liability offences carrying penalties of up to seven years imprisonment. Again, under the umbrella of an environmental protection act, I find that very interesting, particularly in the face of the explanatory memorandum disclosing no real reason or explanation for that.

In the very brief time that I have—and I do not want to take up too much time on this—can I say that the 2004 guide called *A guide to framing Commonwealth offences, civil penalties and enforcement powers*, as set out by Senator Ray, has simply been ignored. It makes me wonder whether the departmental draftsman is aware of this provision. Further to that, on the committee’s sixth report of 2002, as cited by Senator Ray, *Application of absolute and strict liability of-
fences in Commonwealth legislation, again I would say the same thing: the draftsman is oblivious to this document, which is apparent on the face of the style and import of the terms and clauses contained within this piece of legislation.

Strict liability offences are throughout the proposed act. The commencement date is contingent on a number of pieces of state legislation, which causes me concern. There is the abrogation of the privilege against self-incrimination by inserting a new section 486J into the Environment Protection and Biodiversity Conservation Act. Again, these are at the pinnacle of the exercise of Commonwealth legislative power and, again, under the umbrella of an environmental protection act, with no explanation. I really do not want to go on, other than to say that I think this legislation should go back to the drawing board.

Senator BARTLETT (Queensland) (4.55 pm)—I do not normally speak to reports of the Senate Standing Committee for the Scrutiny of Bills. My colleague Senator Murray does an excellent job on that committee—as does everybody on the committee, I might say. It is one of those committees that, in general, does not get much scrutiny or attention, but it does perform a very important role, along with the Senate Standing Committee on Regulations and Ordinances. But I do want to speak to this report on this occasion and to make an exception, because this is an exception. I concur with the comments that have already been made, and I urge all senators—but, given the reality of the chamber at the moment, particularly government senators—to really look at this closely. The legislation in question here, the Environment and Heritage Legislation Amendment Bill (No. 1) 2006, which is the amendment bill to the EPBC Act, is before the Senate Standing Committee on Environment, Communications, Information Technology and the Arts, of which I am deputy chair. I will certainly ensure that the committee takes on board this report. But I do think it is worth noting and repeating Senator Johnston’s comment—for example, that this is the most appalling explanatory memorandum he has ever seen.

It is worth noting that, because the government—the department—have been foreshadowing the relevant legislation for months and months. I presume they have been spending a very long time putting it together. Yet, in what is sadly becoming an all too common occurrence, the legislation was, at the insistence of the government, referred to the committee before the bill had even been tabled—before people had a chance to see how big the bill was or to get any idea of its content beyond just the very general policy goals. It was already referred to the committee with the reporting date insisted upon of 17 November, which is in a non-sitting period. Indeed, we could not even get the extra non-sitting week to get a reporting date of 24 November.

When the government have months and months to put together their legislation, including their explanatory memorandum, and it comes down to something that Senator Johnston himself, on the government side, says is the most appalling explanatory memorandum he has ever seen, then you really have to wonder. But the government do that and then try and force the committee that has the job of examining the totality of the legislation—not just the narrow constructs that the Scrutiny of Bills Committee has to do but the totality of it—and say, ‘You’ve got to do it within a month.’ Two weeks of that month is already taken up with sittings and estimates committees. They even insist: ‘We won’t even let you have an extra week, because if you want to make amendments we’ve got to have enough time to write them, get them approved and all that sort of process.’ If they get the legislation or
the explanatory material so wrong to start with, apparently, then that does not give great confidence about them getting any amendments right in such a short time frame. But they have given themselves almost as much time to allow for drafting of any amendments based on recommendations as the committee gets to look at the whole bill.

This should go beyond politics. We will all have different policy views about this particular piece of legislation, but this is the law we are making here. This stuff affects people’s lives. People get caught by the laws in all sorts of ways. You can always talk after the fact about what was or was not intended, but courts have to interpret the law. They might have a little bit of leeway, but they do not have that much. It is not just a game-playing or point-scoring process. If the parliament and particularly the Senate is to do its job in scrutinising legislation—in being a legislature, a law-making body—properly, we have to take reports like this seriously. To reinforce that, there are so many concerns expressed in this. I do not know if this is some sort of record, but 10 or 11 pages on one bill is pretty rare for this committee. Normally when they have concerns there are one or two pages. To have 10 or 11 pages worth of concerns about various aspects of the legislation—some of them procedural and not so serious, but some of them very serious—should send alarm bells. The Standing Committee for the Scrutiny of Bills, I would emphasise, is very much a non-partisan and non-policy committee. It simply scrutinises on the basis of basic legislative principles and basic appropriate standards for the drawing up of laws and for basic liberties—so basic they are deemed to be non-partisan.

The strict liability issue is one of those. As a nonlawyer, sometimes phrases like ‘strict liability’ and other types of liability go a bit over my head, and I am sure they do with the general community—they do not realise quite how significant it is when something becomes a strict liability offence. That is why you have committees like this and that is why you have guidelines regarding the application of absolute and strict liability. To repeat from those guidelines, which are in the report:

... strict liability should be introduced only after careful consideration on a case-by-case basis of all available options; it would not be proper to base strict liability on mere administrative convenience or rigid formula;

I frankly already have concerns that it is becoming just administrative convenience: ‘It is the easiest thing to do. It is already around the place. Let’s just put some more in. The more we put in, the more we can use it as precedent to justify even more.’ But even more crucial is the following guideline:

... strict liability offences should be applied only where the penalty does not include imprisonment and where there is a cap on monetary penalties ...

A strict liability offence basically means you are more likely to be convicted. If you are going to make it easier for people to be convicted of offences, unless you have an extremely good reason, they should not be for ones that are going to get people imprisoned. Yet on 31 different occasions here strict liability offences are put in place. In some of these cases there is a maximum penalty of seven years imprisonment or 420 penalty units—seven times the recommended maximum.

To do that once would, I am sure, draw the attention of and raise alarm bells with the committee. To do it 31 times and then not even actually explain why it is particularly necessary is a serious concern. Maybe there are very good reasons. It all goes back to treating the parliament and the public through the parliament with greater respect. It is, in my mind certainly, unavoidably intertwined with the growing practice of railroad-
major legislation—this legislation is 400 pages—through Senate committees in extremely short spaces of time with no consideration given to the committee’s other workload, let alone the totality of what is being put before them.

The other point I would make is that the government should not assume that people on this side of the chamber—because it is this piece of legislation, the EPBC Act—will always oppose what they are putting forward. If they actually make an effort to do the job properly and to take on board people’s concerns, they might actually find they get some support. They certainly did from the Democrats in regard to this legislation back in 1999—at great pain to us, I might say. It was something we paid a political price for. Because of that heritage, if you like, and having defended this legislation in the face of extraordinary attacks from some in the conservation movement for seven years, I am actually quite keen to try to find reasons to support attempts to keep it a solid act, as the minister is saying he is trying to do. But you make it impossible for people.

How can one support what you are doing when there is not only the content of what you have here—this sort of strict liability free-for-all—but the process and the total contempt in preventing any sort of proper scrutiny, the total contempt in regard to even properly explaining the reasons why these sorts of things are being done? It simply makes it impossible for people who are actually wanting to find opportunities to support it to do so. I would really urge the minister, firstly, to open up his ears a little bit—

Senator Robert Ray—He’s in China.

Senator BARTLETT—when he gets back from China, to the views of those who are at least interested in trying to work constructively with him on this stuff. I would also really urge all of the government senators to think about, firstly, this growing problem of major pieces of legislation being railroaded through committees at breakneck speed—which, as soon as we get to the committees, all senators, including government senators, complain about. Secondly, in particular in regard to this report, please try and take it on board. The work of this committee is not often paid as much attention as it should be. If there is one time when we are going to pay attention to what they are saying, let us make it this one.

Question agreed to.

Public Works Committee
Reports

Senator TROETH (Victoria) (5.05 pm)—On behalf of the Parliamentary Standing Committee on Public Works, I present three reports of the committee: report No. 16 of 2006, Provision of facilities for Project Single LEAP—Phase 1; report No. 17 of 2006, Provisions of canine kennelling and training facilities for the Australian Federal Police at Majura, ACT; and report No. 18 of 2006, Fit-out of new leased premises for the Department of Employment and Workplace Relations at Brindabella Park, ACT. I move:

That the Senate take note of the reports.

I seek leave to incorporate my tabling statement in Hansard.

Leave granted.

The statement read as follows—

Provision of Facilities for Project Single LEAP—Phase 1

The sixteenth report of 2006 addresses the provision of facilities for Project Single Living Environment and Accommodation Precinct (LEAP)—Phase One, at an estimated cost of $406 million. This project is the second Public-Private-Partnership (PPP) that has come under the scrutiny of the Public Works Committee.

The project proposes to provide 1,295 permanent rooms and the provision of infrastructure and ancillary support services for a period of thirty...
years across three sites—Holsworthy Barracks, NSW; Gallipoli Barracks, Enoggera, Queensland; and RAAF Base Amberley, Queensland. The project goes some way to addressing the current shortfall of bed spaces of appropriate standards for single services personnel and includes:

- financing the development of the facilities and services;
- a commissioned and fully operational living-in-accommodation service, together with all associated furniture and equipment, parking, storage and facilities;
- all required infrastructure, including upgrading engineering services and other utilities;
- ongoing operation including repair and maintenance; and
- supply and conduct of the accommodation services for the facilities including those provided by the strategic partner and those sourced through existing Garrison Support Service and Comprehensive Maintenance Service contracts.

The Committee investigated all aspects of the work paying particular attention to project cost, consultation, project delivery and project implementation.

Given the complexity of the PPP arrangement for this project, the Committee requested an additional confidential briefing to ensure that the details of the expected costs for the project represented value-for-money for the Commonwealth. Another issue for the Committee was that it faced the challenge of considering a project before its final form is known. As a result the Committee recommends that Defence provide it with regular reports on the progress of works as well as a briefing on the final form of the project.

Part of this proposal involves the demolition of existing buildings. The Committee heard that 175 buildings within Gallipoli Barracks contained asbestos and was assured that it would be removed and disposed of during the demolition of the buildings.

Having given detailed consideration to the proposal, the Committee recommends that proposed provision of facilities for Project Single LEAP—Phase One proceed at the estimated cost of $406 million.

Development of Canine Training Facilities for the Australian Federal Police at Majura, ACT

The Committee’s seventeenth report of 2006 presents findings in relation to the proposed development of canine kennelling and training facilities for the Australian Federal Police at Majura, ACT.

The purpose of the proposed works is to provide new and upgraded facilities for handlers and trainers, dog kennelling and training to enable the AFP to meet the increasing demand for canine services within Australia and overseas. The project will provide:

- 46 main kennels;
- 20 isolation kennels
- two quarantine kennels;
- workshops;
- magazines and vaults for the storage of explosives, firearms and drugs;
- an extended and refurbished kennel management facility;
- a new building to accommodate handlers, trainers and the ACT Community Policing Dog Team; and
- associated site works and infrastructure.

Subject to Parliamentary approval, construction is scheduled to commence in November 2006 and be progressively completed and operational by November 2007.

The Committee conducted a site inspection of the Majura site noting the inadequacy of the facilities for both handlers and canines. The Committee was provided with a comprehensive briefing and demonstration of a canine exercise further highlighting the importance of this capability within the AFP is pleased to recommend that the proposed works proceed at the estimated cost of $10.2 million.

———
Fit-out of New Leased Premises for the Department of Employment and Workplace Relations at Brindabella Park, ACT

The Committee's eighteenth report of 2006 addresses the proposed fit-out of new leased premises for the Department of Employment and Workplace Relations at Brindabella Park, ACT.

DEWR currently occupies 13 buildings across the ACT, located in Civic, Turner and Brindabella Business Park. The two main objectives of the proposed works are to:

- meet the additional accommodation requirements of DEWR which have been significantly affected by the implementation of the Workplace Relations Reforms, and expiration of and existing sub-lease arrangements; and
- maximise space efficiencies made possible by larger floor plates on offer at 29-31 Brindabella Business Park, taking advantage of the opportunity to collocate currently fragmented working groups

The Committee considered in detail:

- the leasing arrangements of current tenancies and options considered for the project;
- consultation with staff and other relevant stakeholders;
- specific design initiatives such as individual workstation configuration and the sound attenuation of the building; and
- general staff amenity.

The Committee was pleased to note that DEWR had consulted the Australian Greenhouse Office and that the Department is currently in negotiations with the building owner to attach a Green Lease Schedule allowing for building owner and tenant to achieve 4.5 star ABGR. The Committee is hopeful that a Green Lease Schedule can be attached to the project, and recommends that the Department keep it informed of its progress with this matter.

Having examined all the evidence presented to it, the Committee recommends that the proposed fit-out of new leased premises for the Department of Employment and Workplace Relations proceed at the estimated cost of $15.1 million.

I wish to thank my Committee colleagues and all those who assisted with the public hearings.

I commend the Reports to the Senate.

Question agreed to.

Foreign Affairs, Defence and Trade Committee: Joint Report

Senator FERRIS (South Australia) (5.06 pm)—On behalf of Senator Ferguson and the Joint Standing Committee on Foreign Affairs, Defence and Trade, I present a report on the committee’s review of the Defence annual report 2004-05 and move:

That the Senate take note of the report.

I seek leave to have a tabling statement incorporated in Hansard.

Leave granted.

The statement read as follows—

The inquiry into the review of the Defence Annual Report 2004-05 focused on the activities, achievements and undertakings of the Australian Defence Force and the Department of Defence during the period July 2004 to June 2005.

During this period of time, Australian Defence Force personnel were involved in 17 offshore operations, two of which were particularly noteworthy. First, the strengthening of the presence in Iraq with the deployment of a 450-strong Task Group to the Al Muthanna Province and second, the humanitarian relief effort undertaken in response to the South-East Asian tsunami.

The Al Muthanna Task Group contributed in a real and tangible way to the reconstruction efforts in Iraq. Indeed, members of this Committee were privileged to visit the AMTG and observe first-hand the commitment, pride and professionalism of these men and women and the positive impact they were having on the lives of Iraqis in the Province.

Mr President, you will be aware that the AMTG has now moved from Al Muthanna to join the Overwatch Battle Group-West (OBG-W), based in the southern Iraqi province of Dhi Qar, where
they undertake a security overwatch role as part of a larger Coalition Force.

We continue to wish them well in this new role.

The second noteworthy operation during the 2004-05 period was the tsunami relief operation—another demanding mission and one that was completed with professionalism with compassion. You will recall that, sadly, the achievements of the ADF during this relief operation were tempered by the tragic loss of nine personnel, and the injuries of two others, in the helicopter crash on Nias in early April 2005. Such accidents are a reminder that the men and women of the ADF do a dangerous job, often in unforgiving environments, through the spectrum of operations from humanitarian relief, to peacekeeping to warlike.

The four major topics reviewed in this report provided the Committee with an opportunity to examine how Defence was commanded, managed and operated in the context of the strategic environment and the Defence Capability Review extant at the time.

The first topic examined was the attainment of Prescribed Agency Status for the Defence Materiel Organisation, the implications of prescription for the ongoing reform process. The Committee was also updated on the progress of certain key capital projects and in this context discussed risk mitigation and the project management methodologies that had been developed by the DMO to ensure the effective and efficient management of these projects.

Given the intensity and persistence of ADF operational deployments, and the need to maximise the survivability and efficacy of our people and platforms, the Committee also examined a range of issues in relation to the Chinook helicopter.

In particular, we looked at upgrades to the helicopters and the implications for their deployed role in Afghanistan, as well as a more general discussion in relation to the enhancement and modernisation of the ADF helicopter fleets occurring under Project AIR 9000.

Topic three addressed the roles and responsibilities of the Joint Offshore Protection Command. This section focused on the people, the operational tasking and strategic command and control issues. Specifically, we considered the range of current operations, the impact on personnel of maintaining a high tempo, and the management and effectiveness of the inter-agency relationships.

Our final topic was an examination of the progress on the remediation of Defence’s qualified financial statements. While elements of this topic were considered during 2003-04, the ongoing nature of these issues was considered to be of such a magnitude that they warranted further examination.

To conclude the review of the Defence Annual Report 2004-05, the Acting Chief of the Defence Force, Lieutenant General Ken Gillespie, and the Secretary, Mr Ric Smith, made themselves available for a wide-ranging discussion on current issues in the Department. The Committee appreciated the candour and commitment displayed by the Defence leadership during this session.

Mr President, to conclude, the Committee would like to record their appreciation for the excellent work that continues to be done by the men and women of the ADF in support of operations in Australia, in our region, and around the world.

Question agreed to.

DOCUMENTS

Parliamentary Service Commissioner
Annual Report

The ACTING DEPUTY PRESIDENT
(Senator Moore)—I present the annual report of the Parliamentary Service Commissioner for 2005-06.

Ordered that the report be printed.

AUDITOR-GENERAL’S REPORTS

Report No. 8 of 2006-07

The ACTING DEPUTY PRESIDENT
(Senator Moore)—In accordance with the provisions of the Auditor-General Act 1997, I present the following report of the Auditor-General: Report No. 8 of 2006-07: Performance audit: Airservices Australia’s upper airspace management contracts with the Solomon Islands government.
Senator O’BRIEN (Tasmania) (5.08 pm)—by leave—I move:

That the Senate take note of the document.

