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SITTING DAYS—2006

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RADIO BROADCASTS
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- SYDNEY 630 AM
- NEWCASTLE 1458 AM
- GOSFORD 98.1 FM
- BRISBANE 936 AM
- GOLD COAST 95.7 FM
- MELBOURNE 1026 AM
- ADELAIDE 972 AM
- PERTH 585 AM
- HOBART 747 AM
- NORTHERN TASMANIA 92.5 FM
- DARWIN 102.5 FM
FORTY-FIRST PARLIAMENT
FIRST SESSION—SEVENTH PERIOD

Governor-General

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

Senate Officeholders

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

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

Senate Party Leaders and Whips

Leader of the Liberal Party of Australia—Senator the Hon. Nicholas Hugh Minchin
Deputy Leader of the Liberal Party of Australia—Senator the Hon. Helen Lloyd Coonan
Leader of The Nationals—Senator the Hon. Ronald Leslie Doyle Boswell
Deputy Leader of The Nationals—Senator the Hon. John Alexander Lindsay (Sandy) Macdonald
Leader of the Australian Labor Party—Senator Christopher Vaughan Evans
Deputy Leader of the Australian Labor Party—Senator Stephen Michael Conroy
Leader of the Australian Democrats—Senator Lynette Fay Allison
Leader of the Australian Greens—Senator Robert James Brown
Leader of the Family First Party—Senator Steve Fielding
Liberal Party of Australia Whips—Senators Jeannie Margaret Ferris and Stephen Parry
National Whips—Senator Nigel Gregory Scullion
Opposition Whips—Senators George Campbell, Linda Jean Kirk and Ruth Stephanie Webber
Australian Democrats Whip—Senator Andrew John Julian Bartlett
Australian Greens Whip—Senator Rachel Siewert

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

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

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

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

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<td>Senator the Hon. Christopher Martin Ellison</td>
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<td>Minister for Fisheries, Forestry and Conservation</td>
<td>Senator the Hon. Eric Abetz</td>
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<td>Senator the Hon. Charles Roderick Kemp</td>
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<td>Minister for Human Services and Minister Assisting the Minister for Workplace Relations</td>
<td>The Hon. Joseph Benedict Hockey MP</td>
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<td>Minister for Community Services</td>
<td>The Hon. John Kenneth Cobb MP</td>
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<tr>
<td>Minister for Revenue and Assistant Treasurer</td>
<td>The Hon. Peter Craig Dutton MP</td>
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<td>Special Minister of State</td>
<td>The Hon. Gary Roy Nairn MP</td>
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<tr>
<td>Minister for Vocational and Technical Education and Minister Assisting the Prime Minister</td>
<td>The Hon. Gary Douglas Hardgrave MP</td>
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<td>Minister for Ageing</td>
<td>Senator the Hon. Santo Santoro</td>
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<td>Minister for Small Business and Tourism</td>
<td>The Hon. Frances Esther Bailey MP</td>
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<td>Minister for Local Government, Territories and Roads</td>
<td>The Hon. James Eric Lloyd MP</td>
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<td>Minister for Veterans’ Affairs and Minister Assisting the Minister for Defence</td>
<td>The Hon. Bruce Frederick Billson MP</td>
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<td>Minister for Workforce Participation</td>
<td>The Hon. Dr Sharman Nancy Stone MP</td>
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<tr>
<td>Parliamentary Secretary to the Minister for Finance and Administration</td>
<td>Senator the Hon. Richard Mansell Colbeck</td>
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<td>The Hon. Gregory Andrew Hunt MP</td>
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<td>Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry</td>
<td>The Hon. Sussan Penelope Ley MP</td>
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<tr>
<td>Parliamentary Secretary (Foreign Affairs)</td>
<td>The Hon. Teresa Gambaro MP</td>
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SHADOW MINISTRY

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

(The above are shadow cabinet ministers)
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<tr>
<td>Shadow Minister for Consumer Affairs and Shadow Minister for Population Health and Health Regulation</td>
<td>Laurie Donald Thomas Ferguson MP</td>
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<tr>
<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>Senator Kerry Williams Kelso O’Brien</td>
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<td>Senator Kate Alexandra Lundy</td>
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<tr>
<td>Shadow Minister for Homeland Security and Shadow Minister for Aviation and Transport Security</td>
<td>The Hon. Archibald Ronald Bevis MP</td>
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<tr>
<td>Shadow Minister for Veterans’ Affairs and Shadow Special Minister of State</td>
<td>Alan Peter Griffin MP</td>
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The PRESIDENT (Senator the Hon. Paul Calvert) took the chair at 9.30 am and read prayers.

PETITIONS

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

**Human Rights: Falun Gong**

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

The petition of the undersigned shows:

Witnesses, including an investigative journalist and a veteran military doctor have revealed that Falun Gong practitioners are being held in at least 36 concentration camps in China where they are routinely subject to the forced removals of their organs which are then sold for transplants and their bodies are then cremated to destroy all evidence.

Your petitioners therefore request the Senate to initiate a resolution to:

1. Call for the Australian Government to fully support the International Coalition to Investigate the Persecution of Falun Gong (CIPFG), and demand that the Chinese Communist Party (CCP) immediately open the doors of all concentration camps, forced labour camps, hospitals, prisons and detention centres throughout the People’s Republic of China in order to allow independent teams to investigate the charges of illegal detention, torture and live organ removal for transplants.

2. Demand that the CCP regime release all detained Falun Gong practitioners immediately.

by The President (from 75 citizens).

**Live Animal Exports**

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

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

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

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

by Senator Bartlett (from 30,975 citizens).

**Live Animal Exports**

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

This petition of the undersigned citizens of Australia draws to the attention of the Senate the stress and extreme suffering caused to cattle, sheep and goats during their assembly, land transportation and loading in Australia, shipment overseas, and then unloading and local transportation, feedlotting, handling, and finally slaughter without stunning in importing countries.

Further, we ask the Senate to note that heat stress, disease, injury, inadequate facilities, inadequate supervision and care, and incidents such as on board fires, ventilation breakdowns, storms and rejection of shipments contribute to high death rates each year, e.g. 73,700 sheep and 2,238 cattle died on board export ships in 2002. Many thousands more suffer cruel practices prior to scheduled slaughter.

We the undersigned therefore call upon the Senate to establish an inquiry into all aspects of live animal exports from Australia, with particular reference to animal welfare, to be conducted by the Senate’s References Committee on Rural and Regional Affairs and Transport.

by Senator Bartlett (from 646 citizens).

**Live Animal Exports**

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

The petition of the undersigned protests in the strongest possible terms against the live export of
Australian animals for slaughter in other countries.

The live export trade is cruel. Inhumane conditions are inherent to the trade, resulting in high death rates and unacceptable suffering for animals involved.

The live export trade costs jobs. Rural and regional Australians, already suffering under a lengthy drought, can ill afford to send animals overseas for slaughter when there are workers in Australian abattoirs who can perform this work. As long as animals continue to be sent overseas for slaughter, jobs in Australian abattoirs will suffer.

Furthermore, the live export trade is unnecessary. Australia’s export markets in Asia and the Middle East WILL accept meat that has been slaughtered in Australia according to their cultural requirements.

There are currently 123 abattoirs in Australia with an approved Halal program that could slaughter livestock for export to markets that demand Halal procedures.

The live export trade for slaughter is both cruel and unnecessary. Your petitioners request that the Senate act immediately to abolish the live export trade and replace it with an expanded chilled meat trade

by Senator Bartlett (from 22 citizens).

Information Technology: Internet Content

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

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

This petition of certain citizens of Australia draws to the attention of the Senate, the danger of children accessing internet pornography and other internet pages.

Your petitioners therefore ask the Senate to make laws that:

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

by Senator Conroy (from 20,646 citizens).

Australian National Flag

To the Honourable the President and the Members of the Senate in Parliament assembled. The Petition of the undersigned respectfully sheweth that:

1. We the undersigned wish to signify our strong opposition to any change in the design or colour of the Australian national flag.

2. We believe that the current flag has served Australia well and will continue to do so in the future and represents a true manifestation of the nation’s history.

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

by Senator Kemp (from nine citizens).

Nuclear Waste

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

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

by Senator Webber (from 59 citizens).
NOTICES

Petitions received.

NOTICES

Presentation

Senator WATSON (Tasmania) (9.31 am)—On behalf of the Standing Committee on Regulations and Ordinances, I give notice that 15 sitting days after today I shall move:

That the Inclusion of species in the list of threatened species (Nos. 42 to 45) made under section 178 of the Environment Protection and Biodiversity Conservation Act 1999, be disallowed.

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

Leave granted.