I have only had a brief opportunity to look at this document. I do note that the four recommendations made by the ANAO have been accepted and agreed to by both the Department of Transport and Regional Services and Airservices Australia. However, it is not the acceptance of these recommendations that I wish to discuss; rather it is the fact that there was any need to investigate inappropriate payments made by a Commonwealth statutory authority.

The Auditor-General has been called in to examine a range of transactions made by Airservices Australia, which is a wholly owned entity of the Australia government. The fact that a Commonwealth statutory authority has paid more than $2.1 million outside the terms of a legally binding contract alone is of great concern. Airservices is responsible for the safety of Australian airspace and, after perusing this report, I certainly hope there is more attention paid to that job than there is to corporate governance.

I note that the Auditor-General has summarised over 400 transaction payments made by Airservices Australia, allegedly under this contract, between 1998 and 2003. Of the more than 400 payments made by Airservices supposedly relating to the contract, only 77 of these were made to the bank accounts specified in that legally binding contract.

The initial contract between Airservices Australia and the Solomon Islands government was to manage the upper airspace of the Honiara flight information region, to collect, on behalf of the Solomon Islands, air navigation fees from airlines entering their airspace and to pay fees, less Airservices’ charges, to the government. This arrangement commenced on 1 June 1998. What I find very surprising is that, almost immediately after the contract was in place, Airservices agreed to requests to make payments outside the terms of the contract and that these payments continued over a period of five years between 1998 and 2003. The ANAO says:

This was not only a departure from sound contract management practices but was not prudent given the number and variety of payment transactions.

Frankly, I think that is a very generous assessment by the Auditor-General. Other people may describe such a fundamental failing differently. For the record, in my opinion even a clerk of modest competence should have questioned the fact that payments were being requested outside the terms of the contract—especially so soon after the contract had been put in place. I note that, of the 400 or so payments summarised on page 65 of the report, well over 300 of these transactions were made outside the terms of the legally binding contract. With apologies to Oscar Wilde, one unauthorised transaction is unfortunate; over 300 is just plain careless.

Of these payments, 305 were made to third parties—that is, non Solomon Island government accounts: 36 for fees and expenses of an aviation adviser totalling over $500,000; 161 for education expenses totalling nearly $400,000; 42 for travel expenses totalling approximately $300,000; and a further 66, totalling over $800,000, simply listed as ‘other third-party payments’. There was also over $28,000 that comprised 17 transactions summarised as ‘credit card cash advances and payments’. I understand these were made on Airservices corporate credit cards. This is amazing; it is quite concerning.

This is not a one-off lapse in judgement or mistake; this is a methodical payment system that, over time, has come to be seen as nor-
mal. The Auditor-General refers to this in this comment:

... it could be argued that the parties had agreed to informally vary the contracts. This is despite the contract providing for variations to be made in writing.

I do not know how one could assume that one was concluding a contract had been varied when the contract was so specific about variation. I suggest there had been a systemic failure in the management of Airservices to deal with this issue appropriately well before the payments ceased in 2003.

The fact that there were four internal audits or reviews of the contracts and it was not until the final review in November 2005 that Airservices determined that improvements were required in relation to the management of money indicates to me that corporate governance in Airservices has been questionable. An Airservices internal audit concluded in July 2003:

... the contract appeared to be well managed and that, as well as ensuring a high standard of ongoing accountability, the management of the contract had promoted Airservices Australia’s and Australia’s interests with the Solomon Islands Government.

It simply beggars belief that the Auditor-General could report that this conclusion was coupled with:

...concerns were raised that the contract was not being managed strictly in accordance with its terms and conditions.

That is further evidence of a corporate culture that was divorced from reality. The ANAO has drawn a number of conclusions concerning the administration of this multi-million-dollar contract, and we should be thankful that one of these conclusions was that there was:

... no evidence to indicate that payments had been made by Airservices Australia to secure or retain the upper airspace managements contracts ...

They were not buying wheat, obviously. I think that this is a fortunate occurrence. This is of course in marked contrast to that other payment I referred to.

I note that Airservices has been at pains to assure the Auditor-General that the recent restructure and the implementation of a business improvement program, along with addressing deficiencies in internal audit procedures, has alleviated any problems. As mentioned, I have also noted that both the Department of Transport and Regional Services and Airservices have accepted the Auditor-General’s recommendations. Despite this, I would urge the Auditor-General to institute a complete performance audit of Airservices within the next 12 months. Assurances of improvement are all well and good but, given the quite basic problems uncovered in this situation, a full examination is a must. Labor welcomes the report. However, my initial feeling is that a deficiency of the report is that the parties to the irregular payments are not identified. And I am talking about well over 300 payments.

Yesterday in the other place my colleague the shadow minister for overseas aid and the Pacific Islands, Mr Bob Sercombe, discussed the worsening relations between Australia and a number of Pacific nations, not the least being the Solomon Islands. It would not do Australia’s credibility in the region any good for this report to be seen as some sort of a whitewash of the circumstances which took place over this period. When I have had more of an opportunity to examine the report, I may seek additional information from the Auditor-General and it would be pleasing to be more fully briefed about this matter. It is of concern that there were many payments made completely at odds with the way payments should have been made under the contract. I intend to follow this matter up further.
Senator FERRIS (South Australia) (5.16 pm)—There are a couple of points that need to be made in relation to those comments concerning this report. The first is that the report found no evidence of facilitation payments or any other illegality. As well, the Auditor-General noted that a separate investigation that was undertaken by the Australian Federal Police concluded that there was no evidence to support a charge of criminal conduct in any case. Most importantly, the report concluded that Airservices Australia employees, in acting on the authority of Solomon Islands government ministers and officials, did depart from sound contract management in making some payments under the contract.

Airservices Australia accepts these findings by the Auditor-General and has committed to a swift response to them. In fact, Airservices has already undertaken a range of reforms to its processes. The department has been asked to review the Auditor-General’s findings and to report on actions that might be taken to further strengthen the guidelines issued to Airservices Australia in relation to its overseas service contracts. Airservices Australia has already taken action to carry out some of these recommendations, including a thorough strengthening of corporate governance procedures in relation to offshore contracts through a revised contract management procedure that clearly segregates the duties of the contract manager and the contract administrator, requires contracts or variations to contracts to be endorsed by the general counsel and approved by the relevant general manager and/or CEO, incorporates a senior management review and oversight process, requires monthly reconciliation of bank accounts and requires monthly financial reporting to management by the relevant finance officer independent of the contract manager.

Notwithstanding the actions already taken by Airservices, the minister will be writing to the Airservices board asking them to review the Auditor-General’s report very carefully and to provide a written report covering all aspects of the findings. The report is expected to address not only the specific contract but also the implications for the administration of other Airservices contracts and that strategies be put in place to ensure similar shortcomings cannot occur in the future. Airservices Australia accepts the findings by the Auditor-General and has committed to a swift response to them and, as I said, has already undertaken a range of reforms to its processes.

Airservices Australia’s safety work is not confined to Australia. Significant safety issues in the Asia-Pacific region, including in the Solomon Islands, PNG and Indonesia, are being addressed through assistance from Airservices Australia. This assistance is being provided through standardisation of procedures, targeted training programs, the development of equipment and maintenance and radar realignment programs. The assistance is a very important issue for Australia, because over 80 per cent of international aircraft flying to and from Australia pass through Indonesian airspace.

Airservices Australia advised Minister Anderson’s office of the outcome of an internal audit of the Solomons Island contract in September 2003. This audit raised questions about whether some payments made by Airservices were in accordance with the contract. The minister’s office requested that RAMSI be informed. Internal and external investigations were conducted and they identified that Airservices Australia and its staff acted in good faith in administering this contract. The Airservices Australia chief executive informed Minister Truss in March 2006 of a Solomons Island government auditor-general inquiry into civil aviation in the
Solomon Islands, which included the financial management of that Airservices contract.

I will conclude my remarks by saying again that this investigation found no evidence of facilitation payments or any other illegality. Links by comment by my colleague Senator O’Brien to wheat export contracts are unfortunate. In addition, the Auditor-General noted that a separate investigation by the Australian Federal Police concluded that there was no evidence to support a charge of criminal conduct. I seek leave to continue my remarks later.

Leave granted; debate adjourned.

Building Industry Taskforce: Commonwealth Ombudsman Review

The ACTING DEPUTY PRESIDENT (Senator Moore)—I present the report of the Commonwealth Ombudsman on his review of the use of compliance powers by the Building Industry Taskforce for the period 13 January 2005 to 27 March 2006.

PARLIAMENTARY ZONE

Proposal for Works

Senator ABETZ (Tasmania—Minister for Fisheries, Forestry and Conservation) (5.22 pm)—In accordance with the provisions of the Parliament Act 1974, I present two proposals for works within the Parliamentary Zone, together with supporting documentation, relating to refurbishment of the podium surrounding the National Library of Australia, and resurfacing the temporary car park on section 55, Parkes. I seek leave to give a notice of motion in relation to the proposal.

Leave granted.

Senator ABETZ—I give notice that, on the next day of sitting, I shall move:

That, in accordance with section 5 of the Parliament Act 1974, the Senate approves the proposals by the National Capital Authority for capital works within the Parliamentary Zone, being the refurbishment of the podium that surrounds the National Library of Australia, and resurfacing the temporary car park on section 55, Parkes.

COMMITTEES

Membership

The ACTING DEPUTY PRESIDENT (Senator Moore)—The President has received a letter from a party leader seeking to vary the membership of a committee, and letters from senators resigning from the Parliamentary Joint Committee on Corporations and Financial Services.

Senator ABETZ (Tasmania—Minister for Fisheries, Forestry and Conservation) (5.23 pm)—by leave—I move:

That senators be discharged from and appointed to committees as follows:

Corporations and Financial Services—Joint Statutory Committee—

Appointed—

Senator Forshaw upon the resignation of Senator Sherry—effective 8 am, 24 October 2006

Senator Sherry upon the resignation of Senator Forshaw—effective 8 am, 25 October 2006

Environment, Communications, Information Technology and the Arts—Standing Committee—

Appointed—Substitute member: Senator Carr to replace Senator Lundy for the committee’s inquiry into the provisions of the Environment and Heritage Legislation Amendment Bill (No. 1) 2006.

Question agreed to.

TRADE PRACTICES LEGISLATION AMENDMENT BILL (No. 1) 2005

Consideration of House of Representatives Message

Message received from the House of Representatives returning the Trade Practices Legislation Amendment Bill (No. 1) 2005 and informing the Senate that the House has
agreed to amendments Nos (2) to (6) made by the Senate, has disagreed to amendment No. (1), and has made further amendments to the bill.

Ordered that the message be considered in Committee of the Whole immediately.

House of Representatives message—

(1) Schedule 1, item 6, page 4 (lines 1 and 2), omit the definition of *proceedings* in section 29P, substitute:

*proceedings* includes:

(a) applications made to the Tribunal under Subdivision C of Division 3 of Part VII; and

(b) applications made to the Tribunal under section 111 (about review of the Commission’s decisions on merger clearances).

(2) Schedule 1, items 7 and 8, page 4 (lines 3 to 13), omit the items, substitute:

7 Section 39
Before “The”, insert “(1)”.

Note: The heading to section 39 is replaced by the heading “President may give directions”.

8 At the end of section 39
Add:

(2) The President may give directions to the Deputy Presidents in relation to the exercise by the Deputy Presidents of powers with respect to matters of procedure in proceedings before the Tribunal.

Note: Subsection 103(2) provides that any presidential member may exercise powers with respect to matters of procedure in proceedings before the Tribunal.

(3) Schedule 1, item 27, page 12 (line 34), omit “make”, substitute “give”.

(4) Schedule 1, item 27, page 15 (line 17), after “Commission”, insert “, within a specified period,”.

(5) Schedule 1, item 27, page 15 (lines 20 to 23), omit section 95AK, substitute:

95AK Commission may seek further information and consult others

(1) The Commission may give a person a written notice requesting the person to give the Commission, within a specified period, particular information relevant to making its determination on the application.

(2) The Commission may consult with such persons as it considers reasonable and appropriate for the purposes of making its determination on the application.

(6) Schedule 1, item 27, page 16 (lines 4 to 7), omit subsection 95AM(2), substitute:

(2) In making its determination, the Commission must take into account:

(a) any submissions in relation to the application made to it by the applicant, the Commonwealth, a State, a Territory or any other person that are received within the period specified under paragraph 95AG(b); and

(b) any information received under section 95AJ within the period specified in the relevant notice under that section; and

(c) any information received under subsection 95AK(1) within the period specified in the relevant notice under that subsection; and

(d) any information obtained from consultations under subsection 95AK(2).

(2A) In making its determination, the Commission may disregard:

(a) any submissions in relation to the application made to it by the applicant, the Commonwealth, a State, a Territory or any other person that are received after the period specified under paragraph 95AG(b); and

(b) any information received under section 95AJ after the period specified in the relevant notice under that section; and
(c) any information received under subsection 95AK(1) after the period specified in the relevant notice under that subsection.

(7) Schedule 1, item 27, page 16 (line 22), omit “refused”, substitute “made a determination refusing”.

(8) Schedule 1, item 27, page 18 (after line 12), after subsection 95AR(2), insert:

2A The regulations may provide that the application form contain a requirement that the applicant give an undertaking under section 87B that the applicant will not make the acquisition while the application is being considered by the Commission.

(9) Schedule 1, item 27, page 18 (line 28) to page 19 (line 3), omit subsection 95AR(5), substitute:

Commission must make a determination on the application

5 The Commission must make a determination in writing:

(a) varying the clearance; or

(b) refusing to vary the clearance.

The Commission must notify the applicant in writing of its determination and give written reasons for it.

5A In making its determination, the Commission must take into account:

(a) any submissions received within the period specified under subsection (4); and

(b) any information received under section 95AJ within the period specified in the relevant notice under that section (as that section applies because of subsection (11) of this section); and

(c) any information received under subsection 95AK(1) within the period specified in the relevant notice under that subsection (as that subsection applies because of subsection (11) of this section); and

(d) any information obtained from consultations under subsection 95AK(2) (as that subsection applies because of subsection (11) of this section).

5B In making its determination, the Commission may disregard:

(a) any submissions received after the period specified under subsection (4); and

(b) any information received under section 95AJ after the period specified in the relevant notice under that section (as that section applies because of subsection (11) of this section); and

(c) any information received under subsection 95AK(1) after the period specified in the relevant notice under that subsection (as that subsection applies because of subsection (11) of this section).

10 Schedule 1, item 27, page 19 (after line 9), after subsection 95AR(6), insert:

Determination varying clearance may also vary clearance conditions

6A A determination varying a clearance may also vary the conditions (if any) of the clearance to take account of the variation of the clearance.

11 Schedule 1, item 27, page 19 (line 14), omit “refused”, substitute “made a determination refusing”.

12 Schedule 1, item 27, page 20 (after line 3), at the end of section 95AR, add:

Powers of Commission

11 The following sections apply in relation to an application for a minor variation of a clearance in the same way as they apply in relation to an application for a clearance:

(a) section 95AJ (Commission may seek additional information from applicant); and

(b) section 95AK (Commission may seek further information and consult others).
(13) Schedule 1, item 27, page 20 (after line 17), after subsection 95AS(2), insert:

(2A) The regulations may prescribe that the application form contain a requirement that the applicant give an undertaking under section 87B that the applicant will not make the acquisition while the application is being considered by the Commission.

(14) Schedule 1, item 27, page 21 (lines 18 to 27), omit subsection 95AS(7), substitute:

Commission must make a determination

(7) The Commission must make a determination in writing:

(a) revoking the clearance, or revoking the clearance and substituting a new clearance for the one revoked; or

(b) refusing to revoke the clearance. The Commission must notify, in writing, the person to whom the clearance was granted of its determination and give written reasons for it.

(7A) In making its determination, the Commission must take into account:

(a) any submissions invited under subsection (4) or (6) that are received within the period specified under that subsection; and

(b) any information received under section 95AJ within the period specified in the relevant notice under that section (as that section applies because of subsection (13) of this section); and

(c) any information received under subsection 95AK(1) within the period specified in the relevant notice under that subsection (as that subsection applies because of subsection (13) of this section).

(7B) In making its determination, the Commission may disregard:

(a) any submissions invited under subsection (4) or (6) that are received after the period specified under that subsection; and

(b) any information received under section 95AJ after the period specified in the relevant notice under that section (as that section applies because of subsection (13) of this section); and

(c) any information received under subsection 95AK(1) after the period specified in the relevant notice under that subsection (as that subsection applies because of subsection (13) of this section).

(15) Schedule 1, item 27, page 22 (line 15), omit “refused”, substitute “made a determination refusing”.

(16) Schedule 1, item 27, page 22 (after line 25), at the end of section 95AS, add:

Powers of Commission

(13) The following sections apply in relation to an application for a revocation, or a revocation and substitution, of a clearance in the same way as they apply in relation to an application for a clearance:

(a) section 95AJ (Commission may seek additional information from applicant);

(b) section 95AK (Commission may seek further information and consult others).

Substituted clearances

(14) The following sections apply in relation to a clearance substituted under this section in the same way as they apply in relation to a clearance granted under section 95AM:

(a) section 95AP (Clearance subject to conditions);

(b) section 95AQ (When clearance is in force).

(17) Schedule 1, item 27, page 22 (line 31), omit “Note”, substitute “Note 1”.

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CHAMBER
(18) Schedule 1, item 27, page 22 (after line 34), at the end of subsection 95AT(1), add:

Note 2: Division 2 of Part IX contains provisions about procedure and evidence that relate to proceedings before the Tribunal.

(19) Schedule 1, item 27, page 23 (line 26), omit “make”, substitute “give”.

(20) Schedule 1, item 27, page 26 (lines 12 to 23), omit section 95AZB.

(21) Schedule 1, item 27, page 26 (line 26), after “Tribunal”, insert “, within a specified period,”.

(22) Schedule 1, item 27, page 26 (lines 28 to 31), omit section 95AZD, substitute:

95AZD Tribunal may seek further information and consult others etc.

(1) The Tribunal may give a person a written notice requesting the person to give the Tribunal, within a specified period, particular information relevant to making its determination on the application.

(2) The Tribunal may consult with such persons as it considers reasonable and appropriate for the purposes of making its determination on the application.

(3) The Tribunal may disclose information excluded from the merger authorisation register under subsection 95AZA(3), (4) or (7) to such persons and on such terms as it considers reasonable and appropriate for the purposes of making its determination on the application.

(23) Schedule 1, item 27, page 27 (after line 3), after section 95AZE, insert:

95AZEA Tribunal must require Commission to give report

(1) For the purposes of determining the application, the member of the Tribunal presiding on the application must require the Commission to give a report to the Tribunal. The report must be:

(a) in relation to the matters specified by that member; and

(b) given within the period specified by that member.

(2) The Commission may also include in the report any matter it considers relevant to the application.

(24) Schedule 1, item 27, page 27 (lines 4 to 8), omit section 95AZF, substitute:

95AZF Commission to assist Tribunal

(1) For the purposes of determining the application:

(a) the Commission may call a witness to appear before the Tribunal and to give evidence in relation to the application; and

(b) the Commission may report on statements of fact put before the Tribunal in relation to the application; and

(c) the Commission may examine or cross-examine any witnesses appearing before the Tribunal in relation to the application; and

Note: The Commission may be represented by a lawyer: see paragraph 110(d).

(d) the Commission may make submissions to the Tribunal on any issue the Commission considers relevant to the application.

(2) For the purposes of determining the application, the member of the Tribunal presiding on the application may require the Commission to give such information, make such reports and provide such other assistance to the Tribunal, as the member specifies.

(25) Schedule 1, item 27, page 27 (before line 9), before section 95AZG, insert:

95AZFA Commission may make enquiries

The Commission may, for the purposes of section 95AZEA or 95AZF, make such enquiries as it considers reasonable and appropriate.

(26) Schedule 1, item 27, page 27 (lines 16 to 19), omit subsection 95AZG(2), substitute:

(2) In making its determination, the Tribunal must take into account:
(a) any submissions in relation to the application made to it by the applicant, the Commonwealth, a State, a Territory or any other person that are received within the period specified under paragraph 95AY(b); and

(b) any information received under section 95AZC within the period specified in the relevant notice under that section; and

(c) any information received under subsection 95AZD(1) within the period specified in the relevant notice under that subsection; and

(d) any information obtained from consultations under subsection 95AZD(2); and

(e) the report given to it under section 95AZEA; and

(f) any thing done as mentioned in section 95AZF.

(2A) In making its determination, the Tribunal may disregard:

(a) any submissions in relation to the application made to it by the applicant, the Commonwealth, a State, a Territory or any other person that are received after the period specified under paragraph 95AY(b); and

(b) any information received under section 95AZC after the period specified in the relevant notice under that section; and

(c) any information received under subsection 95AZD(1) after the period specified in the relevant notice under that subsection.

(27) Schedule 1, item 27, page 29 (after line 24), after subsection 95AZL(2), insert:

(2A) The regulations may prescribe that the application form contain a requirement that the applicant give an undertaking under section 87B that the applicant will not make the acquisition while the application is being considered by the Tribunal.

(28) Schedule 1, item 27, page 30 (lines 12 to 19), omit subsection 95AZL(6), substitute:

Tribunal must make a determination on the application

(6) The Tribunal must make a determination in writing:

(a) varying the authorisation; or

(b) refusing to vary the authorisation.

The Tribunal must notify the applicant in writing of its determination and give written reasons for it.

(6A) In making its determination, the Tribunal must take into account:

(a) any submissions received within the period specified under subsection (5); and

(b) any information received under section 95AZC within the period specified in the relevant notice under that section (as that section applies because of subsection (13) of this section); and

(c) any information received under subsection 95AZD(1) within the period specified in the relevant notice under that section (as that section applies because of subsection (13) of this section); and

(d) any information obtained from consultations under subsection 95AZD(2) (as that subsection applies because of subsection (13) of this section); and

(e) the report given to it under section 95AZEA (as that section applies because of subsection (13) of this section); and

(f) any thing done as mentioned in section 95AZF (as that section applies because of subsection (13) of this section).

(6B) In making its determination, the Tribunal may disregard:

(a) any submissions received after the period specified under subsection (5); and
Tribunal must make a determination

(8) The Tribunal must make a determination in writing:

(a) revoking the authorisation, or revoking the authorisation and substituting a new authorisation; or

(b) refusing to revoke the authorisation.

The Tribunal must notify, in writing, the person to whom the authorisation was granted of its determination and give written reasons for it.

(8A) In making its determination, the Tribunal must take into account:

(a) any submissions invited under subsection (5) or (7) that are received within the period specified under that subsection; and

(b) any information received under section 95AZC within the period specified in the relevant notice under that section (as that section applies because of subsection (15) of this section); and

(c) any information received under subsection 95AZD(1) within the period specified in the relevant notice under that subsection (as that subsection applies because of subsection (15) of this section); and

(d) any information obtained from consultations under subsection 95AZD(2) (as that subsection applies because of subsection (15) of this section); and

(e) the report given to it under section 95AZEA (as that section applies because of subsection (15) of this section); and

(f) any thing done as mentioned in section 95AZFA (as that section applies because of subsection (15) of this section).

(8B) In making its determination, the Tribunal may disregard:

(a) any submissions invited under subsection (5) or (7) that are received
(b) any information received under section 95AZC after the period specified in the relevant notice under that section (as that section applies because of subsection (15) of this section); and

(c) any information received under subsection 95AZD(1) after the period specified in the relevant notice under that subsection (as that subsection applies because of subsection (15) of this section).

(36) Schedule 1, item 27, page 35 (line 10), omit paragraph 95AZM(15)(a).

(37) Schedule 1, item 27, page 35 (line 13), omit “consult others”, substitute “seek further information and consult others etc.”.

(38) Schedule 1, item 27, page 35 (after line 13), after paragraph 95AZM(15)(c), insert:

(a) section 95AZEA (Tribunal must require Commission to give report);

(39) Schedule 1, item 27, page 35 (after line 14), at the end of subsection 95AZM(15), add:

; (e) section 95AZFA (Commission may make enquiries).

(40) Schedule 1, item 27, page 35 (after line 14), at the end of section 95AZM, add:

Substituted authorisations

(16) The following sections apply in relation to an authorisation substituted under this section in the same way as they apply in relation to an authorisation granted under section 95AZG:

(a) section 95AZI (Authorisation subject to conditions);

(b) section 95AZK (When authorisation is in force).

(41) Schedule 1, item 33, page 36 (lines 12 to 15), omit the item, substitute:

33 Before section 103

Insert:

102A Definition

In this Part:
bunal all the information that the Commission took into account in connection with the making of the determination to which the review relates.

(1A) The Commission must identify which of that information (if any) the Commission excluded from the merger clearance register under subsection 95AI(3), (4) or (7).

(46) Schedule 1, item 36, page 38 (after line 12), after the definition of *business day* in subsection 113(2), insert:

*merger clearance register* means the register kept under section 95AH.

(47) Schedule 1, item 36, page 38 (lines 18 to 21), omit subsection 114(2), substitute:

(2) The Tribunal may disclose information identified under subsection 113(1A) to such persons and on such terms as it considers reasonable and appropriate for the purposes of clarifying the information.

(48) Schedule 1, item 36, page 39 (after line 7), at the end of section 116, add:

; and (d) any information or report given to the Tribunal under section 95AH.

(49) Schedule 1, item 36, page 39 (after line 22), after subsection 118(3), insert:

(3A) If the Tribunal has not made its decision on the review within the period applicable under subsection (1) or (2), the Tribunal is taken to have made a determination affirming the Commission’s determination.

(50) Schedule 3, item 1, page 47 (lines 5 and 6), omit the item, substitute:

1 **Subsection 8A(6)**

After “or (3A)”, insert “or 93AC(1) or (2)”.

(51) Schedule 3, item 11, page 56 (lines 23 and 24), omit the item, substitute:

11 **Subsection 93A(1)**

After “or (3A)”, insert “or 93AC(1) or (2)”.

(52) Schedule 3, item 12, page 56 (lines 26 and 27), omit the item, substitute:

12 **Subsections 93A(3), (4) and (10A)**

After “or (3A)”, insert “or 93AC(1) or (2)”.

(53) Schedule 3, item 19, page 57 (lines 13 to 16), omit the item and the note, substitute:

19 **Section 101A**

After “or (3A)”, insert “or 93AC(1) or (2)”.

Note: The heading to section 101A is altered by inserting “or 93AC(1) or (2)” after “or (3A)”.

(54) Schedule 3, item 21, page 58 (lines 33 and 34), omit the item, substitute:

21 **Subsection 109(1A)**

After “or (3A)”, insert “or 93AC(1) or (2)”.

(55) Schedule 3, item 24, page 59 (lines 5 and 6), omit the item, substitute:

24 **Paragraph 151AY(2)(c)**

After “or (3A)”, insert “or 93AC(1) or (2)”.

(56) Schedule 3, item 25, page 59 (lines 7 and 8), omit the item, substitute:

25 **Subsection 155(1)**

After “or (3A)”, insert “or 93AC(1) or (2)”.

(57) Schedule 8, item 5, page 95 (lines 11 to 13), omit the item, substitute:

5 **Subsection 155(1)**

After “under subsection”, insert “91B(4), 91C(4),”.

(58) Schedule 8, page 95 (before line 14), before item 6, insert:

5A **Subsection 155(1)**

Before “, a member of the Commission may”, insert “or 95AS(7) or the making of an application under subsection 95AZM(6)”.

**Senator ABETZ** (Tasmania—Minister for Fisheries, Forestry and Conservation) (5.25 pm)—I move:

That the committee does not insist on its amendment No. (1), to which the House of Representatives has disagreed, and agrees to the further amendments made by the House.

**Senator CONROY** (Victoria) (5.25 pm)—The principal change in the government’s amendments is to ensure that the commission must give a report to the tribunal.
in authorisation matters. This is a concession to Labor’s calls for the government to stop sidelining the ACCC in the merger process. The government plan is to make the tribunal the decision maker, but Labor believes the ACCC, the regulator, should be defended. The ACCC should be the decision body. The change is an improvement but not enough to gain Labor’s support. We want the ACCC to be the decision maker.

The government made its new amendments available at 5.30 last night. There has not been time for consultation, and Labor argues that House procedures were breached in moving this amendment this morning. Senator Fielding has caved in yet again. I can probably only say on this matter, yet again, that I concur with what my colleague Senator Murphy said in the other place. But having said that—

Senator Abetz—Senator Murphy in the other place?

Senator CONROY—Thank you, Senator Abetz—Mr Murphy in the other place. We know you are always here to help, just like with the Tasmanian opposition. As I was saying, Senator Fielding has caved in. He has put small business in a very difficult position. Yet again we have vague promises about reforms to section 46. Let me give you a track record on this government’s vague promises. I would hope even at this late stage, Senator Boswell, you would understand the importance of this. Just because big business leaned on the small business organisations that had previously opposed this, and in some cases quite simply brutalised them and did them over—

Senator Abetz—Get the conspiracy going!

Senator CONROY—No, this is all on the record. Let’s be clear. Those who know something about this debate, Senator Abetz, unlike you, know exactly what has gone on with the small business organisations that are now signed up to this deal. But small businesses themselves will not welcome this cave-in.

Senator Boswell—Well, they have.

Senator CONROY—No, the organisations have had the fix put in, Senator Boswell. You know these people; you should know better. You are going to feel as bad about this as you felt the last time you voted with the government in an important vote, because the small business community have been sold out by their organisations. They have been bullied into this.

The TEMPORARY CHAIRMAN (Senator Moore)—Senator Conroy, please address your comments through the chair.

Senator CONROY—Thank you for that. I accept your admonishment, Madam Temporary Chairman. This is a very important issue—the small business organisations have been bullied and had the fix put in. Through you, Madam Temporary Chairman, Senator Boswell should understand that and not just believe these dodgy press releases.

That is what happens when it comes to this government making promises, like the promise in the cross-media laws that you would get some local content after a 12-month review. The radio networks are already telling anybody and everybody that that local content is never going to happen. The fix is in from the government—from the Liberals and the minister. These local content rules are going to get butchered. So, when the government comes to you and says, ‘We promise to fix section 46 later,’ have the gumption to stand up and make them move the amendments at the same time.

The Labor Party still has a letter signed by Mr Peter Costello, Treasurer of this country, on behalf of the government about the alienation of personal income. We have a signed
letter; you have a vague promise. And let me tell you, when it came to delivering, we voted for the government’s package on the basis that we would get this commitment from the Treasurer first—a written letter. Senator Joyce understands this concept. It is a written letter from the Treasurer which was ripped up, with the Treasurer saying: ‘Sorry, guys. It’s too hard. We’re not doing it.’

Senator Bartlett—We’ve had commitments in the chamber.

Senator CONROY—We have had commitments in the chamber. That is exactly right, Senator Bartlett. So, if you are going to do deals like this, at least do a good enough deal to get them to move the amendments up-front, because you are about to be had again, just like they had you early last week. They are going to have you again.

The proposed section 46 changes are an emaciated version of the Senate committee’s recommendations. In the case of the recoupment of losses from predatory pricing, it might actually be negative. Only Labor—and, to give him his due, Senator Barnaby Joyce—are the defenders of competition policy. Senator Fielding has caved in, and Mr Costello has proven that he is only interested in pandering to sectional interests rather than ensuring productivity gains will be generated from a strong competition environment. So you have a choice here today. It is not too late, Senator Boswell—through you, Madam Temporary Chair—to make a difference on this bill. It is not too late.

Senator BOSWELL (Queensland—Leader of The Nationals in the Senate) (5.31 pm)—That was a very short speech. In matters relating to the Trade Practices Act, which sets the rules and the framework for the way all businesses operate in Australia, The Nationals see our job as taking on the viewpoint and issues of the small business and farming sectors and working to ensure that they achieve their outcomes in addition to the outcomes demanded by big business. In this case, I have worked closely with both big and small business interests to get to a point today where we have across-the-board support for the bill before us and a commitment from the government to work towards further trade practices reform. And I make the point that this bill has absolutely nothing whatsoever to do with section 46. We have reached the point where we are all travelling in the one direction.

I have noted over my time in the Senate that big business trade outcomes are more readily achieved compared to those of small business. Big business is well resourced, well connected and staunchly united. Small businesses in Australia are largely sectional and different. Industries are often headed in different directions due to the healthy diversity that is a character of that sector. One issue that I have found unites small business is the need for access to a new collective bargaining authorisation regime. While there is currently a system in place under the TPA to enable collective bargaining for smaller businesses through an authorisation from the ACCC, small businesses wanted the coalition government to make it easier, faster, more definite and less expensive, and that is what this bill will do. In the past, small business based industries like the dairy industry have had to jump significant bureaucratic and financial hurdles. They actually got an authorisation at one period, but then one of the dairy companies appealed against it and they went around and around the legal mulberry bush. It cost them thousands of dollars to access a collective bargaining authorisation.

In the late nineties, I was part of a retail inquiry which initially recognised that the market between big and small operators was becoming increasingly tilted towards big business and they were dominating the mar-
ket and that there was a need for collective bargaining to be made more accessible for small business and farmers prior to the 2001 election. The Nationals’ then leader John Anderson took the issue up and said in his policy speech that this process needed to be fixed. This led to the Dawson review, and Dawson’s finding led down a winding path to this legislation that we have before us today that will give small business better access to collective bargaining, with set time lines and boycott provisions to give collectively negotiated business deals some teeth.

As part of the initial debate on the Dawson bill, I worked with the Treasurer to maintain the per se prohibition on third-line forcing. This was a vital amendment for small business. Third-line forcing is selling to a buyer only on the condition that goods or services are bought from a third party. If the third-line forcing rules in section 47 were weakened, as Dawson recommended, we may have been headed toward a situation where a given pharmacy company might only sell a pharmacist a medication product at a lower rate if the pharmacist bought his toothbrushes from a nominated third-party supplier or where a car dealer would only sell you a business vehicle at a discount if you got it serviced by his chosen mechanical chain. The Treasurer looked at this issue and decided that we would not risk a return to the outdated practices eliminated from our business sector in Australia years ago.

I have spoken previously on this bill and on the importance of collective bargaining to small businesses throughout Australia, including pharmacists, bottle shop owners and farmers. I know in Victoria the grape growers are desperate for these measures to be passed, with their crop due to be picked and negotiations needing to take place on price and quantities. All the small business groups want this collective bargaining. I do not intend to take up the Senate’s time by again going into great detail on the new collective bargaining regime. It is clear that The Nationals support the new system. It is our reform that we have worked hard to put in place over a period of close to 10 years. It is an essential reform and one that I am pleased to see come into being via the passage of this bill.