The summary read as follows—

Inclusions of species in the list of threatened species (Nos. 42 to 45)

The four instruments amend the list of threatened species in the Endangered, Critically Endangered and Vulnerable categories.

The information regarding consultation that is supplied in the explanatory statements to each of these four instruments notes that ‘parties with relevant expertise were directly consulted regarding their views’. It would assist in understanding the nature of the consultation process if the explanatory statements named these parties and also gave some indication of their responses to the changes that are made by these instruments. The committee has therefore written to the minister seeking further information on the consultation process.

Senator Nettle to move on the next day of sitting:

That the Senate—

(a) notes that:

(i) important wetlands and floodplain areas in the Murray-Darling Basin face the threat of irretrievable ecological damage as a result of river diversions and unauthorised interception banks (in areas including, but not limited to, the Condamine, Balonne and the southern Macquarie Marshes),

(ii) unregulated and unmetered off-stream water storage, such as Cubbie Station, places an unsustainable burden on our shared water resources and undermines efforts to manage limited resources in an equitable and sustainable fashion, and

(iii) while the drought has exacerbated this situation, even a cyclical improvement in drought conditions will not improve these threatened ecosystems while these diversions remain in place; and

(b) calls on the Federal Government to:

(i) work with the New South Wales and Queensland Governments to legislate and regulate to ensure uninterrupted environmental flows, and

(ii) look at options of buying out unsustainable operations such as Cubbie Station.

COMMITTEES

Selection of Bills Committee

Report

Senator FERRIS (South Australia) (9.33 am)—I present the 12th report of 2006 of the Selection of Bills Committee and move:

That the report be adopted.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.33 am)—I move:

At the end of the motion, add “and, in respect of the Medibank Private Sale Bill 2006, the bill be referred to the Finance and Public Administration Committee”.

Senator GEORGE CAMPBELL (New South Wales) (9.33 am)—I move the following amendment to Senator Ellison’s proposed amendment:
The reason for moving my amendment is fairly obvious. Whilst it is argued by the minister that this is purely an asset sale, it is obvious that the sale of Medibank Private will have significant and substantial policy implications for health policy in this area. There is a range of issues that the opposition would try to cover in a committee inquiry on the sale of Medibank Private. Those issues are: geographical coverage of insurance services and the impact that it might have on contracting arrangements between insurers and hospitals; the level of coverage that is supplied; whether premiums will be affected by consolidation in the sector or whether gaps will be affected or increased; whether competition in the sector will be enhanced or reduced—Medibank currently has a 30 per cent market share Australia-wide and dominates market share in most states; the rights and entitlements of members, including the impact of the sale on their current standing and policies; and why the Minister for Finance and Administration has asserted that the sale would put downward pressure on premiums. The government has failed to provide any evidence or modelling to support this assertion, despite the Department of Health and Ageing, which is responsible for health insurance policy, being asked at estimates on a number of occasions for such information. When the sale of Telstra bill was referred to a committee it was referred to the relevant policy committee rather than to the finance and public administration committee. It is difficult for the opposition to understand why a similar course of action would not be followed in these circumstances.

The Selection of Bills Committee has in the past operated on the basis of consensus when dealing with the reference of bills to committees. The way in which the committee is now operating is reaching high farce. We have meetings that last less than five minutes. We are told that bills are being referred; many bills that have been referred have not even been tabled or introduced in the parliament and are being pre-empted by the government already seeking to refer them through the Selection of Bills Committee to committees for inquiry. On a number of occasions recently, bills that at the end of the day did not require an inquiry have been referred to committees.

The operation of this committee needs to be seriously looked at. If the government is going to use this place to simply rubber-stamp the way in which it functions, just do it. Do not bother having the meetings; do not bother going through the farce. Just come in here and tell the chamber what you want to do, what you are going to do and what the time line for doing it is going to be. Do not try to engage us in a process that appears to be democratic when in fact, when we express a view about how some of these issues ought to be dealt with, it is simply ignored. It is not the Selection of Bills Committee that is determining where a bill is to be referred; it is the ministers. The advice is coming directly from ministers’ offices. They are determining where bills are to be referred and they are determining the reporting dates, some of which for some inquiries are absolutely absurd.

We have a similar situation with this inquiry into the sale of Medibank Private. The proposal has major implications for health policy. It is not just about the sale of an asset. It has major implications for the way in which Australians will be covered by health insurance in the future and whether that coverage will be of such a character that they can be confident they are insured at a reasonable cost.
But we are not even going to get an opportunity to look at the range of links that might exist in that area of health policy. This bill will be rammed through a committee that has no people on it who have any understanding of the implications for the health area. This is simply being put before a committee to be used in such a way as to get the government the cover to introduce the bill and to move on with the sale of Medibank Private, without any serious scrutiny or consideration of the range of issues and implications that will arise from such a sale for health care in the future in this country.

(Time expired)

Senator MINCHIN (South Australia—Minister for Finance and Administration) (9.39 am)—I seek this opportunity to put the perspective of the government on what is a rather technical matter—that is, the question of which committee should deal with the Medibank Private Sale Bill 2006. The issue before us is whether the bill should go before the Senate Standing Committee on Finance and Public Administration or whether it should go before the Senate Standing Committee on Community Affairs.

It is the government’s view that the most appropriate committee to consider this bill is the finance and public administration committee. This bill provides for the mechanism by which a government business asset—that is, Medibank Private Ltd—is to be sold. It is a technical bill dealing with all the sale issues involved. It is being handled by the Department of Finance and Administration. The Minister for Finance and Administration is the relevant minister. The minister for finance is the shareholder minister in Medibank Private Ltd. The bill—and what this committee is meant to do is deal with provisions in a bill—deals with all those technicalities. It talks about the Medibank Private sale scheme, the profit status of Medibank Private, the restrictions on ownership of Medibank Private companies, Australian identity, Medibank Private companies and restrictions on the transfer of assets and liabilities of the Medibank Private fund. Those are the matters to be considered by the committee that deals with this bill. It is obvious and logical that that is the jurisdiction of the finance and public administration committee.

With respect to Senator George Campbell’s arguments, I remind him that, back in April, when the Minister for Health and Ageing and I announced the sale of Medibank Private, we also announced the government’s intention to introduce significant reforms to private health insurance in this country in order to make it a more attractive product for consumers and to enhance the viability of the whole private health insurance industry. Legislation to give effect to those policy objectives is currently being finalised and will soon be ready for debate and discussion. I foreshadow that from the point of view of the government, subject to the views of those opposite and all members of the chamber, the most appropriate committee to deal with that legislation is indeed the community affairs committee. That is legislation that will deal with the whole issue of private health insurance and private health insurance reform, not the sale of a particular government business.

I urge the opposition, in moving to have the Medibank Private Sale Bill referred to the community affairs committee, to consider that point: the parliament will be dealing with wider reform issues in a reform bill. I am not sure whether we will get to it in this session, but certainly we will in the next session of parliament. I anticipate that the government will support a proposal that that bill go to the community affairs committee. But it is the government’s clear view that a bill dealing with the technical issues related to the sale of a government business should be dealt with by the most appropriate commit-
We think it is a perversion of the Senate committee process to attempt to send this bill to the wrong committee. It reminds us of why the Senate committee structure did need reform, which was the abuse of the Senate committee system which had been evident in the last few years. It is an abuse to send this bill to the wrong committee. It is clear to anyone examining this issue objectively that the appropriate committee is the finance and public administration committee.

Senator BARTLETT (Queensland) (9.43 am)—I get only one go to speak to this issue, as I understand it, so I will try to cover the whole issue—that is, both the amendment and the substantive motions. For the Democrats the big issue is not even which committee the Medibank Private Sale Bill 2006 goes to, although I think that is a valid question. The issue for us is the reporting date requirement, which is that we have to report before the end of the year.

The Democrats proposal, which is contained in the report, is that we have a report-back date in March. Frankly, the only argument for the bill going to the Senate Standing Committee on Finance and Public Administration rather than the Senate Standing Committee on Community Affairs is that the finance committee does not have much on but the community affairs committee has stacks on. That would be a valid reason if the bill had to go through before the end of the year, but it does not. The government’s own reason for urgency, which is contained in this report, states that ‘the government has announced its intention to sell Medibank Private Ltd through a share market float in 2008’. Why on earth is that a justification for having to ram this through the parliament before the end of 2006?

There is no urgency, and the suggestion by the minister that, somehow, this is just some sort of accounting measure is ludicrous. You might as well say that all the media reforms we have just debated were really just about business matters and that that bill should have gone to the finance committee or the economics committee or the corporations committee because it was just about business decisions, as though it would have had no impact on the media and the communications landscape.