However, I do wish to speak on some of the other issues associated with the bill. Any change to trade practices legislation brings with it a risk of upsetting a very fine balance, and it must be acknowledged that this bill has proven very difficult to balance between the interests of big and small business. I have always described my job in developing trade practices legislation as tilting the seesaw back toward small business, and a lot of effort has had to go into this.

Senators would be aware that much negotiation has taken place with big business on this bill. The big end of town wanted a more transparent process for merger authorisation and a timely, optional, formal process for merger clearances by the ACCC, with appeal to the tribunal. Many, including myself, expressed concern that the small business voice could be undermined or subverted by the changes which would enable final decisions on merger authorisations and formal clearances to be taken by the Australian Competition Tribunal without the full consideration and input of the ACCC. I am pleased to be able to assure small business throughout Australia that this new system is likely to improve, or certainly not disadvantage, their opportunity to have their voice and cases heard throughout the merger process, through the operations of the ACCC.

I assisted the Treasurer, and he has been back and consulted small business and has put into place some substantial safeguards. The major safeguard that we negotiated is making the ACCC a full player in the Austra-
lian Competition Tribunal merger process. Therefore, the ACCC has power in the tribunal to submit and explain its own report and support material on the merits of a merger. It will be able to call and cross-examine witnesses in the tribunal, and that material will have to be taken into consideration by the tribunal. Further, if the tribunal approves a merger with specified conditions or undertakings, the conditions will then be policed by the ACCC. The ACCC will be able to act with and alongside the tribunal process, giving small business a real opportunity to get their case heard through this new forum. It will make it, I suppose, more tidy that the ACCC will have a real power tribunal when the tribunal considers mergers. This is a great benefit negotiated by The Nationals on behalf of small business.

Concern has also been raised regarding a 40-business-day time limit that has been placed on the ACCC under the new formal process to decide on a merger clearance application. I know this concerns my colleague Senator Joyce. Under the new formal system, if a decision on a merger is not made by the ACCC within 40 working days, the application goes straight to the tribunal for a decision. The fear was that a virtually blank application with no supporting documentation could sit in the ACCC for the 40 days and that the case could effectively go straight to the Competition Tribunal. It was seen in small business circles as another way of subverting the ACCC. On a study of the legislation, I know and I am assured that the new system will ensure that documentation and information not submitted to the ACCC within a reasonable period for consideration in the 40 days will also not be eligible for introduction into the tribunal in an appeal on the ACCC’s decision. That means that, if a merger proponent wants to get their merger through, it is in their best interests to provide all their documentation to the ACCC at the outset so that it can be used if the merger case goes before the tribunal on appeal. In other words, unless that evidence goes before the ACCC, it cannot be used in the tribunal.

We have essentially considered this bill before. However, these safeguards are the differences that have brought it back to the Senate with the support of the major small business groups: NARGA, the Fair Trading Coalition, COSBOA and the National Farmers Federation. I do take issue with the Deputy Leader of the Opposition in the Senate when he accuses those people of folding over. He is suggesting that the National Farmers Federation, NARGA, COSBOA and the Fair Trading Coalition do not have any backbone and that everyone can be bullied and beaten into submission.

Senator Conroy—Yeah, look at you.
Senator BOSWELL—No, do not look at me on this one. I am very firm on this one. I believe this is a good outcome.
Senator Brandis—Hear, hear! It is a very good outcome, Senator Boswell.
Senator BOSWELL—It is a very good outcome, and I have had a fair bit to—
Senator Conroy interjecting—
Senator BOSWELL—No, Senator Brandis has not talked to me about this, as a matter of fact. I have done this through other people.

The Fair Trading Coalition represents around 30 small business organisations. Their convener, Michael Delaney, who is also the head of the Motor Trader Association of Australia, said in a recent letter to the Prime Minister that he was:

... pleased to advise that the Fair Trading Coalition and MTAA support the proposals outlined in the draft statement to be issued by the Treasurer and the Minister for Small Business and that we look forward to the foreshadowed consultations by the government with small business organisations on the higher collective bargaining thresh-
olds and the terms of the government’s final propos- 
sals in relation to Trade Practices Legislation Amendment Bill (No. 2) 2006.
I am committed to seeing that happens now and, if it does not happen, I am in big trouble. There have been commitments given to me which I am confident will be enacted in legislation. I assure Mr Delaney that I will be working closely with him and his fellow small business representatives to make sure the thresholds for his business members are set at the required level in regulation after the passage of this bill.

Senator Conroy interjecting—

Senator BOSWELL—NARGA, the National Association of Retail Grocers of Australia expressed reservations about this bill in the previous debate, Senator Conroy, but they are now behind it too. Their release this week states:

NARGA and other small business organisations have agreed that no benefit would derive from further blocking of the Trade Practices Legislation Amendment Bill.

It went on to state:

Now that the major small business organisations have agreed on a way forward, we are hopeful that the Dawson bill will receive support in the Senate.

The NFF have also consistently expressed their support for the changes that we are today proposing go ahead. That includes the dairy industry and the fruit and vegetable industry. They all want this bill to be passed.

COSBOA, another major peak body of small businesses, said yesterday in their release that they welcomed the Treasurer’s changes to include the ACCC in the proposed new formal process for the merger and acquisition approvals. They said:

COSBOA looks forward to the bill being passed as soon as possible to ensure the benefits of the collective bargaining notification process can be used and further negotiations on the second bill can begin.

I share COSBOA’s zeal for negotiations on the second bill, and I can assure people that that is going to happen. That can go ahead when this bill is passed. I will be working closely with all the small business organisations on section 46. Senator Brandis and I both agree that section 46 needs tightening. It is very important that it is tidied up.

This bill clearly has the support of small business—and that of all coalition members in the Senate, I believe, though maybe Senator Joyce has other ideas. Under this bill the mergers test in section 50 remains safe. The principle of law remains that a merger clearance should not be given if the merger is likely to lessen competition in a substantial market. Former Labor Senator Schacht and I managed to put this strong merger test in place to replace the old monopoly test. It is one of my proudest achievements in the Senate, and I am pleased that the test will remain secure under the coalition government.

I want to see this bill pass. Its passage will enable collective bargaining provisions to come into play and will clear the air so that I, along with my Nationals colleagues and business representatives from all sectors, can move on and return our focus to the really big issue, which is the strengthening of section 46 of the Trade Practices Act, which deals with the misuse of market power, predatory pricing and other unfair practices, and section 51, on unconscionable conduct. I seek leave to table the rest of my speech.

(Time expired)

Leave not granted.

Senator BARTLETT (Queensland) (5.47 pm)—Firstly, I want to go to the process here. I cannot speak for the opposition, but certainly the Democrats were given no notice that the Trade Practices Legislation Amendment Bill (No. 1) 2005 was going to be
brought on for immediate debate. That in itself is problematic. As I mentioned earlier today in relation to another matter, the Senate is a law-making body and the laws we make affect Australians directly and often for very long periods of time. The absence of notice and the absence of an opportunity to scrutinise what is actually put into law are big problems. It is not just that something might pass that people do not approve of in a policy sense; history has shown that, when deals are stitched together and legislation is rushed through very quickly before people change their minds, that can lead to bad drafting.

We have just had a report from a non-partisan Scrutiny of Bills Committee highlighting extremely bad drafting in legislation the government had months to work on. Yet here is something that is cobbled together and rushed through as part of a quickly stitched up deal. We are supposed to be confident that it is actually well drafted and that all the implications have been fully thought through.

From a purely process point of view, the arrangements are seriously problematic. That is why the Democrats continue to make this point. For the Democrats, a key part of our core value is, as our name implies, democracy. Making democracy work well is one of the jobs for the parliament. It is not just having an opportunity for senators to scrutinise amendments and proposed amendments. We might all like to think that we are the fount of all wisdom, but there are other people in the community who have expertise and knowledge. It is often very helpful for them to have the opportunity to properly scrutinise what is being done.

Those of us who have been around for any length of time know how these processes often work. You get people in and say, ‘Here is what we are going to do.’ You will get government ministers, bureaucrats or advisers explaining to people: ‘Here is what we are going to do. Here is how it is going to work.’ It all sounds great. In many cases, people who then sign up to those deals do not get to scrutinise the actual wording of the legislative changes—what the law will look like. There are many examples where the impact and the consequence of the actual wording are different from the promises.

Then there is the problem that Senator Conroy referred to. When the commitments relate not to promises that are actually put forward in legislation in black and white but to other promises about things that will happen down the track, the history of this government—and that of previous governments as well; this government is not the first government in history to break its promise on a matter—shows that even written commitments and promises from ministers saying that this is what will happen do not materialise. I can certainly say from the Democrats’ point of view that that has happened more than once in my period in this chamber: commitments given in the chamber—not just to the Democrats but to the Senate as a whole, and through the Senate to the Australian people—that certain things would happen have not materialised.

There is a very long list of flagrant breaches of promises where commitments are given as part of getting support for something being passed and, as soon as it is passed, all bets are off. There have been many examples of that, certainly in the life of this government. Anybody who does not acknowledge that and recognise that, and who is willing to enter into agreements on the basis of a promise, is being foolish.

Another point that needs to be emphasised is that it appears that this has been brought on and rushed through all of a sudden because of a change of view by Senator Field-
ing, the Family First senator. He is entitled to change his view; people can always change their views. Unfortunately, he is not here to explain what his change of position is and the reasons behind it. It would be desirable for him to do that. At first glance, the changes that have been made are not sufficient to satisfy the Democrats.

The Democrats supported the omission of one schedule in the bill. We also have significant problems with one other schedule in the bill, which for us goes to a core value and which I would have thought was a core value of the Liberal Party—that is, the question of choice. We have just had all this talk from Senator Boswell about the opportunity for small businesses to have collective bargaining. That is something the Democrats support, but the legislation contains a component that says, ‘Collective bargaining, except for anything involving trade unions,’ that the only people who cannot be involved in collective bargaining are unions. It is a blatant anti-union clause. It was not based on any recommendation or finding through any of the processes that led up to this legislation. It was simply the Treasurer, and more widely the government, taking the opportunity to stick one in the neck of the unions.

That in itself is offensive enough, but the fact is that it goes against stated principles of choice—and this is supposed to be all about choice—and against the people it is supposed to help. The whole principle of this component of the legislation is constrained by saying, ‘You can do this, except you can’t do it with unions.’ That is ridiculous and offensive.

There is no doubt that there are other aspects of this legislation which are desired by people in the small business community in general and which they would like to see go through. But there is one person responsible for those measures not going through more than a year ago, and that is Treasurer Costello. All these measures, apart from schedule 1, could have gone through 12 months ago. He is the one who has held them up. There were certainly other avenues for him, even if he did not want to accept and pass those parts that could have been passed straight up. There was certainly ample opportunity for him to consult with others and to ensure that all of these matters, including the section 46 matters, were advanced. Unfortunately, the way in which this Treasurer operates is extraordinarily inflexible. You need only talk to people in the business community, big business or small business, to know the low regard in which he is held, as much for his inflexible attitude as for any of his policy views. This legislation again reflects this very poor process.

I want to quickly make a point about the role of Senator Fielding. I do not know his reason for changing his position. I think he might have made some comments to the media, in which case he is also following the habit of members of this government these days, which is not to bother talking to the parliament about anything and instead holding media conferences.

Senator Abetz—The Democrats never do that, do they, Andrew! Give me a break!

Senator BARTLETT—We hear repeated assertions by Senator Fielding that Family First does not do deals.

Senator Milne—What a joke!

Senator Ferris—Are you reflecting on another senator?

The TEMPORARY CHAIRMAN (Senator Moore)—Senator Bartlett, ignore the interjections.

Senator BARTLETT—I think they are very informative interjections, frankly, Madam Temporary Chairman.
The TEMPORARY CHAIRMAN—Pick them up if you choose to.

Senator BARTLETT—It is always useful to get those sorts of things on the record. The Democrats have quite openly stated when we have done deals. Indeed, if the minister would like I could elaborate at length about some of the deals the Democrats have done over time, including some very good deals when I was leader. The point is that we were open about the deals we made, and we justified them and coped the flak or the praise as we went along. There is nothing wrong with doing deals if they are open deals. The problem is when they are secret deals, and the bigger problem is when people deny that they are doing them and continue to assert plaintively and with great innocence that Family First does not do deals.

Frankly, if you have an opportunity as a representative of your constituency to improve legislation for your constituents in an area of importance to you, I think it is pretty irresponsible not to seek to use opportunities to do that, as long as it is not dishonest or secretive and does not involve a compromise of your own principles and values. Certainly you want to do smart deals. Senator Conroy perhaps confessed—at least I think it was a confession—that Labor had made a mistake in doing a deal on business tax reform when supporting the government’s business tax changes.

Senator Conroy—For the record, your party spokesman supported it as well.

Senator BARTLETT—At that time, I think Simon Crean was Leader of the Opposition, Labor did a deal in exchange for a promise on other reforms, which never happened. I thought it was an appalling deal, and the Democrats opposed it. I think it was incredibly inequitable. We can all point to others. I did not support an agreement that my own party made on one particular issue back in 1999. You put forward your position and you make your arguments on the basis of the facts, out in the open. You do not deny the fact that it is happening.

The most extraordinary thing is how Family First can keep getting away with saying, ‘Family First doesn’t do deals,’ with big, unblinking eyes. We saw it repeated again, and greatly insisted upon, on Crikey this week. The only reason Senator Fielding is a senator is that Family First did a deal with the Labor Party. It may or may not have been a good deal, but they did a deal. To keep saying, ‘We don’t do deals,’ and the only reason you are in the Senate is because of a deal, I find extraordinary. Those preferences did not come by accident.

Just to be completely open, the Democrats did a deal when I was leader. I did a deal with Family First, so I do not know which Family First party Senator Fielding represents which does not do deals, but it was a Family First party that I did a deal with on preferences—a deal that, with the benefit of hindsight, I think was a great mistake. I completely underestimated what Family First were about, and they have proven that, sadly, in their performance in this chamber. Frankly, we got greater openness and consistency from former Senator Harris, the One Nation senator. I am certainly not saying that I agreed with all his policy positions, but at least he was intellectually consistent with regard to his position and at least he was open about what he was doing. I thought he made some terrible agreements—one of which was supporting dramatic increases in university fees. I think the agreement that he and all of the then crossbenchers reached on allowing university fees to go up was a terrible and very poor deal. But at least they were open about what they were doing.

To continue to insist that you do not do deals when your whole presence here is as a
result of one is extraordinary. To reaffirm, whilst I very much regret it now and think it was an incorrect decision, I fully admit I was part of a deal done by us. We all do deals. The Democrats and Greens do deals all the time on preferences; the Liberal Party does deals with other parties, whether they are on legislation or on preferences; the Labor Party does it. The key issue is that the deals are open, not that you deny that they are being made, and that is really the problem here.

Frankly, I think it would be much better if we just had some transparency about what is going on rather than this continual denial and secrecy. Secrecy, deceit, dishonesty and the breaching of promises are all the things that bring politics into discredit. Lack of due process is another. They are all things that I think are becoming more and more prevalent. They are certainly not unique to this government or the federal parliament. But the federal parliament is where we are now, this government is the one in power now and the actions before us are the ones that we describe. I am certainly not going to shy away from describing them as I see them.

I think there are significant problems with the process, regardless of some of the policy issues before us. I will say again that we could have had the vast majority of the gains wanted by the business community, large and small, 12 months ago if it was not for the Treasurer and his intransigence. I do not see getting them 12 months later than necessary via shabby processes as a particularly good thing.

Finally, I will just repeat the biggest problem that the Democrats have with this particular bill, which this message refers to. It is actually not schedule 1—although we certainly were not 100 per cent thrilled with that. I think from memory it was schedule 2—it was a year ago now—which perverted the government’s own so-called principles with regard to choice on these matters. I do think it should be recognised that if this motion before us is agreed to that very unconscionable component of the legislation will pass into law as well.

Senator Murray (Western Australia) (6.01 pm) Well, numbers is numbers! In a place like a house of parliament you respect the numbers. The government has the numbers and that is it. What we are left with, of course, is two things: firstly, explaining how we feel about the process and, secondly, explaining how we feel about the policy. And the process is an issue. There is an old-fashioned expression: be careful of whom you kick on your way up in case you pass them on the way down. I would suggest to you that rushing contentious legislation like this through with insufficient warning to the major participants is not just bad process; it is a bad look. It contributes, eventually, to a payback mentality.

I would be very surprised if, when the government does eventually lose office—whether it is next time or the time after that—there was not a bit of payback for bad process. I will not be here, but I know enough about the Labor Party to know that they have long memories. You are very unwise to do this sort of thing, to bring something on in a rush with insufficient warning. Senator Bartlett has expressed his lack of appreciation with respect to that quite clearly, and I concur.

Moving on to the next issue, which is of numbers, the government senators—except for the very brave amongst them—will, by and large, follow their leader. This is legislation which has been ticked off by the cabinet and they will support it as such—sometimes with a full knowledge; sometimes with very little knowledge. The people who have to justify their vote outside of the government—because it is a job of government
members to back government legislation—are those who give their vote to the govern-
ment.