To suggest that such a major change to the ownership of Medibank Private, the profit status and all these sorts of things have no implications for health policy is ludicrous. To try to run the argument that this is just some arcane accounting measure gives an indication of how little attention the government is paying to the potential consequences for the private health sector and the health sector in general as a result of these actions.

The Democrats believe that the Senate Standing Committee on Community Affairs is the better committee to refer the bill to—and, frankly, we can all substitute people across to the Senate Standing Committee on Finance and Public Administration anyway; it is a bit of an unnecessary process—but the real problem is the reporting date. That goes to the big problem that has now become apparent, continually, with this committee process, as Senator George Campbell noted in his remarks. This may seem arcane to people, but I hope there is recognition that it is important. The Medibank Private example is classic. The government is trying to railroad this through. The people are being railroaded in their own backbench. They are trying to railroad it through—to push it all through in a rush before any opposition is built up and we get another Snowy that gets the thing overturned. That is what they are trying to do. By voting for these ridiculously short inquiries time after time, coalition
senators are gagging and railroading themselves. Frankly, I am getting a bit tired of their continually voting for these ridiculously short reporting dates and then, when we get into the committee, they sit there and ask, ‘How the hell are we going to deal with this in such a short time frame?’ You have the power to fix the problem; we don’t. It is your responsibility. How about you take some?

Another classic example—which is even worse—is the copyright legislation, which was referred to a committee before it was introduced into the parliament. We were being asked whether we supported its referral without knowing what was in it. There was a statement of reasons attached for the urgency—which was better than what we have had in the past, which was basically no reason at all—and the purpose of the bill but not the reasons for the referral. That legislation was introduced half an hour ago in the House of Representatives, and the reporting date is 10 November, three weeks away, two weeks of which are sitting weeks or estimates committees weeks. The only non-sitting week is next week, so that committee will have no opportunity to have a public hearing.

Another aspect is that, when we are given half an hour to decide whether or not a bill needs to go to a committee, there is the potential for a committee to get a bill that nobody thinks needs examining or to get a bill that does need examining but where the committee has a ridiculously short time frame to do it in. It is a ludicrous scenario. It is the ministers who are creating this situation. The committee has no say in it, in effect, so this is not a criticism of the committee. You also have to recognise that, with the copyright bill, it is not just about what is in it; it is what is not in it. From what I can tell from what has been just introduced, what is not in the legislation is the proposal to remove the one per cent cap on commercial radio fees paid to performers—copyright holders. That was promised to be part of the balanced changes to the fair use changes. That is not in the bill. The fair use changes are. I do not know whether that is a big issue but to give you half an hour to decide not just to look at the bill but to try to determine whether something is not in the bill—and then to give a ridiculously short time frame to examine it—is simply ludicrous. The process shows contempt for the Senate, but much more importantly it is contempt for the public and democracy. (Time expired)

Senator NETTLE (New South Wales) (9.48 am)—I rise to indicate that the Australian Greens are supportive of the Medibank Private Sale Bill 2006 being addressed as a health issue—which clearly we all understand it will be—so that we can look at the implications of this sale not only on the private health insurance area but also on our public health system. There are implications for this in the $3 billion that this government spends every year in providing the private health insurance rebate. That is an issue that needs to be addressed, and the community affairs committee is an appropriate place to do that. The community affairs committee has a lot of work to do. Given that the government does not intend to proceed with the sale of Medibank Private until 2008, and it has indicated that the timetable for it is dependent on legislation being enacted, then clearly the government is prepared to wait—and it should wait so that the community can have a real and genuine discussion about the implications of the sale of Medibank Private—so the community affairs committee can look at it next year. We support the proposal put forward that there be a longer reporting date so that these things can be properly addressed.

This is one situation where we do know what is proposed in the bill—it is pretty simple; the government wants to sell off Medibank Private—but there are many other
situations where we do not. I can think of migration legislation that just last week was referred to a committee. We do not know what is in it—therefore we do not know how long we need for people in the community to genuinely be involved in discussions about the implication of the legislation—because we did not even see the legislation before the government referred it to a committee. At the time we were being asked to agree to refer it, we could not even get a copy of the bill so we knew what it dealt with. All we can rely on is a few dot points that the minister’s office has given us. They may cover some things in the bill and leave other things out. They may not mention the implications of the bill. We cannot make that assessment when we cannot even see the bill, yet we are being asked to decide whether it should go to a committee and how long it should go for.

This process is taking away the strong role that senators have had in reviewing legislation. The government is simply abusing the processes by not showing us the legislation and then deciding which committee legislation should be referred to, how long it should be referred, who is allowed to say anything and whether or not there can be a time frame for public inquiry and community debate about these important issues. So, on this issue of Medibank Private, the Greens say there are health implications. They need to be addressed by a Senate committee, and that Senate committee needs time to look at the significant health implications of this proposal. That means into next year, and that is what we should be doing here. The Greens absolutely support the proposal to refer the legislation to the community affairs committee and to give enough time for the public to be involved in the debate about the health implications of this proposal to sell Medibank Private.

Senator CHRIS EVANS (Western Australia—Leader of the Opposition in the Senate) (9.51 am)—Senator George Campbell put the Labor position very clearly. I do not want to cover all the ground he covered—I want to make some additional remarks—but his argument is the key one. The sale of Medibank Private is, first of all, not urgent in the sense that the government have said they are not going to sell it until 2008, if they are still in power. There are a couple of hurdles to get over first. Secondly, the government are seeking to define the debate about the sale of Medibank as a narrow financial debate about the terms of the sale, about the cost of health insurance to the Australian public, to do with the rights of the current members and to do with the effect on the efficiency and management of the whole private health sector.

If you turn to the Selection of Bills Committee report, you see that it was referred in part by the Democrats and Labor. The reasons for reference go to things like the effect on competition, the impact on health insurance, the implications for equity and access to health care. The people who have been invited to attend are the Doctors Reform Society, the AMA, Catholic Health Australia and the Australian Private Hospitals Association. Their issues are not merely issues of financial interest; their issues go to the future of the health insurance market and to the future of the health system in Australia. The government wants to narrow and control the debate; it wants to determine who appears and what they say and totally control it because it knows it cannot win the argument in the public arena. That is an abuse of the Senate process, and we ought to support Senator George Campbell’s amendment, which says that the broader issues ought to be examined by the Standing Committee on Community Affairs. It highlights the absolute farce that
the committee system in the Senate is being turned into by this government.

We now have the ridiculous situation where government ministers have to pay lip-service to the Senate committee system. They have found that they cannot win the public debate about riding roughshod over the committee system so they have got smart and they have become cynical. Now we have a minister who says: ‘I think I might introduce a bill next week. I’ll get it referred to the Senate committee system so that when I actually get a bill we can ram it through within a couple of days.’ We have the absolutely ridiculous position where the Senate is referring bills it has not seen to committees on the motion of the government that at some time in the future it will introduce a bill relating to something generally described by the minister, and then it will have an inquiry. The government also sets the timetable for the inquiry so that the committee has to report before the next sitting of the Senate. However important the issue, however wide the terms of debate ought to be, however much it requires public examination, the Senate is asked to report the day or the Friday before the Senate comes back, so the government can ram the legislation through in the first week we are back. There is no consideration of how long a proper inquiry would take and there is no integrity to the system. The committees get a day or two days to take public evidence and then it is rammed through the committee.

To be fair to government senators, while they are not showing much bottle on the floor of the Senate, report after report has government senators saying: ‘We didn’t get time to look at this. We would have preferred more time. In the limited time available, we think it is probably okay because the man has told us so.’ I have served on committees where the government chairman has agreed wholeheartedly with us that there is not enough time to do the bill justice, to allow the public to have input, but when they seek authority from the minister to have a longer reporting time frame they are told no.

So we have this ridiculous farce of a process where we keep the sausage factory going. We are passing bills we have hardly seen. There are hundreds of government amendments moved at the last minute that are not cited but are passed through the Senate. So maintaining our review function and our capacity to examine legislation has been totally eroded. The government changed the rules so that they govern all the committee processes. They have control in the Senate, so they pay lip-service to the committee system, which is being undermined at every turn. This is just another example. I urge government senators to stand up for the role of the Senate and say: ‘This is not good enough. The executive should not be able to ride roughshod over the Senate.’ (Time expired)

Question put:
That the amendment (Senator George Camp-bell’s) be agreed to.

The Senate divided. [10.00 am]
(The President—Senator the Hon. Paul Calvert)

| Ayes | 31 |
| Noes | 33 |
| Majority | 2 |

AYES

Allison, L.F.  Bartlett, A.J.J.
Bishop, T.M.  Brown, C.L.
Campbell, G. *  Conroy, S.M.
Crossin, P.M.  Faulkner, J.P.
Fielding, S.  Forshaw, M.G.
Hogg, J.J.  Hurley, A.
Hutchins, S.P.  Kirk, L.
Ludwig, J.W.  Landy, K.A.
McEwen, A.  McLusca, J.E.
Milne, C.  Moore, C.
Murray, A.J.M.  Nettle, K.
O’Brien, K.W.K.  Polley, H.
The PRESIDENT—The question now is that the amendment moved by Senator Ellison be agreed to.

Question agreed to.

Senator LUDWIG (Queensland) (10.03 am)—by leave—I move:

At the end of the motion, add “but, in respect of the Copyright Amendment Bill 2006, the Legal and Constitutional Affairs Committee report by 4 December 2006”.

I seek leave to make a short statement.

Leave granted.

Senator LUDWIG—The Copyright Amendment Bill 2006 has not even come into this house. It was introduced into the other house in the last half hour; it is not here yet. The government’s own motion has set the Selection of Bills Committee a reporting date of 10 November for this legislation. It will mean that the committee will have only one week for the matter to be scheduled for a hearing date and advertised and for submissions to be dealt with. Given that the committee could schedule hearings next week and deal with all of those matters, there are estimates hearings in the following week and then the bill has to be reported on. It is ridiculous that the government should be putting a bill as important as this one through such a process.

When you look at this bill, you see that it includes matters that go to the free trade agreement, and we understand that there is an urgent date for that to be dealt with. The government has also tacked on a range of other matters, including the fair use review. In other words, the content of this bill is sufficient to warrant an inquiry that allows people time to make submissions and for the committee to deal with them. The government is jamming the legislative program by using this tactic of referring bills to committee with a short turnaround time, without allowing time for this place to look at them. The shadow minister has not even had a brief in respect of this bill to be able to determine whether it even requires a reference to a legislation committee. This is an abuse of the process, and the government should agree to this amendment.

Question put.

The Senate divided. [10.10 am]

(The President—Senator the Hon. Paul Calvert)

Ayes.............. 30
Noes.............. 33
Majority......... 3

CHAMBER
AYES
Allison, L.F. Bartlett, A.J.J.
Brown, C.L. Campbell, G.*
Comroy, S.M. Crossin, P.M.
Faulkner, J.P. Conroy, S.M.
Forshaw, M.G. Crossin, P.M.
Hurley, A. Faulkner, J.P.
Kirk, L. Forshaw, M.G.
Lundy, K.A. Hogg, J.J.
McLucas, J.E. Hurley, A.
Moore, C. Hutchins, S.P.
Nettle, K. Hurley, A.
O’Brien, K.W.K. Hutchins, S.P.
Parry, S.* Hutchins, S.P.
Patterson, K.C. Hutchins, S.P.
Payne, M.A. Hutchins, S.P.
Santoro, S. Hutchins, S.P.
Stott Despoja, N. Hutchins, S.P.

NOES
Abetz, E. Adams, J.
Adams, J. Bernardi, C.
Barnett, G. Brandis, G.H.
Boswell, R.L.D. Chapman, H.G.P.
Calvert, P.H. Colbeck, R.
Colbeck, R. Eggleston, A.
Ellison, C.M. Ferguson, A.B.
Fierravanti-Wells, Fierravanti-Wells, A.
Heffernan, W. Fifield, M.P.
Johnston, D. Fifield, M.P.
Lightfoot, P.R. Flood, A.
Macdonald, J.A.L. Ferguson, A.B.
McGauran, J.J. Fifield, M.P.
Parry, S.* Fifield, M.P.
Payne, M.A. Fifield, M.P.
Santoro, S. Fifield, M.P.
Troeth, J.M. Fifield, M.P.
Watson, J.O.W. Fifield, M.P.

PAIRS
Brown, B.J. Kemp, C.R.
Carr, K.J. Minchin, N.H.
Evans, C.V. Ferris, J.M.
Marshall, G. Campbell, G.
Sherry, N.J. Coonan, H.L.
Stott Despoja, N. Vanstone, A.E.

* denotes teller

Question negatived.

Original question, as amended, agreed to.

Senator PARRY (Tasmania) (10.13 am)—I seek leave to have the report incorporated in Hansard.

Leave granted.

The report read as follows—

SELECTION OF BILLS COMMITTEE
REPORT NO. 12 OF 2006

(1) The committee met in private session on Wednesday, 18 October 2006 at 4.17 pm.
(2) The committee considered proposals relating to the Medibank Private Sale Bill 2006 and resolved to recommend that the provisions of the bill be referred for inquiry and report by 27 November 2006, but was unable to agree on the committee to which the bill should be referred (see appendices 1 to 3 for statements of reasons for referral).
(3) The committee resolved to recommend—That upon its introduction in the House of Representatives the provisions of the Copyright Amendment Bill 2006 be referred to the Legal and Constitutional Affairs Committee for inquiry and report by 10 November 2006 (see appendix 4 for a statement of reasons for referral).
(4) The committee resolved to recommend—That the following bills not be referred to committees:
• Broadcasting Services Amendment (Collection of Datacasting Transmitter Licence Fees) Bill 2006
• Crimes Amendment (Victim Impact Statements) Bill 2006
• Datacasting Transmitter Licence Fees Bill 2006
• Inspector of Transport Security Bill 2006
• Inspector of Transport Security (Consequential Provisions) Bill 2006
• Maritime Legislation Amendment (Prevention of Pollution from Ships) Bill 2006
• Migration Amendment (Border Integrity) Bill 2006
• Migration Legislation Amendment (Enabling Permanent Protection) Bill 2006.

The committee recommends accordingly.
The committee deferred consideration of the following bill to its next meeting:


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


(Chair) Jeannie Ferris
19 October 2006

Proposal to refer a bill to a committee
Name of bill(s):
Medibank Private Sale Bill 2006

Reasons for referral/principal issues for consideration:
To examine the provisions of the bill relating to the sale of Medibank Private to ascertain

- if the Government is entitled to cash out the value that has built up in a not for profit structure or whether it belongs to the policy holders,
- what effect the sale would have on competition and the efficiency of the private health insurance sector as a whole
- whether there will be differential effects across the various states and territories
- what impact the sale may have on health insurance
- the implications for access and equity in healthcare for all Australians.

Possible submissions or evidence from:
Australian Health Insurance Association
Australian Private Hospitals Association
Private Health Insurance Administration Council
Australian Competition and Consumer Commission
Australian Consumers Association/CHOICE
Australian Medical Association
Doctors Reform Society
Health Issues Centre
Catholic Health Australia
Anglicare
Public Health Association of Australia

Professor Stephen Duckett, Professor of Health Policy, Dean of the Faculty of Health Sciences
Professor John Deeble
Professor Stephen Leeder
Dr Ken Harvey
Other private health insurance funds

Committee to which bill is to be referred:
Community Affairs Committee
Possible hearing date(s):
Possible reporting date: 20 March 2007

Appendix 2
Proposal to refer a bill to a committee
Name of bill(s):
Medibank Private Limited Sale Bill 2006

Reasons for referral/principal issues for consideration
Statement of reasons for introduction and passage in the 2006 spring sittings

Purpose of the bill
The purpose of the bill is to remove a statutory prohibition on the sale of Medibank Private Limited’s shares, and to implement other measures appropriate to facilitate the sale of the Company.

Reasons for Urgency
On 12 September 2006, the Government announced its intention to sell Medibank Private Limited through a share market float in 2008. The legislation is essential to the sale of the Commonwealth’s shares in Medibank Private Limited, and the sale timetable is dependent upon the legislation being enacted.

(Circulated by authority of the Minister for Finance and Administration, Senator the Hon. Nick Minchin)

Possible submissions or evidence from:
Committee to which bill is referred:
Finance and Public Administration Committee
Possible hearing date:
Possible reporting date(s):
Appendix 3

Proposal to refer a bill to a committee
Name of bill(s):
Medibank Private Limited Sale Bill 2006

Reasons for referral/principal issues for consideration
Including:
- Impact on PHI premiums
- Impact on Medibank members and current policy entitlements
- Impact of sale on members’ entitlements
- Impact of state by state competition in both insurance and hospital market.

Possible submissions or evidence from:
AHIA, funds, previous commissions, AMA, Catholic Health, DOHA, Private Hospitals Association

Committee to which bill is referred:
Community Affairs Committee

Possible hearing date:
Possible reporting date(s): 7 December 2006

Appendix 4

Proposal to refer a bill to a committee
Name of bill(s):
Copyright Amendment Bill 2006

Reasons for referral/principal issues for consideration

Statement of reasons for introduction and passage in the 2006 spring sittings

Purpose of the bill
The bill contains provisions to implement Australia’s remaining obligations under the Australia-United States Free Trade Agreement (AUSFTA) concerning intellectual property rights. It creates a liability scheme for certain activities relating to the circumvention of “effective technological measures”. These measures help protect copyright owners from piracy and will encourage the increased availability to consumers of copyright materials in digital form.