As some of the participants in this debate will know, many are the times I have had to stand and justify supporting the government of the day, or indeed supporting the opposition of the day, with respect to particular amendments or bills. You need to be very clear as to your principles and why you are doing things. Those who have been in the balance of power position before include Senator Colston and Senator Harradine, Senator Harradine, by himself at times, and two Greens—believe it or not. Senator Bob Brown and Senator Margetts had the balance of power once on the constitutional convention bill. Incidentally, I am talking about in my time, not before then. And, of course, the Democrats have. You have to be very clear on what principles, and on what basis, you are supporting one side or the other.

The difficulty for Senator Fielding is that his policy positions, the principles under which he has based his decisions in various key areas, probably have not been expressed or outlined as fully as they might be. If I were to give him some advice from the hard rock of experience it would be that he is very clear as to exactly why he has made a decision to support the government. Having made those remarks, of course he is perfectly entitled to support the government. It is an entitlement of every senator in this place, to vote as they see fit. I just wish that more senators, both from the opposition and the government, had the courage and gumption of somebody like Senator Joyce, who does indeed vote on conscience. I should name in those brave ranks Senator Humphries, of course, who recently voted on conscience. I think it is a good thing.

Senator Boswell—Wouldn’t say you did it too often.

Senator MURRAY—That is true! Having got that off my shoulder, I have to come back to the policy. By and large, I never thought that much of the Dawson report, frankly. I was not that impressed with it as a great work of policy and I did not think its outcomes mattered too much—and, that being so, you could probably happily support most of it. But there are two issues of contention. One is easiest to identify in principles terms, and I would remind the chamber that I am a very, very strong supporter of choice. In the days when it was not too popular to do it in this chamber I vigorously supported the right to join or not to join a union.

Senator Abetz—Except a student union!

Senator MURRAY—With respect to students, by the way—I take the interjection—I do not regard them as unions. And I speak to you as probably one of the people in this place who has held one of the highest ranks in student bodies because, in my day, I was vice-president of the National Union of South African Students—which was not a very popular post! People there did not last too long. They tended to get—

Senator Barnett—Shot!

Senator MURRAY—They tended to be dealt with severely by the government of the day, shall we put it that way—more like a soldier of fortune, I think. Let us not get distracted by that. I am a strong supporter of choice. I do believe that there are unions who have the expertise to be of great assistance to small business. I see absolutely no reason why a small shopkeeper would not want to use the shoppies in a negotiation. I cannot understand, because it is not part of the Dawson package, why that anti-union clause is in the bill. I am strongly opposed to that on a principles ground and I think it offends the views that I have heard
the Liberal Party express time and again about choice. By the way, I strongly supported choice in superannuation as well, which I am glad has happened. So we can put that aside as one of the two major elements.

The other major element is, of course, schedule 1. Essentially I have a view which I hope, because this bill is going to pass, will be found to be wrong. I hope that the Dawson bill changes will in fact result in more mergers being rejected rather than fewer. I have a view of a highly dynamic and very effective Australian capital market. As members in the chamber know, I have strongly participated in taxation debates. I do not think it is commonly understood how important the tax laws consolidation measures were in freeing up artificial structures in the tax law, and I strongly supported the Corporations Law and the creation of the highly dynamic market, particularly with the introduction of the informal appraisal system based on the British precedent. So Corporations Law in combination with tax law and the modern economy has produced an extremely dynamic mergers and acquisitions market, which is at its most dynamic ever. And the level of foreign involvement in mergers and acquisitions is also at an extremely high level, which indicates capital fluidity and diversity and access to capital in the market, which is highly desirable. So I see no impediments in the way in which mergers and acquisitions are operating.

In fact, my criticism would be that not enough are rejected—but, nevertheless, that is where we are. I think the figures are around 98 per cent of all mergers and acquisitions are passed and something like two per cent are refused. That hardly seems dramatic or onerous. If it works out that, as a result of this legislation, instead of two per cent being rejected, 0.1 per cent are rejected, then I will have been proven to be right and the new process will be able to be condemned. If, on the other hand, the new process results in more being rejected, then I would be prepared to admit I was wrong.

On another matter I am concerned about, I have always regarded the ACCC as, broadly speaking—and a distinguished barrister like Senator Brandis would recognise the meaning of this word—an ‘inquisitorial’ regulator. That is, it has a high level of discretion, it examines issues and it is able to move flexibly to resolve matters. I think that is most desirable in mergers and acquisitions activity. I am alert to the dangers of a more adversarial and more traditional yes/no kind of approach with the tribunal. I am not overly impressed with the fact that mechanisms have been introduced for the ACCC to interact with the tribunal; I cannot see that that contributes vastly. It is, of course, good process. But the fact is the ACCC becomes a supplicant and not a decision maker. So the question of the tribunal’s lift in status and power in decision making and the ACCC’s reduction is a difference of opinion. I recognise that others do not hold that opinion, but I do. The problem with these changes, I think, is that they will allow for an even greater acceleration of big corporate agglomerations in this country. I have always thought that is bad for competition, not good for competition.

That leads me to the last parcel of opinion I have. As participants in these debates know, I have again and again stressed our fundamental weakness in terms of our trade practices law, and that is that we do not have adequate divestiture powers. I think the flip side of a merger and acquisition power is a very strong divestiture power, and I am somewhat of an admirer of the American anti-trust divestiture tradition. That is not supported by the government. It is now supported by the Labor Party, as expressed in the Senate’s March 2004 report. Of more
immediate concern within the range of Australian experience is the ability to strengthen section 46; and section 51 can be strengthened and probably a few others as well. That is with regard to ensuring that anti-competitive behaviour can be properly disciplined and policed.

I would have been far happier if this bill had arrived in conjunction with that particular section of legislation. The Senate report in March 2004 was supported by the government in quite a number of recommendations and further amplified by Senator Brandis, who sat on that committee. And then the government reacted favourably to all those Brandis recommendations. Two years later they are still trying to spin me a story and spin the world a story that they need to consult more with small business on this matter. I do not accept that spin, I am afraid.

Senator Boswell—It’ll happen next week.

Senator Murray—Well, if it happens next week I will be glad to come into this chamber and say I was wrong.

Senator Abetz—We’re not sitting next week.

Senator Murray—I will, but as we are not sitting next week I do not think I will have to. Thank you, Minister.

Senator Abetz—Yes, very helpful!

Senator Murray—We slipped out of that one.

Senator Brandis—Next sitting week, then.

Senator Murray—I would be happy to; I would honestly be very happy to say that if it comes in the next sitting week, because that would please me enormously. I do not think you should engage in what we have been engaging in—the Telstra sale, the media law changes and various other changes in the corporate concentration world—and not simultaneously be strengthening the regulators, particularly the ACCC.

So, to sum up: this should not have been brought on in a rush. I have a fundamental policy problem with a couple of areas of the bill. The new bill is an improvement on the old one; my congratulations. And it is without the accompanying strengthening of the Trade Practices Act bill. Those are my comments.

Senator Brandis (Queensland) (6.16 pm)—At long last it seems that the parliament will pass the Trade Practices Legislation Amendment Bill (No. 1) 2005, what has been commonly called the Dawson bill. This has been a long time coming. Small business has been waiting for these reforms for a very long time—a year longer than it needed to have waited for them. But at last it seems it will get them.

As you know, Mr Temporary Chair Watson, and as other senators know, there are two big issues for small business in relation to the reform of the Trade Practices Act: collective bargaining and reform of section 46. Those are the two issues which concern it most. This bill, the Dawson bill, delivers on one of those two big issues: collective bargaining. And contrary to the rather wild and as usual false assertions we heard from Senator Conroy about a fix, the small business community in Australia, speaking through its representatives and its peak organisations, is delighted that at last this Senate, it seems—subject to the vote that will occur later—will deliver on this reform.

Let me correct incorrect statements that were made by those who have come before me in the debate. First let me deal with what Senator Murray said about process. There has been no irregularity of process in coming to this point. The Dawson committee delivered its report on a review of the competition provisions of the Trade Practices Act on 31
January 2003. That is three years and nine months ago. In the meantime, the government introduced the legislation giving effect to the Dawson recommendations, which were very much a package deal, last year—more than a year ago. They were amended in a manner inconsistent with the Dawson report in this place last year. Now the government, having pursued the matter with the various peak small business organisations, has made some amendments to schedule 1 of the bill, concerning the merger authorisation provisions, and it seems that we will now get the bill.

If the result is—as has been freely predicted by other senators—that Senator Fielding may have changed his position, that is a matter for him; I do not know. But the fact is that this has been before the parliament for more than a year. We are usually chastised by the other side that we rush these things through. This has nearly been a four-year process, which has been before the parliament for more than a year. If it passes tonight or tomorrow then that will be the fulfilment of a totally orthodox process in which the bill has been amended and improved in certain respects. There has been no abuse of process, Senator Murray—no procedural issue at all.

Might I also deal with what Senator Stephen Conroy had to say about section 46. Senator Stephen Conroy says that this bill is inadequate because it does not contain any proposal to amend section 46. It does not, and there is a reason for that. This is the bill to give effect to the Dawson report, and the Dawson report recommended that there should be no changes to section 46. Section 46 reform was never part of the Dawson package. But there is another bill being contemplated which does deal with the quite separate and discrete topic of section 46 and which will proceed after this bill is out of the way. So what Senator Conroy had to say about section 46 is completely wrong.

Once again, there is a reason why the Dawson report does not deal with section 46 of the Trade Practices Act. It is to do with the sequence of events. The Dawson report, as I said before, was tabled on 31 January 2003. Those of us who have followed the issue of section 46 of the Trade Practices Act know that the concern about the limits of the operation of that section came to a head with the decision of the High Court of Australia in the Boral case, and I myself jumped into the arena and began advocating for reform of section 46 of the Trade Practices Act directly as a result of what I thought was the judicial narrowing of its reach by the Boral case. But the High Court delivered its judgement in the Boral case on 7 February 2003—a week after the Dawson report had been delivered. If you look at chapter 3 of the Dawson report, which deals with reform of section 46, and in particular if you read the discussion of the judicial interpretation of section 46 at page 84 of the Dawson report, there is of course no mention of the Boral case—because it had not been decided. That is why the Dawson report does not deal with Boral, and that is why the Dawson bill does not deal with section 46—because the Dawson report was overtaken by events after the report was tabled.

What did happen after the Boral case was that the Senate Economics References Committee, as it was then called, had a public hearing in late 2003 dealing with the specific topic of the effectiveness of the Trade Practices Act in protecting small business. Senator Murray knows that; he was a member of and an active participant in the deliberations of that committee. As a result, the committee made 17 recommendations in its majority report—including, I might say, in recommendation 11, collective bargaining, which this bill this evening now delivers on.
The government senators on the committee—I was the deputy chair, so I was the senior government senator on the committee, I suppose—agreed, in whole or in part, with 10 of those 17 recommendations and did not agree with seven of the 17 recommendations. But, importantly, the government senators agreed with—and, if I may say so, led the discussion on—the key recommendations for reform of section 46. The Prime Minister was asked some questions in question time about the Senate committee’s recommendations, and he undertook, on behalf of the government, to examine very closely the government senators’ report. The government did that and announced its response. And the announced position of the government was that the government would accept all but one of the 10 recommendations which the government members of that committee had embraced—which, in my view, as the draftsman of the government senators’ report, were all of the important ones. The one point of difference was not, in my opinion, particularly significant or consequential.

We have been waiting to get the quite different topic of the Dawson bill out of the way before the section 46 bill is proceeded with. It has not been introduced into the parliament yet, as I understand. A process of consultation has been undertaken, as it ought to have been. But here it is: I have a draft of the bill, concerning which I was consulted. So there is no doubt that a section 46 bill is awaited and is in contemplation and will be proceeded with.

*Senator Murray interjecting—*

*Senator BRANDIS—So, Senator Murray, to the extent to which you say, ‘That’s just not going to happen,’ with all due respect to you, you are wrong. And I am sure Senator Murray will be delighted to see the section 46 reform which we have, from our different points of view, worked on through the Senate committee process come to fruition. It may not be what you wanted, Senator Murray; it may be closer to my model—I hope it is. But I hope that you will take some satisfaction from the fruition of that process.

Let me finish on this note. Let the Dawson bill now proceed. Let the amendments that the government has made to the authorisation of mergers provisions be passed this evening by the Senate. I think that the proposal to give the primacy to the Australian Competition Tribunal, rather than, in the first instance, the Australian Competition and Consumer Commission, is a good proposal. It is a good proposal because—and, Senator Murray, what you neglected to say in your contribution was that—the current arrangement, whereby a party can seek a clearance under section 88(9) of the Trade Practices Act from the ACCC, lacks transparency. It is an informal process. It lacks transparency. If a party is dissatisfied with that outcome, it can then make an application to the Australian Competition Tribunal.

How much better, and how much less wasteful, to have a transparent process, so that if there is to be a dispute about a merger authorisation it be before the Australian Competition Tribunal, where it would have ended up in a disputed case anyway. And how much better to have—as the amendments we have before us tonight propose—the ACCC as a full party before the Australian Competition Tribunal, able to make submissions, so that there can be a full, contested, transparent, inter partes hearing of a controversial merger proposal. That is a better way of going about it. It has the dual virtues of efficiency and transparency. And I would have thought, Senator Murray, particularly having regard to many things you have said in related contexts about transparency, that that would have been something you would have welcomed.
Be that as it may, those are the virtues of the reforms to the merger authorisation proposal. But that is not what small business is delighted about tonight. Small business is delighted that—after an unwanted delay as a result of a stunt we saw in this chamber last year—collective bargaining, No. 1 on their wish list, will be delivered. It will be delivered, in fidelity to the Dawson recommendations—consistent with your own recommendations in the Senate committee, Senator Murray, and something to which this government has been committed for a very long while.

Senator Joyce (Queensland) (6.29 pm)—We are discussing an amendment to schedule 1. The Dawson provisions to do with small business were passed one year ago. So to bring into the debate that this is about everything in Dawson is not correct. If they have been sat on for a year, the reason has nothing to do with this chamber. That is something entirely different. What we should be debating here is schedule 1, mergers and acquisitions power, because that is basically what we are dealing with. If you vote for this, you believe that the mergers and acquisitions power is correct; if you vote against it, you do not.

We have had a lot of people who have said that the amendment is a good amendment, a great amendment, a hard-fought-for amendment. You only have that amendment because a senator crossed the floor. That is the only reason that amendment came about, because it was not in the initial bill. Let us just look at some of the other things. Since that time, of course, NARGA has changed their position. They have also changed their board—Alan McKenzie and Frank Zumbo are now no longer there. Inordinate pressure has been coming in from all sorts of directions to get this.

There are a lot of other things that we have to look at. It has been clearly stated that the primacy of deliberations will now be held by the Australian Competition Tribunal. That has been said tonight. That is a clear statement that the ACCC’s position is being circumvented. We are now moving the powers to a judicial body that will basically come up with a yes or no answer. Before we had yes, no or maybe; now we have yes or no. You are right: they are only going to take the evidence in the so-called 40 days—40 days to deal with a merger! Imagine the ACCC trying to deal with a merger between PBL and News within 40 days. It is blatantly ridiculous. The only evidence they can take is the evidence that was presented, and of course the only evidence that is going to be presented is favourable evidence.

There are a whole range of things that have been suggested, because this goes hand in hand with the media issue. We have a raft of mergers and takeovers out there. This works hand in hand with that. We are at the same time promoting the idea that the ACCC, which has had 22 years of dealings with mergers and acquisitions, is now going to be circumvented as we move to a purely judicial form of Australian Competition Tribunal judgement made on section 50, which is a substantial lessening of competition. Let us say News decides to merge with PBL. They have to prove that if they raise prices they would lose some of their customers. Of course they could prove that. It is a very easy thing to prove. Once they do prove that, the merger is through. That is why this is so important, because it is a package deal.

I look forward to Family First explaining their logic over the last period of time as to why they believe they are not circumventing the process of democracy in this nation. I have heard from Family First that the diversity of ownership does not reflect diversity of opinion. Well, that is interesting. I have a
report from the Committee to Protect Journalists looking at the number of media outlets and how democracy is protected. Funnily enough, the fewer the media outlets, the worse democracy gets! At the top of the list is Burma, Turkmenistan, Equatorial Guinea, Libya and North Korea. The most democratic places are places such as the United States, France and Germany. These are the issues, because the diversity of ownership equals the support of democracy.

Some people have said, ‘Oh well, there is still an authorisation process.’ Yes, for one in 700. One in 700 of these mergers will end up in an authorisation process, where the Australian Competition Tribunal can take over undertakings. But that is not going to happen, because the vast majority are going straight through. They would not be promoting changes to mergers and acquisitions laws if they thought they were going to make them harder. This is to make them easier.

The former process of ACCC undertakings was maybe a clumsy instrument but a better instrument than no instrument at all. You need to have the ability to have that open-ended negotiation of merger issues, to be fair dinkum and have the dignity to show to the Australian people all the nuances and inflections in the merger. I would not care so much if they limited it and put a ceiling on it saying: ‘We can’t go on forever. You have to get to a point and stop.’ An amendment was moved in that regard, with an extra 80 days, giving you 120 days in all—four months. I think even four months is an expressly short period of time to try to deal with mergers like Toll, which we have had lately. We have Coles. It is about to be broken up and Woolworths will probably be in the market to pick some of it up. These are vitally important processes in our nation. If you believe that the nation is threatened with too much concentration then you have to have a mechanism to protect it. The vote that is coming up is not about the Dawson provision, because that vote has been had; this is a vote about an amendment of schedule 1. It is a clear statement by those who believe that schedule 1 is correct and those who do not. That is what it is about.