The AUSFTA sets out a number of permissible exceptions to the liability scheme for:
- interoperability of software
- studying encryption technology
- testing security of computer networks
- identifying and disabling “spyware”
- security, law enforcement and similar governmental purposes, and
- access for acquisition decisions by libraries, archives and educational institutions.

The AUSFTA also provides for additional limited exceptions where the case for such an exception has been demonstrated. The bill amends the Copyright Act 1968 to give effect to the liability scheme and the exceptions. Additional limited exceptions will be included in the Copyright Regulations on a case by case basis. A number will be included as a result of the House of Representatives Standing Committee on Legal and Constitutional Affairs “Review of TPM Exceptions”.

The bill also implements the outcomes of several copyright reviews conducted by the government in 2005-06, including the outcome of the “Fair Use Review” and the review of protection for encoded broadcasts. The bill also extends the jurisdiction of the Copyright Tribunal, makes amendments so that Australia can accede to the World Intellectual Property Organization Internet treaties and makes a range of changes to the enforcement provisions in the Copyright Act.

Reasons for Urgency
The Australia-United States Free Trade Agreement came into force on 1 January 2005. However, an additional two year period was granted for the commencement of the provisions relating to the liability scheme for the circumvention of effective technological measures. Those provisions, which will be given effect to by this bill, must commence on 1 January 2007.

(Circulated by authority of the Attorney-General)

Possible submissions or evidence from:
Committee to which bill is referred:
Legal and Constitutional Affairs Committee

Possible hearing date:
Possible reporting date(s): 10 November 2006
BUSINESS

Rearrangement

Senator ELLISON (Western Australia—Minister for Justice and Customs) (10.13 am)—I move:

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

(1) general business order of the day No. 70—Crimes Amendment (Victim Impact Statements) Bill 2006; and

(2) consideration of government documents.

Question agreed to.

LEAVE OF ABSENCE

Senator PARRY (Tasmania) (10.14 am)—by leave—I move:

That leave of absence be granted to Senator Mason for the period 6 November to 15 December 2006, on account of parliamentary business overseas.

Question agreed to.

Senator GEORGE CAMPBELL (New South Wales) (10.14 am)—by leave—I move:

That leave of absence be granted to Senator George Campbell for the period 6 November to the last day of sitting in 2006 inclusive, on account of absence overseas on parliamentary business.

Question agreed to.

Senator GEORGE CAMPBELL (New South Wales) (10.15 am)—by leave—I move:

That leave of absence be granted to Senator Forshaw for the period 6 November to 10 November inclusive, on account of absence overseas on parliamentary business.

Question agreed to.

NOTICES

Postponement

The following item of business was postponed:

Business of the Senate notice of motion No. 1 standing in the names of Senators Siewert and Milne for today, proposing the reference of matters to the Rural and Regional Affairs and Transport Committee, postponed till the next day of sitting.

Withdrawal

Senator NETTLE (New South Wales) (10.15 am)—Mr President, I withdraw general business notice of motion No. 593 standing in my name for today.

BUSINESS

Rearrangement

Senator ELLISON (Western Australia—Minister for Justice and Customs) (10.16 am)—I move:

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.
Question agreed to.

PARLIAMENTARY ZONE
Approval of Works

Senator ELLISON (Western Australia—Minister for Justice and Customs) (10.16 am)—I move:

That, in accordance with section 5 of the Parliament Act 1974, the Senate approves the proposals by the National Capital Authority for capital works within the Parliamentary Zone, being the refurbishment of the podium that surrounds the National Library of Australia, and resurfacing the temporary carpark on section 55, Parkes.

Question agreed to.
tection immediately after arriving in Australia. It is a fallacy which assumes that asylum seekers come to Australia knowing about the protection system, or have access to specific information about the protection system, or have the capacity to make an application soon after arrival.

Asylum seekers often do not lodge applications in time because of factors such as:

- Fear of authorities and fear in general (which often causes people to keep a low profile and avoid attracting attention).
- Unfamiliarity with Australia’s legal and administrative system and how to make an application.
- Language difficulties, cultural, religious and societal barriers.
- A less than stable mental state (often suffering from post-traumatic stress disorder) and general confusion and disorientation.
- Misinformation from well-meaning family or others about their status and what is required of them.
- Other reasons are that some asylum seekers who have been living in Australia (for example, on student visas) apply for refugee status only after the situation has changed in their own country, preventing them from returning home due to a fear for their lives. Others apply as a last resort after waiting in hope that conditions in their own country would improve and allow them to return.

These restrictions in effect ‘punish’ refugee claimants who lodge their applications after 45 days, regardless of the nature of their claims or whether they have survived torture.

The restrictions also prevent them from engaging in any form of purposeful activity (including voluntary work) so there is no distraction from thinking endlessly about their situation and the fear they feel. They are destitute, frightened and desperate. The experience is harmful to both their physical and emotional/psychological health.

There have been numerous NGO groups which have been providing assistance to asylum seekers and believe that the Government should review the “45-day rule”, to restore government assistance to former levels and to grant refugee claimants permission to work. This is a matter of basic human rights to design a refugee determination process that avoids making these people go through such an extremely stressful experience.

The Democrats do not believe that there is any justification for such a penalty in the Migration Act and believe that they are unnecessarily cruel and should be abolished.

I commend this bill to the Senate.

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

Leave granted; debate adjourned.

COMMITTEES

Finance and Public Administration Committee

Extension of Time

Senator PARRY (Tasmania) (10.18 am)—I move:

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.

Question agreed to.

PROHIBITION OF HUMAN CLONING FOR REPRODUCTION AND THE REGULATION OF HUMAN EMBRYO RESEARCH AMENDMENT BILL 2006

First Reading

Senator PATTERSON (Victoria) (10.18 am)—I move:

That the following bill be introduced: A Bill for an Act to amend the Prohibition of Human Cloning Act 2002 and the Research Involving Human Embryos Act 2002 based on the Lockhart Review recommendations, and for related purposes.

Question agreed to.

Senator PATTERSON (Victoria) (10.18 am)—I move:
That this bill may proceed without formalities and be now read a first time.
Question agreed to.
Bill read a first time.

Second Reading

Senator PATTERSON (Victoria) (10.19 am)—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—
The RIHE and the PHC Acts required that both Acts be reviewed by an independent committee by December 2005.
Sub-clause 25(1) of the PHC Act provided that the Minister was required to cause an independent review of the Act to be undertaken commencing two years after it received Royal Assent. A similar provision was included in the RIHE Act. Provisions in the RIHE Act ensured the reviews of both Acts were undertaken concurrently and by the same people.
The terms of reference for the Committee was set out in both Acts and the intention in 2002 was that the Acts be reviewed together and the full terms of reference provided to the Committee by the Minister for Ageing are:

(i) the following statutory requirements:
(a) developments in technology in relation to assisted reproductive technology;
(b) developments in medical research and scientific research and the potential therapeutic applications of such research;
(c) community standards;
(d) the applicability of establishing a National Stem Cell Bank; and
(ii) the following additional matters in relation to the national legislative scheme:
(a) consideration of relevant aspects of State and Territory legislation corresponding to the Research Involving Human Embryos Act 2002;
(b) the role played by State and Territory statutory bodies that regulate assisted reproductive technology (ART) treatment as well as the role of national organisations including, but not necessarily limited to, the Fertility Society of Australia and its Reproductive Technology Accreditation Committee (RTAC);
(c) the effectiveness of monitoring and compliance under the Research Involving Human Embryos Act 2002 in particular, but also in relation to the Prohibition of Human Cloning Act 2002 to the extent that issues may arise in relation to the latter Act;
(d) the ongoing appropriateness and effectiveness of changes to the Customs regulations to regulate the export of human embryos derived through ART and the import of viable materials derived from human embryo clones;
(e) options for regulation of the import and export of human embryonic stem cells;
(f) the implications of cost recovery; and
(g) implications for Australian science and economic activity.

(2) The Legislation Review Committee is required to consult the Commonwealth, the States, the Australian Capital Territory and the Northern Territory and a broad range of
persons with expertise in or experience of relevant disciplines.

(3) The reports must, to the extent that it is reasonably practicable, set out the views of the Commonwealth, the States and Territories and those other persons consulted.

(4) Each report must contain recommendations about amendments, if any, that should be made to the Prohibition of Human Cloning Act 2002 and the Research Involving Human Embryos Act 2002, whichever is applicable.


In June 2005 the Hon Julie Bishop MP (the then Minister for Ageing with portfolio responsibility for human cloning and stem cell research) appointed a six-member Legislative Review Committee. All the appointments to the Committee were agreed by each State and Territory as the Acts required.

The Legislative Review Committee was chaired by the late John S Lockhart AO QC, a former Justice of the Federal Court of Australia. The other members were Associate Professor Ian Kerridge (New South Wales) a clinical ethicist; Professor Barry Marshall (Western Australia), a specialist gastroenterologist and community advocate; Associate Professor Pamela McCombe (Queensland), a clinical neurologist; Professor Peter Schofield (New South Wales), a neuroscientist; and Professor Loane Skene (Victoria), a lawyer and ethicist.

Sadly John S. Lockhart AO QC died very shortly after the Legislative Review Committee (more commonly known as the Lockhart Review Committee) provided the Minister with its report. I was not privileged to know John Lockhart but I think it would be remiss of me not to relay a comment made to me by one of the other members of the Lockhart Committee—“he was an extraordinary fellow who imbued the entire process and report with a deep respect for all parties and a deep tolerance of divergent viewpoints”.

The Committee “consulted the community extensively through a review website, written submissions, face-to-face meetings with key stakeholders, public hearings and some private meetings (at stakeholders’ requests), facilitated stakeholder discussion forums, and selected site visits. In addition, the Committee reviewed the latest results of focus group and telephone survey research by the Public Awareness Program of Biotechnology Australia, and a literature review (commissioned by the NHMRC on behalf of the Minister for Ageing) of recent scientific and technological advances in human cloning, human embryo research and related matters, including stem cell technologies.” (page xiii)

“Throughout the consultation, the Committee heard from a broad range of people about the implications of legislation for assisted reproductive technology (ART), including in vitro fertilisation (IVF), and for human embryo research. The purpose of this public consultation was to seek the views, values and ‘standards’ of the community regarding the reviews of the Prohibition of Human Cloning Act 2002 (PHC Act) and the Research Involving Human Embryos Act 2002 (RIHE Act). In doing so, the Committee came to the view that Australian society should not be characterised as being a single, homogeneous community, but instead is composed of many different ‘communities’, each of which may have its own perspectives, interests and values, and that any one individual may be a member of many different communities at the same time. Thus, a person may be a committed Christian, a scientist, a shareholder, and the relative of a person with a serious illness — ‘communities’ that may have very different perspectives or ‘standards’ regarding the development and use of embryos for research.

“The Committee also observed that the ‘standards’ evidenced by these communities varied
enormously both between and within communities in terms of the extent to which they were clearly developed or articulated; the degree to which they were felt to bind members of the community; and the degree to which they changed over time or with developments in science and medicine. Consequently, the Committee considers that the social and moral concerns raised by ART and embryo research cannot be explained simply by reference to a single ‘standard’ or a single set of values, beliefs or interests held by a single community.

“In looking for common ground, the Committee noted that there are certain moral values that are held in common by all communities, such as a commitment to social justice and equity, and to the care of vulnerable members of society. This is reflected in broad support for medical research aimed at understanding, preventing or treating disease. The Committee also noted widespread support for medical research to assist people to have children (including a general acceptance that this process may involve the ‘wastage’ of some embryos). Hence, the Committee came to the view that considerations regarding the use of embryos for research needed to take account of both the value that different communities attach to the embryo, and the social and moral value that communities attach to the treatment of disease and the amelioration of infertility.

“It is clear that there are wide-ranging views on embryo research and human cloning, with the exception of human reproductive cloning, which appears to be widely condemned. Some people consider that human embryos have the moral status of an adult and so should not be subject to destructive research in any circumstances, regardless of medical benefit. Others hold a view that human embryos deserve some special consideration by virtue of their moral or social/relational status, but should not be accorded the same status as humans after birth. People who hold this view consider that embryos may be subject to research in certain circumstances, such as when they are judged to be excess, nonviable or unsuitable for implantation. A third group supported research on human embryos before implantation into the body of a woman and urged an extension of what is currently permitted because of the potential medical or scientific benefits that may result from such research. Each of these views is sincerely held and it was apparent to the Committee that all those who made submissions were motivated by a desire to do what is best for our society. However, it was also clear to the Committee that these views could not always be reconciled. Therefore, the challenge for the Committee has been to make recommendations that are consistent with shared values and take into account the needs, beliefs and concerns of the whole community.” (page 161)

“In framing the recommendations, the Committee considered that the higher the potential benefits of an activity, the greater the need for ethical objections to be of a high level and widely accepted in order to prevent that activity. Conversely, where there is evident or possible harm, or where there is widespread and deeply held community objection, a total prohibition through the legal system may be justified. The Committee’s view is that it does not necessarily follow that even though some people think that an activity is unethical, it is necessary to make that activity illegal. Furthermore, the wider the range of ethical views on a particular activity, the weaker the case becomes for declaring that activity to be illegal, with all the attendant consequences of criminal conduct.” (page 162)

The Committee noted that “despite the divergent views received by the Committee during the reviews, both proponents and opponents of embryo research agreed that the current system of legislation is valuable. Therefore, it recommended a continuation of national legislation imposing prohibitions on human reproductive cloning and some other ART practices, as well as strict control and monitoring, under licence, of human embryo research”. (page xiv)


In summary, the proposed amendments to the Prohibition of Human Cloning Act 2002 and the Research Involving Human Embryos Act 2002:

- retain existing prohibitions on activities such as:
• placing a human embryo clone in the human body or the body of an animal;
• importing or exporting a human embryo clone;
• creating a human embryo by fertilisation of a human egg by human sperm, for a purpose other than achieving pregnancy in a woman;
• creating or developing a human embryo by fertilisation of human egg by human sperm which contains genetic material provided by more than 2 persons;
• developing a human embryo outside the body of a woman for more than 14 days;
• making heritable alterations to a human genome;
• collecting a viable human embryo from the body of a woman;
• creating or developing a chimeric embryo;
• developing a hybrid embryo beyond 14 days;
• placing a human embryo in an animal, a human embryo into the body of a human other than into the female reproductive tract or an animal embryo in a human; and
• importing, exporting or placing in the body of a woman, a prohibited embryo.

• enable certain types of research involving embryos to be permitted provided that the research is approved by the NHMRC Licensing Committee (in accordance with legislated criteria) and that the activity is undertaken in accordance with a licence issued by the NHMRC Licensing Committee. In summary, a person may apply for a licence to:
  • use excess ART embryos;
  • create human embryos other than by fertilisation of a human egg by a human sperm, and use such embryos;
  • create human embryos (by a process other than fertilisation of human egg by human sperm) containing genetic material provided by more than 2 persons, and use such embryos;
  • create human embryos using precursor cells from a human embryo or a human fetus, and use such embryos;
  • undertake research and training involving the fertilisation of a human egg, up to but not including the first mitotic division, outside the body of a woman for the purposes of research or training;
  • create hybrid embryos by the fertilisation of an animal egg by human sperm, and develop such embryos up to, but not including, the first mitotic division provided that the creation or use is for the purposes of testing sperm quality and will occur in an accredited ART centre; and
  • create hybrid embryos by introducing the nucleus of a human cell into an animal egg, and use of such embryos.

Unless a shorter time is specified, the uses of embryos that may be authorised by a licence may only be authorised for development up to 14 days (excluding any period during which development is suspended). In no circumstances can any embryo be developed, outside the body of a woman, beyond 14 days.


As I have said, the Acts required that they be reviewed, and one of the terms of reference required that the “reports must contain recommendations about amendments, if any, that should be made to the Prohibition of Human Cloning Act 2002 and the Research Involving Human Embryos 2002, whichever is applicable”.

In 2002 I said in the debate on the bills, “If the review gives rise to possible amendments to the legislation, any such amendments must come before parliament, and at that time, whoever is
here will have the opportunity to consider in detail any proposed changes to the legislation”.

This bill provides that opportunity. It is not an easy issue and people hold diametrically opposed views. It is important that the public and parliamentary debate on this bill is considered and considerate—everybody, whatever their view, has a right to express that view without being subjected to ridicule or personal abuse.

Incorporated at the end of this speech are the Lockhart recommendations and a response to each recommendation indicating if legislative changes are required and how they are dealt with in the bill.