There are other things that came through. We have had statements that this actually increases the ACCC’s powers. But we can see that contradicted in some of the fine detail. The current provisions in the TPA provide the ACCC with the power to enter premises and inspect documents ‘without a warrant’. The bill will provide the ACCC with the ability to search premises and seize evidence ‘when backed by a warrant’. Even in those statements, things have changed. I take on board and I take on trust the section 46 provisions but, as Senator Brandis has said, that has got nothing to do with Dawson. They say these are following and we are to just take on trust the government’s promise that they will put those forward.

We have in front of us right now an absolute hotbed of mergers and acquisitions out there in the media market. The media is the protector of democracy. The diversity of the fourth estate directly relates to the protection of our democratic process. You cannot get a merger if it is not allowed, but what we are doing today goes hand in hand with what happened in the last major piece of legislation that went through here. It is saying, ‘Not only will we allow mergers; we are also going to take away the strong investigative powers that were formerly there.’ The law may be substantially the same, but the law is of no use to you when you do not have the time to fulfil it and follow it to the nth degree.

Over the last year amendments have been suggested; they were written. The moment the legislation failed in the first instance, amendments were suggested. The fact that
we have waited one year is not because people were obstinate or ridiculous. There was always an open communication with the amendments that were suggested, if they were rejected. It was all about trying to protect small business. The issue here is about trying to get a better deal for small business. For everyone who said that the ACCC are now a party to the Australian Competition Tribunal—although they do not get a vote; they get to turn up, ask questions, interrogate, but they do not put their position forward—

Senator Brandis interjecting—

Senator JOYCE—They certainly do that, Senator Brandis—their position can be ignored. For those who think that is a good outcome, there is only one reason that outcome came about. You cannot have it both ways; you cannot say what was proposed initially was right and the amendment is also right. If you believe the initial position is right then you should not support this amendment. Why would you? If you believe the initial position is right and I disagree with you fervently—you would knock this amendment out. But this is an instance of trying to invigorate in the Senate a proper sense of debate. If this proper sense of debate had been seen during the media debate, maybe we would have had a different result because the proof is in the pudding there today.

This step goes hand in hand with cross-media ownership and the new mergers and acquisitions powers. Hand in hand, the nation will walk down the path with these and we will see where we end up. We are going to have a new landscape in which you could have a private equity firm from the US controlling one of the major media houses, and another private equity firm from the US controlling another major media house. There is no register of interest in those private equity houses, so you do not know who is backing them; you do not know what their vested interests are. The world is awash with funds, but we have changed it so the main staple, the fourth estate that protects this democracy, is now going into an uncertain area. I hope it works out well, I really do. I do not want to be a Cassandra; I hope it works out well.

But if it does not, if we have got ourselves into a position where these have been foisted on us, you will not have the power in this chamber to be able to change it back. The power of an overcentralised media is immense. It is clearly defined as going hand in hand with democracy. This is why this is so important. It goes beyond small business. It goes beyond being partisan about an issue. It is about dealing with the environment Australia is in as of this morning. This morning every paper talked about a flurry of media mergers. It is this chamber that has delivered those, and you must accept responsibility for where it goes; you must acknowledge your role in that process.

With respect to all of the decisions and deliberations that made up your vote, you must wear that for the rest of your life. You cannot step away from it and give some paltry excuse as to why it may be so, because in the end you had the freedom of this nation to be able to vote as you wished to. The moment that freedom is taken away from the Senate, it works its way down and down and down until it starts taking away from the freedom of the nation itself. Your responsibilities to that freedom are far higher, I hope, than your responsibilities to any other body. I hope that, in good conscience, the decision you make in this chamber takes into account first and foremost our nation and then your state. In the discussions that will be had from now on, I hope you will be able to explain—on this mergers and acquisitions power and its relationship to the former media ownership power—how it is good for your nation and
your state, and give proper account of yourself to the Australian people in your explanation. That is important.

I will be moving an amendment to this to try to at least get an increase in the time limit for the ACCC. It is the most minor of amendments to give the ACCC more time. We brought this up with the ACCC; we talked about this during the cross-media ownership debate. The ACCC was held out as the arbiter and protector of media diversity over and over again, but what does the next piece of legislation do? It gets rid of the time frame in which the ACCC deals with that. The question was asked of the ACCC, ‘Isn’t there a piece of legislation out there that can circumvent your powers?’ The reply was, ‘That is a matter of policy,’ which is code for, ‘You are dead right.’ That is the issue we are dealing with here today.

My final point is: you are about to vote on mergers and acquisitions powers, not the Dawson committee. If someone has endowed you with a sense of connection or threat or purpose that it is connected to something else—(Time expired)

Senator BARNETT (Tasmania) (6.44 pm)—I stand to support the Trade Practices Legislation Amendment Bill (No. 1) 2005 and to make it very clear that this bill will provide a net benefit for small business.

Senator Conroy—Rubbish. It will not.

Senator BARNETT—it will. There are benefits specifically in regard to collective bargaining and to increasing the powers of the ACCC in terms of increasing the penalties that the ACCC can apply. I want to place on record my thanks to Senator George Brandis and the Senate Economics Legislation Committee, which produced the report last year, for the work that they undertook. It was very comprehensive indeed, and the government senators’ report has essentially been adopted by the government and now implemented at least in part. I want to acknowledge Senator Ron Boswell for his support and for his work with the small business organisations to get an outcome on this.

I want to specifically acknowledge the now strong support of the National Association of Retail Grocers of Australia, the Council of Small Business Organisations of Australia and the Fair Trading Coalition, together with the National Farmers Federation. Senator Barnaby Joyce indicated that NARGA’s board has changed. That is true. John Cummings is the chairman and Ken Henrick is the executive director. They have led that organisation in a very sensible fashion and are now acting in the best interests of their organisation and their members. Indeed, I want to congratulate and acknowledge Bob Stanton as president of COSBOA and Tony Steven as executive director of COSBOA for the cooperative, conciliatory and measured approach that they have taken to getting an outcome for small business. That is what has been delivered: a net benefit for small business.

I want to also put on the record, as I have stated publicly and previously, that I acted for 13 years for small business organisations both in Tasmania and nationally prior to entering the Senate, including for NARGA for some five years and COSBOA intermittently. That ended in a professional capacity when I entered the Senate in 2002. Nevertheless, I have continued my interest in, support of and advocacy for small business. Indeed, that will remain—I hope—for many years to come.

I want to note that the issue of misuse of market power and section 46 has been raised in the debate. Senator Brandis and indeed the government have already acknowledged that that will be put forward into the public arena in the very near future. Full consultations and discussions will be had with the various
small business organisations with regard to that bill. I look forward to partaking in those discussions and getting feedback from the small business community.

Finally, with respect to Senator Joyce’s comments on the 40-day limit, I want to make it clear that the 40-day limit commences on the day that the ACCC receives a valid application, but the 40-day limit is also capable of extension at the request of the applicant. That is on the record. That is the advice that I have. If the ACCC has not made a determination on a merger clearance application 40 business days after the application is given to the ACCC, it is deemed to have refused to grant the clearance. I hope that clarifies the matter for Senator Joyce and perhaps others. I conclude by also saying thank you to the Treasurer and the Minister for Small Business and Tourism, Fran Bailey, for their perseverance and for their efforts to ensure that we have a good, positive net benefit outcome for small business.

Senator FIELDING (Victoria—Leader of the Family First Party) (6.49 pm)—Family First’s priority is small business. That is why Family First supports the Trade Practices Legislation Amendment Bill (No. 1) 2005. Small business groups across Australia want these numerous changes. One of these changes allows easier collective bargaining for small businesses. The bill also gives more power to the ACCC, not less. My third point is that the government has given a commitment to small business to amend section 46 of the Trade Practices Act to help fight predatory pricing by big business. The government has made it clear that these further amendments to section 46 will not proceed unless the legislation before the committee proceeds. Family First will not stand in the way of small business getting wins.

Debate interrupted.

Progress reported.

DOUGHTY (New South Wales—Leader of the Liberal Party) (6.52 pm)—I refer to my earlier speech and say that the government’s views on the proposal for the setting up of the third court of appeal have not changed. The legal community has confirmed that the current arrangements are under stress and need to be resolved. The government will continue to seek ways of improving our federal court system to increase efficiency and effectiveness.

Senator FIELDING (Victoria—Leader of the Family First Party) (6.57 pm)—There are serious concerns about the lack of response of the government to the report of the Senate Standing Committee on Social Affairs. It is now six weeks since the report was released and the government is yet to provide a response. The committee was clear in its findings that there is a lack of coordination and leadership in the federal government’s approach to domestic violence.

The government needs to take action and ensure that the well intentioned measures that have been introduced to deal with this complex issue are fully implemented. The government cannot continue to have its head in the sand in relation to this pressing issue.

Mr President, I will make a similar point in my speech on the budget documents later in the sitting today. The ACTING DEPUTY PRESIDENT (Senator Watson)—Order! It being 6.50 pm, the Senate will proceed to the consideration of government documents.

Department of Immigration and Multicultural Affairs

Senator HURLEY (South Australia) (6.51 pm)—I move:

That the Senate take note of the document.

The annual report of the Department of Immigration and Multicultural Affairs is particularly of interest to me in my shadow portfolio area. This area has been of particular importance in the last year because we have seen a number of changes in citizenship rules, in the setting up of bodies to deal with harmony and now a government discussion paper that is entitled ‘Measures to improve settlement outcomes for humanitarian entrants’.

This annual report talks about settlement—though there is not a great deal about settlement, I have to admit, on which the government spends nearly $50 million a year—but there is no indication in this publication that there are any problems with the settlement services. The report merely states how many people have been assisted and that surveys of the outcomes of the contract have shown people are happy with the outcomes. Yet, in the discussion paper put out by the government, there is a proposal to have another complex case support network imposed over the top of the settlement support service that already exists—the Integrated Humanitarian Settlement Strategy.

This is a scheme that the government only introduced in October last year. It resulted in a lot of criticism because some of the successful tenderers had had no experience whatsoever in refugee and humanitarian entry assistance. The member for Newcastle,
Ms Sharon Grierson, voiced a lot of concerns of refugees in Newcastle that were largely ignored by the department. In fact, it was later revealed that the New South Wales office of the Department of Immigration and Multicultural Affairs was taking those complaints and not passing them on to central administration. Subsequently, I raised a number of issues about the failures of care of the IHSS and the government denied that there was any such problem. It would not institute an inquiry despite several calls and a motion in this place for that inquiry. Indeed, the private contractor for IHSS in New South Wales, ACL, instituted its own private inquiry, the result of which—surprise, surprise!—was that it was completely exonerated of any wrongdoing. Yet now we have the government producing this document which proposes that there be another network imposed on top of IHSS to deal with complex cases. It proposes that key functions would include specialised case management assistance, support and assistance to clients in crisis situations and better integration of services for refugees and other humanitarian entrants.

Also, recently the Parliamentary Secretary to the Minister for Immigration and Multicultural Affairs, Mr Andrew Robb, suggested another proposal—that there be a Job Network service for refugees. Again, the tenderers for IHSS were supposed to provide those links to the Job Network. So, rather than admitting that it has made a failure of the tender process and perhaps chosen the wrong tender specifications or the wrong tenderers for the job—rather than fixing up its $50 million program—the government has proposed that it create another service to rescue the settlement support services.

This admission of failure, but with a plan to, presumably, spend another bucket of money on setting up another service in this area, just indicates that the minister has not been on top of this issue. The parliamentary secretary coming in to aid her in this area has not been of much greater assistance. Indeed, it is difficult to imagine what will happen. Will refugees go to one network and, if that fails, go to the IHSS? It just creates further layers of services, all with promises to integrate well with each other.

**Senator BARTLETT** (Queensland) (6.56 pm)—The Department of Immigration and Multicultural Affairs annual report is one I would recommend that people read. It is an area that gets a lot of political and public debate, usually only around very select components of the immigration area. It is actually quite an enormous area that covers a whole range of activity. As I have mentioned in this place before, I think there is a lack of awareness of just how many people come into Australia each year on various forms of residency visa. The net numbers of permanent and long-term migrants are at very significantly high levels currently in Australia—there were 110,000 in 2004-05, and estimates are up further again. But, when you add on top of that the number of other people coming in on long-term temporary residency visas, it is in the hundreds of thousands of people each year. That means a lot of decisions are being made each year, for starters. Therefore it is very important to be as effective and efficient as possible and get those decisions right and make them promptly. Long delays in determining applications are a significant problem, particularly for people coming in for temporary residency purposes or on special-purpose visits. That is an area where we can always do better.

I note a discussion paper has just been released in the area of settlement services, which the previous speaker touched on. This, again, is a very important area that does not get as much attention as it merits, purely from a public interest and public policy point of view. As I mentioned, clearly there are
very large numbers of people now coming here each year on residency visas, including some on long-term temporary visas, but many of those then become permanent. I think we can do better at identifying people when they first come here for residency purposes and assisting them at that time with integration and settlement in the broader sense of the word. Even if they are not going to end up being permanent residents, it is in our nation’s interests for people who are coming here to reside for prolonged periods for any reason to be given assistance to be an effective part of the Australian community.

The front cover of this report includes the words ‘Enriching Australia through the well-managed entry and settlement of people’. That settlement is a very important part of the whole area of immigration that does not get enough attention. It is not just about making sure people get here and get out okay—that is all important; it is about what happens when people settle here. I think we should think of settlement more as long-term residency of any sort, whether it is permanent in the first instance or not. I am thinking of our nation’s interest as much as the interest of the individuals coming here.

It is also worth while to emphasise just how much of a positive immigration is to Australia and how unavoidable but positive it is that a migration intake of that size will be multicultural. We need to have greater recognition—and the department is the Department of Immigration and Multicultural Affairs—of the importance of promoting the positives of multiculturalism and recognition that a key component of effective multiculturalism is effective integration in the wider community in a way that does not make people negate their previous histories, cultures and beliefs but enables them to contribute that to the wider Australian community. We all benefit from that.

It is often put up by some people that multiculturalism is some sort of opposite to integration. That is sloppy thinking about what it is about. Getting those sorts of numbers of people coming into the country all the time is a great enrichment to Australia—and I would remind people that there is a reciprocal situation here. Many Australians are able to travel and work elsewhere and experience other countries for long periods. Many of them end up coming back here. We benefit from their experience as well. It is an overall positive enrichment for countries worldwide, and it is shown to give huge benefits to Australia. But we need to work on continually improving our delivery of that. I seek leave to continue my remarks later.

Leave granted; debate adjourned.

Commonwealth Grants Commission

Senator BARTLETT (Queensland) (7.01 pm)—I move:

That the Senate take note of the document.

I will not speak for my full time. I am fairly sure that in years gone by you have spoken to previous annual reports of the Commonwealth Grants Commission, Mr Acting Deputy President Watson. It is an area that features in political debate, with various premiers from time to time complaining that their state does not get enough and other states get too much. When you dive into it, the formulas involved are quite arcane and not as straightforward as is often suggested about how the various arrangements work for the Commonwealth Grants Commission. I think for that reason alone it is worth people looking at the report and, before they start mouthing off extensively about Commonwealth grants and the commission, having some broad understanding of what they are talking about.

On one hand, it is very straightforward. As the report said, the commission only has one outcome that they have to report upon, and
that is fiscal equalisation, but the details of how that operates are quite complex indeed. The only comment I would make at the moment is that premiers and treasurers from, in particular, New South Wales certainly make regular allegations that somehow or other Queensland is getting an unfair share of that fiscal equalisation process and that New South Wales is getting sold short. It probably would not be a great surprise that, as a senator for Queensland, I do not agree with those assessments.

We have had full-page newspaper advertisements put in by state governments trying to make the case and complain that they are being short-changed. I think a lot of arguments could be put forward to indicate why Queensland is in no way getting more than its share of the pie, and certainly one area I would strongly support the Queensland government on is not giving in to those sorts of propaganda campaigns from states further south, which are trying to get more money than I think is merited with regard to the Commonwealth Grants Commission process. So I have an opportunity to expand on this further at another time, I seek leave to continue my remarks later.

Leave granted; debate adjourned.

Department of Immigration and Multicultural Affairs

Commonwealth Ombudsman

Senator BARTLETT (Queensland) (7.05 pm)—by leave—I move:

That the Senate take note of the documents.

I am taking note of these documents together because they relate to each other. One is a report from the Ombudsman as part of a series of reports into people in long-term immigration detention, and the other is the response to the Ombudsman’s report by the Minister for Immigration and Multicultural Affairs. This Ombudsman’s report only deals with two cases. I will not comment on the first. The second is an example of the sorts of serious problems that come from the inflexibility that is still in place in our Migration Act because of the presence of mandatory detention. That does not mean that there should be no detention ever. It means that mandatory detention runs a real risk of injustices occurring.