Summary of Lockhart recommendations and how these are addressed in the bill

<table>
<thead>
<tr>
<th>Lockhart Review recommendation</th>
<th>How the issue is addressed in the bill</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Clinical practice and scientific research involving assisted reproductive technologies (ART) and the creation and use of human embryos for research purposes should continue to be subject to specific national legislation.</td>
<td>The national legislative scheme will continue to exist.</td>
</tr>
<tr>
<td>2 Reproductive cloning should continue to be prohibited.</td>
<td>Proposed clauses 9 and 14 continue to ban the development of a human embryo clone for longer than 14 days and the implantation of such a clone in a human or animal. Amended section 20 also bans the development and implantation of any embryo that does not result from the fertilisation of a human egg by human sperm.</td>
</tr>
<tr>
<td>3 Implantation into the reproductive tract of a woman of a human embryo created by any means other than fertilisation of an egg by a sperm should continue to be prohibited.</td>
<td>This is banned in proposed clause 20 of the PHC Act.</td>
</tr>
<tr>
<td>4 Development of a human embryo created by any means beyond 14 days gestation in any external culture or device should continue to be prohibited.</td>
<td>This is banned in proposed clause 14 of the PHC Act.</td>
</tr>
<tr>
<td>5 Implantation into the reproductive tract of a woman of a human–animal hybrid or chimeric embryo should continue be prohibited.</td>
<td>This is banned in proposed clause 20 of the PHC Act.</td>
</tr>
<tr>
<td>6 Development of a human–animal hybrid or chimeric embryo should continue to be prohibited, except as indicated in Recommendation 17.</td>
<td>Creation of chimeric embryos is banned in proposed clause 17 of the PHC Act. The creation and development of hybrid embryos is banned by proposed clause 23B, unless authorised by licence. The only licences that may be issued are ones giving effect to recommendations 17 and 24. Development of hybrid embryos beyond 14 days is banned in all cases by proposed clause 18.</td>
</tr>
<tr>
<td>7 Placing a human embryo into an animal or into the body of a human apart from into a woman’s reproductive tract, or placing an animal embryo into the body</td>
<td>This is banned in proposed clause 19 of the PHC Act.</td>
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<td>Lockhart Review recommendation</td>
<td>How the issue is addressed in the bill</td>
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<td>of a human, for any period of gestation, should all remain prohibited.</td>
<td>This is banned in proposed clause 20 of the PHC Act.</td>
</tr>
<tr>
<td>Implantation into the reproductve tract of a woman of an embryo created with genetic material provided by more than two people should continue to be prohibited.</td>
<td>This is banned in proposed clause 20 of the PHC Act.</td>
</tr>
<tr>
<td>Implantation into the reproductve tract of a woman of an embryo created using precursor cells from a human embryo or a human fetus should continue to prohibited.</td>
<td>This is banned in proposed clause 20 of the PHC Act.</td>
</tr>
<tr>
<td>Collection of a viable human embryo from the body of a woman should continue to be prohibited.</td>
<td>This is banned in proposed clause 16 of the PHC Act.</td>
</tr>
<tr>
<td>Creation of human embryos by fertilisation of human eggs by human sperm should remain restricted to ART treatment for the purposes of reproduction.</td>
<td>This will continue to be the case (proposed clause 12 of the PHC Act).</td>
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<tr>
<td>Creation of human embryos by fertilisation of human eggs by human sperm to create embryos for the purposes of research should continue to be prohibited except in the situation described in Recommendation 15.</td>
<td>This is banned in proposed clause 12 of the PHC Act, which makes it an offence to create a human embryo by fertilisation of human egg with human sperm for any purpose other than achieving pregnancy.</td>
</tr>
<tr>
<td>Use of excess ART embryos in research should continue to be permitted, under licence, as under current legislation.</td>
<td>Use of excess ART embryos in research will continue to be permitted, under licence (proposed amended section 20 of the RIHE Act).</td>
</tr>
<tr>
<td>Research involving fertilisation of human eggs by human sperm up to, but not including, the first cell division should be permitted for research, training and improvements in clinical practice of ART.</td>
<td>The proposed amendments to section 20 of the RIHE Act allow a person to apply to the Licensing Committee to undertake research involving fertilisation of human eggs by human sperm up to, but not including, the first cell division. Such activity not authorised by a licence is banned under proposed clause 10B of the RIHE Act.</td>
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<tr>
<td>Testing of human oocytes for maturity by fertilisation up to, but not including, the first cell division or by parthenogenetic activation should be permitted for research, training and improvements in clinical practice of ART.</td>
<td>Testing by fertilisation up to the first mitotic division will be permitted under licence (proposed clauses 10B and 20 of the RIHE Act). Parthenogenetic activation will be also be permitted under licence in accord with recommendation 25 (amended clause 20 of the RIHE Act allows a person to apply for a licence to create an embryo by any means other than fertilisation of human egg by human sperm).</td>
</tr>
<tr>
<td>Certain interspecies fertilisation and development up to, but not including, the first cell division should be permitted for testing gamete viability to assist ART training and practice.</td>
<td>Proposed paragraph 20(1)(f) enables the granting of a licence to permit this.</td>
</tr>
<tr>
<td>The Licensing Committee should develop a simple proforma application for licences to undertake training and quality assurance activities for ART clinics.</td>
<td>No legislative change required.</td>
</tr>
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</table>
Lockhart Review recommendation | How the issue is addressed in the bill
---|---
19 | Consideration should be given to the use of cytoplasmic transfer (including transfer of mitochondrial DNA), under licence, for research on mitochondrial disease and other uses to improve ART treatment. Proposed amended section 20(1) of the RIHE Act will permit, under licence, certain types of research that may be useful in relation to cytoplasmic transfer. However, an embryo containing genetic material from more than two people (and created by the fertilisation of human egg and sperm) will not be able to be created for research purposes.

20 | An expert body should formulate objective criteria to define those embryos that are unsuitable for implantation. The new definition of “unsuitable for implantation” in subsection 7(1) of the RIHE Act provides for this.

21 | Fresh ART embryos that are unsuitable for implantation, as defined by the objective criteria, should be permitted to be used, under licence, for research, training and improvements in clinical practice. New subsection 24(8) in the RIHE Act (described immediately above) will enable this.

22 | Fresh ART embryos that are diagnosed by preimplantation genetic diagnosis (according to the ART guidelines) as being unsuitable for implantation should be permitted to be used, under licence, for research, training and improvements in clinical practice. New subclause 24(8) in the RIHE Act enables the Licensing Committee to modify the requirements for “proper consent” in relation to use of such embryos. This will enable the current 14 day cooling-off period to be shortened, so as to allow the use of fresh embryos.

23 | Human somatic cell nuclear transfer should be permitted, under licence, to create and use human embryo clones for research, training and clinical application, including the production of human embryonic stem cells, as long as the activity satisfies all the criteria outlined in the amended Act and these embryos are not implanted into the body of a woman or allowed to develop for more than 14 days. Section 22 of the PC Act bans the creation or development of a human embryo by a process other than fertilisation unless this is licensed. Section 20 of the RIHE provides for the licensing of the creation and use of such embryos. This has the effect of allowing SCNT under licence. The PHC Act also bans the development of any human embryo (including a human clone) outside the body of a woman beyond 14 days (clause 14), and the implantation of a human embryo clone (or any embryo that has not been created using sperm and egg) (clauses 9 and 20(3)). Paragraph 20(1)(g) of the RIHE Act enables the granting of a licence to permit this. Section 18 of the PHC Act bans the development of such embryos for more than 14 days.

24 | In order to reduce the need for human oocytes, transfer of human somatic cell nuclei into animal oocytes should be allowed, under licence, for the creation and use of human embryo clones for research, training and clinical application, including the production of human embryonic stem cells, as long as the activity satisfies all the criteria outlined in the amended Act and these embryos are not implanted into the body of a woman or allowed to develop for more than 14 days. Proposed clause 22 of the PHC Act bans such activity, except under licence. Proposed clause 20 of the RIHE provides for the granting of licences. Clause 9 of the PHC Act bans the implantation of such embryos and proposed clause 14 of the PHC Act bans their development for longer than 14 days.