This particular report—statement 073 for this year—is actually a follow-up report from the Ombudsman. The Ombudsman previously had a report tabled in parliament on 29 March this year, and this report updates that material. It concerns a person who, at the time of this report, had been in immigration detention for three years and nine months—since October 2002. Unless he has been released since then, which I assume has not happened, because the minister’s statement made just this week made no mention of it, he has now been in immigration detention for four years.

When the first report was tabled, back in March this year, the minister indicated that a review was underway of all people who had had their visas cancelled under section 501 of the Migration Act—the character provisions of the act—subject to another Ombudsman’s report. All of the character cancellations of people’s visas—usually long-term residents who have been here for a decade or, in some cases, decades—are being reviewed. That is good but the problem is that, whilst that review is being undertaken, this guy has been stuck in detention all year; even though the minister has made it clear that nobody would be removed from Australia whilst this review of previous cancellation decisions was being done, he has spent his whole time in detention. That is a ludicrous scenario, particularly when he had already been there for three years and more.
This report goes into this man’s circumstances. He has children in Australia; his ex-wife has care of the children, and there are problems there. There is clinical evidence that suggests that there are issues of neglect. Clear information has been provided that it is in the interests of his children for him to be put in a circumstance where he could live with them. The minister’s statement says she is advised that this person was moved into alternative detention arrangements in September to enable him to live with his children. But they are still detention arrangements. That is certainly preferable to being in a detention centre; there is no doubt about that. When a person in immigration detention is able to live with his children, who are not in detention, it shows how much flexibility we have with language. Somehow or other, the law manages to maintain that sort of curious legal fiction.

The minister has also indicated that, subject to health and character checks, she is going to consider intervening and using her discretion under section 417 of the Migration Act. That is good, but we have to look at the reality, which is that it has taken four years and, for most of that time, the person has been in detention and there is clear evidence that his children have suffered—not solely, but in part—because of that circumstance.

In some ways this is a sign that the changes that were made some 12 months or so ago have borne some fruit—that the process of Ombudsman’s reports and inquiries into people in long-term detention sheds some light on the issue and puts some extra pressure on the minister to resolve situations. But it should not have to go through such a cumbersome and drawn-out process. These are people who have been locked up for years but have not committed a crime. Having a visa cancelled is not a crime. Now we are finding that cancellation is being reviewed a long time down the track. That highlights some of the problems that are still present not just with mandatory detention but with section 501 of the Migration Act. This report provides more evidence that there needs to be significant reform of parts of the Migration Act, including section 501 and mandatory detention. I seek leave to continue my remarks later.

Leave granted; debate adjourned.

Office of the Commissioner for Complaints

Senator McLucas (Queensland) (7.10 pm)—I move:

That the Senate take note of the document.

The 2005-06 annual report of the Commissioner for Complaints within the Aged Care Division of the Department of Health and Ageing is the last report by Mr Rob Knowles in that capacity. In his introduction to the report, Mr Knowles has made some very astute observations about the operation of the Office of the Commissioner for Complaints and about the operation of the Complaints Resolution Scheme, which it is his primary function to oversee. He says:

I have been surprised at the reluctance on the part of some people and organisations to enter into open and honest dialogue and to give others that which we would seek for ourselves.

He is making the point that the use of any complaints system should be seen by those in any sector as an opportunity for quality improvement. I commend him for that comment and encourage the sector to take heed of it. He goes on to say that, over the six years that he has been the Commissioner for Complaints, he has seen improvement in the sector but still sees a lot of room for improvement. If we have a sector that is robust enough to receive complaints as an opportunity rather than a threat, I think we go a long way towards having open dialogue, especially in an area like aged care, in which, as Commissioner Knowles says, we are work-
ing with some of the most vulnerable people in our society.

These people are vulnerable for a whole range of reasons. They are vulnerable because of their age and their family connections. They are vulnerable because potentially they have dementia and a limited ability to express their opinion. But one of the most significant points of vulnerability in an aged care facility is residents’ fear that, if they make a complaint about what is occurring in the facility, they may get kicked out. That is a situation any government would have to deal with. I think the aged care sector needs to strive to put in place a support structure that allows older persons to make their concerns known in a way they would feel comforted about. No-one likes to be told that what they have done is wrong or, perhaps, inappropriate, but we have to encourage the aged care sector to view the complaint-making process—when complaints are made legitimately—as an opportunity for quality improvement. Mr Knowles goes on to say:

In my view the current role of the commissioner is significantly limited.

We know that has been the case for some time, and we also know that Commissioner Knowles has been making that complaint for some time. We know that the former minister heard that complaint from the commissioner about the capacity of his office to deal with complaints and the structure of the complaints system, but it is only very recently, and only as a result of the horrific stories that we heard in February this year, that the current minister has responded. I acknowledge that the minister has done that. The commissioner says he looks forward to the minister’s promised announcement prior to his retirement from office. He says:

I look forward to the changes being implemented in a way that addresses the limitations of the current scheme, and I am confident that my successor will receive the same support and loyalty that I have enjoyed over the last six years.

A complaints system should be seen as an opportunity for quality improvement. As I said, no-one wants to hear that they have done the wrong thing or made a mistake. But let us try to get past the defensive nature that some in the sector—and I underline the word ‘some’—have about receiving information that is not to their liking. These are the most vulnerable people in our society and we have to do everything that we can to ensure that their health, wellbeing and happiness are protected. I seek leave to continue my remarks later.

Leave granted; debate adjourned.

**Australian Security Intelligence Organisation Report to Parliament 2005-06**

**Senator BARTLETT** (Queensland) (7.15 pm)—I move:

That the Senate take note of the document.

The document I want to discuss is ASIO’s annual report to parliament. I want to comment particularly on one section of the report which deals with visa security assessments. It is under the heading ‘Border security’, which is not always an overly accurate terminology for visas, but when it comes to making security assessments it is a reasonable enough title to use even if I think it is a phrase that is misused in other contexts. It is worth noting some material in this report. I want to refer to pages 29 and 30 in particular. The report says:

The Department of Immigration and Multicultural Affairs refers individuals to ASIO for security checking under Public Interest Criterion 4002 of the Migration Act 1958. ASIO makes an assessment on whether the entry or continued stay ... would pose a direct or indirect threat to security. Visa security checking processes are generally managed in order of referral from the Department of Immigration and Multicultural Affairs, taking into account agreed prioritisation issues.
The report continues:
In making a security assessment ASIO takes into account—
according to it—
all relevant information and considers the impact on security of taking or not taking ... administrative action ...
It continues:
Publicly available and classified information is used to make assessments. Factors taken into consideration include:
- the nature and type of the applicant’s activities;
- the credibility of the information available ... and whether it can be corroborated; and
- the honesty of the applicant.
The assessment also may include an ASIO interview of the applicant. Interviews are undertaken—
according to ASIO—
to accelerate the assessment process and to provide the applicant with an opportunity to resolve issues of concern.
The next part is particularly worth noting:
Individuals who are not Australian citizens or holders of a valid permanent visa, special category visa or special purpose visa cannot apply to the Administrative Appeals Tribunal for review of an ASIO security assessment.
During the last financial year, ASIO completed just over 3,000 assessments of unauthorised arrivals who were applicants for a protection visa. Given the way that political rhetoric is still used in this place and in the community to suggest that asylum seekers are a potential security risk, it is worth noting that 3,000 assessments were made in that financial year but only two raised security issues.

We know who those two people are. They are Mohammed Sagar and Muhammad Faisal, the two men who have been detained on Nauru for five years now. One of them is now in Brisbane—or was still in Brisbane the last time I heard. He is in the hospital there, receiving health treatment but under migration detention. He is still in detention, and has been for five years, on the basis of a security assessment which he has no opportunity to appeal against—this applies for both of the men—and when he has no opportunity to even know the basis used to create that security assessment.

It is worth noting that even that security assessment does not mean that it has been found that these two people are potential terrorists. The criterion is solely that there is even an indirect threat to security. There is no statement of reasons, no opportunity for the people who are affected to find out what the basis of the decision was and no opportunity to appeal. When the consequence of having no pathway to appeal is ongoing indefinite detention in a foreign country such as Nauru, it is a very serious problem and one that we need to find resolutions for.

ASIO officers went to Nauru again a few months ago to reinterview these two people, but not to make a fresh assessment. The process is so opaque that if there is not some mechanism for there to be review to ensure that decisions are made soundly the risk of serious injustice is very great. It is very hard not to suggest that that may have occurred in this case. I seek leave to continue my remarks later.

Leave granted; debate adjourned.

ADJOURNMENT

The ACTING DEPUTY PRESIDENT (Senator Watson)—Order! It being 7.20 pm, I propose the question:

That the Senate do now adjourn.

Iraq

Senator LIGHTFOOT (Western Australia) (7.20 pm)—The role of a democratically elected government is to govern efficiently
and effectively and to make decisions based on accurate and relevant information and not necessarily popularity. If governments were to start making their decisions based on popularity, Australia could face an ineffective and unproductive administration. That is exactly what would occur should a Beazley led government be elected next year.

Australia has had an enviable history of military involvement since before Federation. Our nation has been served proudly by the men and women of the Australian defence forces. For the Leader of the Opposition to suggest that the efforts of these men and women have been counterproductive and pointless is nothing but shameful. In reality, those who have represented our nation have made a huge impact upon the lives of all Iraqis.

Mr Beazley’s recent comments regarding the withdrawal of troops from Iraq are embarrassing and profligate. For a potential leader, his statement is unprincipled and, I believe, malevolent. To suggest that, should he—Mr Beazley—become Prime Minister we would simply walk away from an unfinished job, because it is too hard, undermining the efforts that have been achieved to date by the ADF in Iraq, is not the Australian way.

Mr Beazley should look into the deep suffering eyes of the Kurds, the Shia and the Sunni, as I have. Or go to Halabja, Mr Beazley, and look at the museums of photos of death and destruction. Australian troops will be withdrawn from Iraq only when our job is finished, and not before. That is the same view that the British chief of army, Sir Richard Dannatt, has. He allegedly said that British troops should be out now, but he actually said that British troops would be out soon. We all want our troops out of Iraq or wherever, but only when the job is done.

Whilst the security situation in Iraq is volatile and often dangerous, particularly in and around Baghdad and the Sunni triangle, major improvements have constantly been made. In July last year, for instance, Al Muthanna became the first of Iraq’s 18 provinces to be transferred to the full control of the Iraqi government, with security provided by the Iraqi security forces, not the coalition.

One of the tasks that Australian soldiers have undertaken is the training of Iraqi soldiers, and over 1,600 members of the Iraqi national army are involved in the provision of security in Al Muthanna. It is encouraging to see the Iraqi national army taking over more of the day-to-day responsibility for providing the security and defence of their own nation. These young men and women have a new pride in their nation. They have stepped up to the mark and taken on this dangerous but necessary responsibility.

Despite the constant media reports of the daily suicide bombings that are occurring, and they are tragic, developments and progress are being made in Iraq. Since 2005, Iraqis have had the opportunity to vote in three national elections, the first of which I attended in January 2005, which saw record turnouts, the creation of a draft constitution and the reconstruction of major infrastructure. Schools, hospitals, roads, bridges and courthouses are all being developed, resulting in some form of normality for Iraqis. Some 36,000 teachers have been trained and 700 judges have been appointed to the courts so that Iraq can have control over its own judicial system. Electricity grids and water supplies have been restored and the International Monetary Fund has estimated that Iraq’s real GDP is over 10 per cent per annum. There are many more children at school now than in the pre-invasion period.

Australia has been blessed with good fortune. Our nation was formed without civil war and without violence. We have had democracy thrust upon us, so much so that we
often take it for granted. We see the changes that are slowly occurring in Iraq. Civilians who for decades lived oppressed lives and in constant fear are now edging closer to democracy in an incredible occurrence, something in which our nation should be proud of being involved.

It is all too easy for the Leader of the Opposition to offer his pathetic pacifistic capitulation to the worst evil this world has known and to say what he would do when at the end of the day he will probably never have to make any tough decisions. We have seen time and time again that Mr Beazley has been unable to take a stand on a tough issue. Recent polls have shown that the war in Iraq is not popular. This is hardly surprising, as no-one ever wants to go to war or an unnecessary conflict if it can be avoided. Unfortunately, in this situation that was not the case. The inability of the United Nations to take a stand and to force Iraq and Saddam Hussein to answer to their concerns about weapons of mass destruction and other concerns left the coalition of the willing no other choice but to take action.

Mr Beazley, in another example of his weakness and lack of ticker, has jumped on these polls and tried to appease the Australian public by making populist statements in an attempt to earn some form of support. It obviously does not matter to the mawkish Mr Beazley that now is not the time to cut and run from Iraq. Withdrawing from Iraq now would be a victory for terrorism outlets throughout the Middle East, and the most repulsive, devilish, godless killers would feel justification for their foul malevolence.

There are sections in Iraq that obviously do not want foreign troops on Iraqi soil. There have been over 2,700 deaths and 21,000 wounded soldiers. Just over 100 Britons, and men and women of the defence forces of many other nations, have lost their lives in the contribution to the democratisation of Iraq. Although not now in direct combat, Australia has lost two members of its Defence Force. These men have given their lives to the cause of liberating another nation and attempting to free persecuted people. Pulling out of Iraq, leaving the Iraqis to fend for themselves and not completing the job does not honour the sacrifice they have given. Their lives have not been given in vain. It is important to ensure that we as a nation and as part of the coalition remember that the 3,000 other lives lost have not been without reason, that there is a greater cause for this tragic loss. The Beazley decision is reminiscent of the then Whitlam government ignoring our troops, who returned to an ignominious reception, in 1975. We cannot allow that to happen to our Iraqi troops.

Since the downfall of Saddam Hussein’s regime in 2003, over 270 mass graves have been reported, with 53 confirmed mass graves having their contents identified. Some of these graves have been confirmed by organisations such as Amnesty International, the UN and Human Rights Watch, which state that while some graves contain dozens of bodies others contain thousands. The common factor among them is a bullet hole in the back of the skulls. In a media statement earlier this year, Human Rights Watch stated:

We estimated that as many as 290,000 Iraqis have been ‘disappeared’ by the Iraqi Government over the past two decades. Many of these ‘disappeared’ are those the remains of which are now being unearthed in mass graves across Iraq.

Iraq has more forced disappearance cases than any other country. Tens of thousands of Iraqis have been reported missing in the past decade. This is on the same level as Nazi Germany in World War II, yet it does not seem to arouse the same level of horror or concern amongst us.
Whether the initial reasons for entering Iraq are the same reasons that now remain is irrelevant; you just have to look at the brutal and lethal antics of Saddam Hussein. The people of Iraq were subjected to his rule for far too long, and the fact that they have now been liberated to a significant degree means they are no longer forced to fear the brutal regime under which they lived for so many decades.

Let me turn very quickly to the campaign against the Kurds in Iraq. From 1987 to 1989, Saddam Hussein's bestial onslaught included mass summary executions, unsolved disappearances, arbitrary jailing, ethnic cleansing and the destruction of some 2,000 villages in Kurdistan. Those people who dared to form minority groups within Iraq were terrorised with the use of mustard gas and nerve gas. Under Saddam Hussein, 5,000 to 10,000, some say over 100,000, Kurdish men, women and children were murdered. I have seen the modest town of Halabja, on the western side of the Zagros Mountains, and I was very moved by what I saw.

It was not just the Kurds who had to fear Saddam Hussein but also other Iraqis. Today, just three years after the fall of Saddam Hussein and his regime, Iraq has moved from a nation where the words 'freedom of speech' did not exist to a nation that has over 50 commercial television stations, over 100 radio stations and nearly 300 independent newspapers and magazines.

To me and millions of Australians, a template could be taken from the northern part of Iraq-Kurdistan to the Sunni triangle of Tikrit, Fallujah, Baghdad and the south, and with it the major cities of Um Qasa and Al Basra. The Kurds live in relative peace and are developing their homeland: roads, schools, hospitals, airports, hotels and housing estates are flourishing. Mineral exploration is being undertaken, dams are being built and universities are free and open to all: men and women, Shia and Sunni and Christian and Jew. Kurdistan is flourishing, but what must never happen again is the subjugation of the Kurds. For the first time in memory, generations of Kurds have secured their homes, land and jobs, but most of all they have secured their freedom and they have a future. I thank the Senate.

Poverty

Senator STEPHENS (New South Wales) (7.30 pm)—Too often for privileged people like us, the horrors of poverty seem to be a natural, inevitable part of the geopolitical landscape. But poverty is not inevitable. We have the knowledge and the resources to overcome it and, with the combination of goodwill, creative thinking and courage, we can make that happen. The responsibility belongs to all of us, and we can approach this challenge on more than one front.

One such front is the Make Poverty History campaign. This is a coalition of charities, campaigning groups, faith communities, trade unions and high profile individuals who have united to tackle global poverty. Their representatives have been among us this week, because this is Make Poverty History Week. The campaign is devoted to achieving the eight Millennium Development Goals. In 2000, 189 united nations, including Australia, signed a declaration that aimed to halve the world’s poverty by 2015. Now, five years later, we need to ask ourselves: what are we doing to keep our word? Tackling unfair global trade rules, cancelling the debts of the poorest countries and increasing the quality and amount of aid given to developing countries require political will from the highest levels and on an international scale. At the other end of the spectrum, these goals also require hands-on help from
individuals who are willing to do what they can.

Eradicating extreme hunger, improving maternal health, ensuring justice in trades practices, enabling all children to have a primary school education and giving everyone access to clean drinking water are not just simply ways of improving human dignity and increasing our feel-good factor—they do achieve these ends—they are also a way of making a safer and more humane world, because poverty is a major obstacle to promoting peace and justice. So it was heartening to hear that Muhammad Yunus, who established the Grameen Bank, was awarded the 2006 Nobel Peace Prize. This award reminds us all that we do have the power to bring about change and encourages us to realise that millions of small changes, when put together, can amount to extraordinary change.

All around us there are inspirational stories of people making such changes happen. I have previously spoken here of the work done in Africa by Jacinta Conroy, a young music teacher from my home town of Goulburn. Another young resident from Goulburn who is determined to make a difference is Sally Elliott, who has just returned home after spending six months working as a volunteer with the i-to-i organisation in Kenya and South America. Sally does not conform to anyone’s cliched image of a do-gooder—she is an animated, vibrant young woman with a love of the good life and a flair for graphic design—but the simple awareness that she could make a difference was enough to send her to help out in the Melon orphanage in Nakuru.

There are currently 125 children attending Melon for education and for a meal—usually their only meal of the day. The place can only operate because individuals are prepared to contribute. The four teachers there are volunteers, and there are three Kenyan youngsters who turn up every day—again, on a voluntary basis—to sit in hot rooms preparing beans and rice for the children’s only meal. These are street kids who have to go home at night to all kinds of hovels and tiny homes destitute of any kind of furnishings or conditions. It is quite extraordinary.

Sally herself contributed in a variety of ways. She taught the little ones. She helped with food preparation. She painted murals on all the classrooms. She shared ideas about making Melon’s work known and fundraising and so on—just a local girl from Goulburn but one who was prepared to move from the good feeling of dropping a few coins in a box to doing the more demanding and challenging action of doing something to help. I am very proud of her and the fact that she has helped to make the world a better and safer place.

Then there is Susan Nakawuki. She is a 22-year-old woman from Uganda. She is an orphan who was raised in a Wototo home. I met her this week when she visited Canberra to promote her work in Kampala and to raise funds. As a teenager, Susan decided that to live surrounded by poverty and injustice and not to do anything about it was not an option. At her young age she has already become a member of the Ugandan parliament and has made huge personal steps to help her people. Following the example of Muhammad Yunus, she has set up a bank to help the poor, lending money to small groups for local projects to help them become independent and to break out of the poverty and dependence cycle. I would like to tell you about her delightful project. She calls it the miracle of the three little pigs. She gives a poor family three pigs for six months, in which time the pigs reproduce. The family keep the original pigs plus two of the piglets, so now they have five pigs and a means of making money. They hand back the remaining pig-
lets in the litter, usually about 10, which Susan can then give to other families. And the process continues. It is like the miracle of the loaves and fishes, translated to a Ugandan setting.

So individuals can make a difference, and the beauty of it is that we do not have to travel or to change our lifestyles to make a difference. On an individual basis, or by combining our efforts to achieve greater power, we can change the world. The miracle of the three little pigs reminds us of the truth in Paul Kelly’s lyric, ‘From little things, big things grow.’ This brings me back to Australia, because it is not just in far-flung lands that this kind of commitment can make a difference. It is also important close to home; we need to make poverty history in our own country as well. We think of UNIFEM’s work in the Northern Territory or the social entrepreneurs network which encourages collaborative innovation across community, public and private spheres and supports individuals to use their initiative and enterprise to strengthen their community. We think of the work of people in Indigenous communities, such as Noel Pearson. The core to reform of welfare dependency is the empowering of communities to change their social conditions.

The great achievement of Muhammad Yunus and Grameen Bank, of Susan Nakawuki in Uganda, of Sally Elliott and Jacinta Conroy in Kenya, and of all the other people we know who are doing their bit to alleviate poverty of millions of individuals, is that they teach us, or remind us, to look on the poor and the marginalised in a new light. Instead of thinking of them as victims and survivors we see them as agents of change, in charge of their own destinies, empowered. And while political leaders in the developed world profess their commitment to poverty eradication, all too often we are not prepared to address the systemic causes of poverty. It is true but sad to remember that the political and corporate elites at the helm of the world economy have a powerful interest in maintaining the economic status quo.

So we need to turn our best minds and our best efforts to solving the problem of poverty. We need to rethink our attitudes to ‘growth’ as a solution. Growth does not necessarily alleviate poverty; it may, in fact, exacerbate it. As long as systemic economic and social policies continue to favour the rich, global poverty will remain a stark reality for the majority of people in the world. By dogmatically pursuing globalisation at the expense of the poor we are marching along the path to ever greater upheaval and are only perpetuating the vicious cycle of poverty, displacement and conflict. As Irene Khan, the Secretary-General of Amnesty International, explains:

... poverty is both a cause and a consequence of the failure to respect human rights: both economic, social and cultural as well as political and civil. It is driven by human rights violations and perpetuates further abuses.

As part of the debate, we should be looking at the final report of the UN Millennium Project, Investing in development, which lays out a comprehensive strategy for combating global poverty, hunger and disease. Billions more people could enjoy the fruits of the global economy. Tens of millions of lives can be saved. The practical solutions exist—but we have to act right now.

Sir John Monash

Senator KEMP (Victoria—Minister for the Arts and Sport) (7.38 pm)—Just over 75 years ago, on 8 October 1931, Labor Prime Minister James Scullin rose in the House of Representatives and announced the death of Sir John Monash, Australia’s great wartime general. Amidst emotional scenes in the federal parliament, Joe Lyons, soon to become Prime Minister, said the death of Sir John
Monash was a great loss and he recorded this tribute:
He was a great soldier, a great engineer, a great scholar and above all a great Australian.

Similar sentiments were expressed when the Leader of the Senate, Senator Barnes, brought forward the condolence motion. He said:

Nothing that I might say would enhance his glory; he was so well known to all the people of Australia, and has so endeared himself to every section of the community, that I feel it would be presumptuous on my part to attempt to do more than express our profound sorrow at his death.

Indeed, this nationwide outpouring of grief was evident when, on Friday, 9 October 1931, Sir John Monash’s body was brought to the Victorian Parliament House. The Age reported:

Guarded by four soldiers, day and night, the body of Sir John Monash lies in state at Queen’s Hall, Parliament House, while the whole Australian nation mourns the loss of Australia’s great citizen.

Many men with returned soldiers badges, and a great number of women and children, were in the queue when, at 5 pm, they were allowed to enter Queen’s Hall to file past the coffin and pay their tributes. On Sunday the funeral procession commenced after a brief service at Parliament House. The Age reported that the Parliament House steps were thronged with people as far as the eye could see. The gun carriage on which the coffin was placed was drawn by six horses, with the cap and sword of the dead commander laid upon the flag draped bier. His riderless charger, with the boots reversed in the stirrups, followed slowly behind.

Let me quote from an address given by Roland Perry at the commemoration service at the Victorian parliament held last Friday, when he spoke of the stunning victory at the Battle of Amiens which was planned by Monash in August 1918. Roland Perry said of Monash:

... it was his achievement 88 years ago on the 8th day of the 8th month of 1918, as the commander and planner of the most decisive battle of World War One, that eclipsed all else.

Monash was made Commander of the Australian Army in May 1918. Before he took command, we had five divisions, each of about 30,000 men, placed with the British armies in Belgium and France along the Western Front, the line separating the combatants.
On one side of the Front were the British and French forces (and late in 1918, the Americans too).

On the other side were the Germans, Bulgarians and Turks.

Until Monash took charge, the Australians, the diggers, had been used as cannon fodder in many poorly planned battles that often ended in loss and stalemate.

At this critical moment, Monash fought to get all the diggers from those five Australian divisions together as one army for the first time. It became the biggest of the 20 Allied Army Corps on the Western Front. With all that mighty manpower under his control, Monash put up to the British High Command his master-plan for a major counter-attack.

The Allies had not won a major breakthrough battle, that is, a really damaging victory, in the entire war. Only the Germans a few months earlier, on the 21st of March 1918, had won a big one. They destroyed the British Fifth Army, and disabled the Third Army.

Monash’s plan for the Battle of Amiens, 120 kilometres North of Paris, was adopted. He used the infantry in support of the technology of war, communications, 800 planes for aerial reconnaissance and bombing, several hundred tanks, along with artillery, machine guns and other weaponry. Because of this brilliantly engineered combination, the Australians, with Canadians in support, defeated two German Armies in one mighty Blitzkrieg. It took 48 hours.

The head of all German forces, General Ludendorff, said that the 8th of August was “the blackest day of the war” —

and, of course, the blackest day for the Germans —

Monash’s breakthrough meant that “the German army could not now win the war. It could only defend.”

Roland Perry concluded, in his address:

The First AIF under Monash took on 39 German Divisions, including the crack Prussian Guard, from 4th July to 4th October 1918, and defeated every one of them. There were one million German soldiers in those 39 Divisions, the equivalent of the entire German Army on the Russian front.

This is why Roland Perry called his recent biography of General Monash Monash: The Outsider Who Won a War.

In recent years a great deal has been done to commemorate this magnificent Australian. Each year on the anniversary of Monash’s death a service is now held in the Victorian parliament, and I must pay tribute to the organisers of this particular event. I think it has now been going for three or four years, and they have done a magnificent job in bringing to the attention of the wider public the achievements of General Monash.

I am also pleased to report that my colleague the Hon. Bruce Billson, Minister for Veterans’ Affairs, is currently working at developing a program to commemorate the historic battles of 1917 and 1918 which involved the Australian Imperial Forces. I have no doubt that the events of 8 August 1918 will be a centrepiece of these commemorations and should do much, once again, to bring to the attention of the public how much the world as we know it today owes General Monash, his officers and his men for bringing to an end the carnage of the First World War.

I think this is important; I think that to the current generation of Australians the historic battles of 1918, and particularly the breakthrough on 8 August 1918, are not well known. Australians know well the events at Gallipoli, and that is a very good thing. But I think it would be wonderful if there could be greater knowledge about the magnificent victory that General Monash planned, orchestrated and led. I believe it was the first time an Australian led the five Australian divisions on the Western Front. That was a truly historic battle. The anniversary is in 2008, and I have no doubt that Bruce Billson, who is an excellent minister, will ensure
that this very important battle—important not only to Australians but also, as I said, to the world as we know it today—will be appropriately marked and commemorated. Hopefully many more Australians will learn of the achievements of this very great man.

**Senate adjourned at 7.47 pm**

**DOCUMENTS**

**Tabling**

The following government documents were tabled:

- ASC Pty Ltd—Report for 2005-06.
- Australia Business Arts Foundation Ltd—Financial statements for 2005-06.
- Australian Postal Corporation (Australia Post)—Report for 2005-06.
- Australian Safeguards and Non-Proliferation Office—Report for 2005-06.
- Australian Wine and Brandy Corporation—Report for 2005-06.
- Coal Mining Industry (Long Service Leave Funding) Corporation—Report for 2005-06.
- Commissioner for Superannuation (ComSuper)—Report for 2005-06.
- Commissioner of Taxation—Report for 2005-06.
- Department of Immigration and Multicultural Affairs—Report for 2005-06.
- Film Finance Corporation Australia Limited—Report for 2005-06.

- **Migration Act 1958**—Section 486O—Assessment of appropriateness of detention arrangements—Personal identifiers 072/06 and 073/06—Commonwealth Ombudsman’s reports.
- Commonwealth Ombudsman’s reports—Government response.
- National Archives of Australia and National Archives of Australia Advisory Council—Reports for 2005-06.
- National Competition Council—Report for 2005-06.
- Public Service Commissioner—Report for 2005-06, together with the report of the Merit Protection Commissioner.

**Tabling**

The following documents were tabled by the Clerk:

- **Migration Act 1958**—Section 486O—Assessment of appropriateness of detention arrangements—Personal identifiers 072/06 and 073/06—Commonwealth Ombudsman’s reports.
- Commonwealth Ombudsman’s reports—Government response.
- National Archives of Australia and National Archives of Australia Advisory Council—Reports for 2005-06.
- National Competition Council—Report for 2005-06.
- Public Service Commissioner—Report for 2005-06, together with the report of the Merit Protection Commissioner.

**Tabling**

The following documents were tabled by the Clerk:

- **Legislative instruments are identified by a Federal Register of Legislative Instruments (FRLI) number**

- A New Tax System (Family Assistance) (Administration) Act—Child Care Benefit (Eligibility of Child Care Services for Approval and Continued Approval) Amendment Determination 2006 (No. 2) [F2006L03342]*.
- Banking Act—Banking Exemption No. 2 of 2006 [F2006L03337]*.

Civil Aviation Act—
Civil Aviation Regulations—Instruments Nos—
  CASA 392/06—Instructions—for approved use of P-RNAV procedures [F2006L03376]*.
  CASA 393/06—Amendment of instrument CASA 321/06 [F2006L03381]*.
Civil Aviation Safety Regulations—Airworthiness Directives—Part 105—
  AD/CIRRUS/4 Amdt 1—Crew Seats [F2006L03363]*.
  AD/S-PUMA/65—Main Servo-Control Attachment Bolts [F2006L03382]*.

Customs Act—Defence and Strategic Goods List Amendment 2006 [F2006L03230]*.

Environment Protection and Biodiversity Conservation Act—Threat Abatement Plan 2006 for the incidental catch (or bycatch) of seabirds during oceanic longline fishing operations [F2006L02855]*.

Financial Management and Accountability Act—Financial Management and Accountability Determinations—
  2006/65—IP Australia Account Variation and Abolition 2006 [F2006L03370]*.
  2006/68—Australian Building Codes Board Special Account Establishment 2006 [F2006L03375]*.


National Health Act—Pharmaceutical Benefits Amendment Determination under paragraph 98B(1)(a) No. 2 [F2006L03386]*.

Taxation Administration Act—PAYG withholding—Special tax table for payments to individuals performing work or services in the Joint Petroleum Development Area (JPDA) as defined in the Timor Sea Treaty [F2006L03348]*.

Therapeutic Goods Act—Therapeutic Goods (Listing) Notice 2006 (No. 4) [F2006L03361]*.

Torres Strait Fisheries Act—Torres Strait Prawn Fishery—Torres Strait Fisheries Management Notice No. 72A—Prohibition on Taking Prawns (Time Allocation) [F2006L03372]*.


* Explanatory statement tabled with legislative instrument.
Cootamundra Aboriginal Girls Training Centre Memorial
(Question No. 1296)

Senator O’Brien asked the Minister Assisting the Prime Minister for Indigenous Affairs, upon notice, on 6 October 2005:

(1) Is the Minister aware of a proposal to build a memorial to the Cootamundra Aboriginal Girls’ Training Centre on land at Hovell Street, Cootamundra, controlled by the Australian Rail Track Corporation; if so:
   (a) when and how did the Minister become aware of the proposal;
   (b) when and from whom has the Minister or the department received representations in relation to the proposal;
   (c) what representations relating to the proposal has the Minister made to:
      (i) the Minister for Finance and Administration, and
      (ii) the Minister for Transport and Regional Services;
   (d) what was the nature and the outcome of each representation;
   (e) if a representation was made in writing, can a copy of the representation be provided; if not, why not; and
   (f) if records of a representation were made, can a copy of such records be provided; if not, why not.

Senator Vanstone—The answer to the honourable senator’s question is as follows:

(1) Yes. I have been informed that the site is owned by RailCorp, not the Australian Rail Track Corporation, and that RailCorp has agreed to the site being used for a memorial.
   (a) Miss Betti Punnett, Secretary of the Cootamundra Reconciliation Group, initially wrote to me about the matter on 26 September 2005.
   (b) After her initial letter informing me of the Group’s plans to erect a memorial, Miss Punnett wrote to me again on 15 November 2005, informing me that the proposed site for the memorial is owned by RailCorp, and that RailCorp has granted the Group permission to use the site.
   (c) (i) and (ii) None.
   (d) Refer to answer in (c).
   (e) Not applicable.
   (f) Not applicable.

Post-Budget Function
(Question No. 1899)

Senator Milne asked the Minister for Justice and Customs, upon notice, on 6 June 2006:
Did the Minister host a post-budget function after the release of the 2006-2007 Commonwealth Budget on 9 May 2006; if so:
   (a) where was the function held;
   (b) who was invited to the function;
   (c) who attended the function;
(d) what was the cost of hosting the function;
(e) was the cost charged to the Commonwealth; if not, to whom was it charged;
(f) was a ticket price charged; if so, what was the ticket price;
(g) if no ticket price was charged, was a donation requested;
(h) how much revenue was collected by way of tickets charged or donations received; and
(i) to whom was the revenue paid.

Senator Ellison—The answer to the honourable senator’s question is as follows:
No.

Clairvoyants

(Question Nos 1934 and 1936)

Senator O’Brien asked the Minister for Justice and Customs and the Minister representing the Attorney-General, upon notice, on 8 June 2006:

(1) Can details be provided of any occasions since October 1996 on which departments or agencies for which the Minister is responsible have engaged or otherwise sought to rely on the opinions or advice of clairvoyants.

(2) For each occasion, can details be provided of the circumstances and any associated payments.

Senator Ellison—The answer to the honourable senator’s question is as follows:

Neither the Attorney-General’s Department, nor any portfolio agencies have engaged or otherwise sought to rely on the opinions or advice of clairvoyants on any occasion since October 1996.