25 | Creation of human embryos and human embryo clones by means other than fertilisation of an egg by a sperm (such as nuclear or pronuclear transfer and parthenogenesis) should be permitted, under licence, for research, training and clinical applications, including production of human embryonic stem cells, as long as the research satisfies all the criteria outlined in the amended Act and these embryos are not implanted into the body of a woman or allowed to develop for more than 14 days. Proposed clause 22 of the PHC Act bans such activity, except under licence. Proposed clause 20 of the RIHE provides for the granting of licences. Clause 9 of the PHC Act bans the implantation of such embryos and proposed clause 14 of the PHC Act bans their development for longer than 14 days.
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<td>26 Creation of human embryos using the genetic material from more than two people, or including heritable genetic alterations, should be permitted, under licence, for research, training and clinical applications, including production of human embryonic stem cells, as long as the research satisfies all the criteria outlined in the amended Act and these embryos are not implanted into the body of a woman or allowed to develop for more than 14 days.</td>
<td>The combined effect of proposed clauses 13 and 23 of the PHC Act and clause 20(1) of the RIHE Act is that the Licensing Committee may licence the creation of embryos that include genetic material from more than two people provided that the embryo is created by means other than fertilisation of a human egg by human sperm. Fertilisation studies may also be undertaken, under licence, up to (but not including) the first mitotic division. Proposed clause 23A of the PHC Act bans such activity, except under licence. Proposed clause 20 of the RIHE provides for the granting of licences. Clause 20 of the PHC Act bans the implantation of such embryos and clause 14 of the PHC Act bans their development for longer than 14 days.</td>
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<tr>
<td>27 Creation of embryos using precursor cells from a human embryo or a human fetus should be permitted, under licence, for research, training and clinical applications, including production of human embryonic stem cells, as long as the research satisfies all the criteria outlined in the amended Act and these embryos are not implanted into the body of a woman or allowed to develop for more than 14 days.</td>
<td>This was the NHMRC’s draft definition at the time the Lockhart Report was written. The final NHMRC definition differed slightly from the draft definition. The proposed new definition in the PHC Act and the RIHE Act is the final NHMRC definition.</td>
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| 28 The definition of a ‘human embryo’ in both Acts should be changed to:  
(i) the first mitotic cell division when fertilisation of a human oocyte by a human sperm is complete; or  
(ii) any other process that initiates organised development of a biological entity with a human nuclear genome or altered human nuclear genome that has the potential to develop up to, or beyond, 14 days and has not yet reached eight weeks of development.’ | For consideration by the NHMRC—No changes to the legislation required. |
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<th>Recommendation</th>
<th>Description</th>
<th>How the issue is addressed in the bill</th>
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<td>30</td>
<td>The NHMRC should develop ethical guidelines for the use of embryos that are unsuitable for implantation for research, training and improvements in clinical practice (see Recommendations 20–22).</td>
<td>For consideration by the NHMRC—No changes to the legislation required.</td>
</tr>
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<td>31</td>
<td>The current principles of consent for participation in medical research must apply to sperm, egg and embryo donors, so as to ensure that decisions are freely made.</td>
<td>The proposed amendments to the RIHE Act make it clear that proper consent must be gained for any research involving human eggs or human embryos.</td>
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<td>32</td>
<td>The NHMRC should develop guidelines for egg donation.</td>
<td>For consideration by the NHMRC—No changes to the legislation required.</td>
</tr>
<tr>
<td>33</td>
<td>The present prohibition of the sale of sperm, eggs and embryos should continue, but the reimbursement of reasonable expenses should continue to be permitted.</td>
<td>Proposed clause 21 of the PHC Act is the same as the existing prohibition.</td>
</tr>
<tr>
<td>34</td>
<td>The Embryo Research Licensing Committee of the NHMRC (the Licensing Committee) should continue to be the regulatory body responsible for assessing licence applications, issuing licences and monitoring compliance, as under current arrangements.</td>
<td>This continues to be the case—no changes to the legislation required.</td>
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<td>35</td>
<td>The role of the Licensing Committee should be extended to include assessment of licensing applications and issuing licences for any additional activities permitted, under licence (see Recommendations 14–27).</td>
<td>Proposed amendments to subclause 20(1) of the RIHE Act will enable the Licensing Committee to do this.</td>
</tr>
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<td>36</td>
<td>The Australian Parliament and the Council of Australian Governments should give urgent attention to the problem of delays in the filling of vacancies on the Licensing Committee.</td>
<td>Proposed amendments to clause 16 of the RIHE Act (new subsections (7) and (8)) address this recommendation.</td>
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<tr>
<td>37</td>
<td>There should be no attempt to recover the cost of administration, licensing, monitoring and inspection activities associated with the legislation from researchers at this point in time.</td>
<td>This continues to be the case.</td>
</tr>
<tr>
<td>38</td>
<td>The Licensing Committee should continue to perform its functions in relation to licences and databases for research permitted by licences under the Research Involving Human Embryos Act.</td>
<td>This continues to be the case.</td>
</tr>
<tr>
<td>39</td>
<td>Licensing Committee inspectors should be given powers, under the Prohibition of Human Cloning Act and the Research Involving Human Embryos Act, of entry, inspection and enforcement in relation to non-licensed facilities in the same manner and by the observance of the same procedures as applicable to search warrants under Commonwealth legislation, if such powers do not clearly exist.</td>
<td>Proposed clauses 37A, 37B, 37C and 37D in the RIHE Act provide for these powers.</td>
</tr>
<tr>
<td>40</td>
<td>There should be a continuation of the role of the Reproductive Technology Accreditation Committee in the regulation of ART.</td>
<td>No changes to legislation required.</td>
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<tr>
<td>41</td>
<td>The import or export of a patient’s reproductive material, including ART embryos, for the purpose of that person’s ongoing ART treatment should not require any regulation other than that required under existing quarantine regulation.</td>
<td>Regulation 7 of the Customs (Prohibited Exports) Regulations 1958 is proposed to be repealed by virtue of Schedule 4 of the bill.</td>
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<td>Lockhart Review recommendation</td>
<td>How the issue is addressed in the bill</td>
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<tr>
<td>42 The import or export of ethically derived viable materials from human embryo clones should be permitted after approval by the appropriate authority.</td>
<td>Section 23C of the PHC Act requires the Minister for Customs to take all reasonable steps to ensure that regulations are made permitting this.</td>
<td></td>
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<tr>
<td>43 The existing requirements for the import and export of human biological materials are satisfactory and, for ethically derived human embryonic stem cells, no further restrictions are necessary.</td>
<td>No changes to legislation required.</td>
<td></td>
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<tr>
<td>44 Trade in human gametes or embryos, or any com-modification of these stems, should continue to be prohibited.</td>
<td>This continues to be the case under proposed clause 21 of the PHC Act.</td>
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<tr>
<td>45 Donors of tissue that is going to result in an immortal stem cell line should be informed by means of processes monitored by human research ethics committees about the potential use of that stem cell line, including the potential for commercial gain and the fact that they may not have any rights in potential stem cell developments.</td>
<td>The proposed changes to the Act ensure that there must be proper consent (in accordance with NHMRC guidelines) in relation to any use or creation of embryos.</td>
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<td>46 The development of biotechnology and pharmaceutical products arising from stem cell research should be supported.</td>
<td>No changes to legislation required.</td>
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<tr>
<td>47 A national stem cell bank should be established.</td>
<td>Proposed clause 47B of the RIHE Act requires the Minister to report to Parliament (within 6 months) regarding the establishment of a national register of donated excess ART embryos.</td>
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<tr>
<td>48 Consideration should be given to the feasibility of the Australian Stem Cell Centre operating the stem cell bank.</td>
<td>No changes to legislation required.</td>
<td></td>
</tr>
<tr>
<td>49 A national register of donated excess ART embryos should be established.</td>
<td>Proposed clause 47B of the RIHE Act requires the Minister to report to Parliament (within 6 months) regarding the establishment of a national register of donated excess ART embryos.</td>
<td></td>
</tr>
<tr>
<td>50 The Licensing Committee should be authorised under the Prohibition of Human Cloning Act to give binding rulings on the interpretation of that Act, or the regulations made under that Act, on condition that it reports immediately and in detail to the NHMRC and to parliament on such rulings.</td>
<td>Proposed clause 12A avoids constitutional issues associated with binding rulings, but addresses the basic concern of the Lockhart Committee which appeared to be the potential liability of researchers where they are acting in good faith in accordance with a licence but where the NHMRC Licensing Committee in fact had no power to issue the licence.</td>
<td></td>
</tr>
<tr>
<td>51 The Licensing Committee should be authorised by the Research Involving Human Embryos Act to give binding rulings and to grant licences on the basis of those rulings for research that is not within the literal wording of the Act, or the regulations made under the Act, but is within their tenor, on condition that the Committee reports immediately and in detail to the NHMRC and to parliament on any rulings it gives, or any licences it grants, in that way.</td>
<td>Proposed clause 12A (as described above).</td>
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<tr>
<td>52 A researcher who conducts research on the basis of a ruling or a licence should be protected from liability under the legislation, provided that they act in accordance with the relevant ruling or licence.</td>
<td>Proposed clause 12A (as described above).</td>
<td></td>
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In view of the fast-moving developments in the field, and the range of amendments proposed herein, the two Acts should be subject to a further review either six years after royal assent of the current Acts or three years after royal assent to any amended legislation.

The bill includes a new clause 25A (in the PHC Act) and a new clause 47A (in the RIHE Act) that requires that a review be undertaken.

There should be ongoing public education and consultation programs in the areas of science that are relevant to the Acts.

No changes to legislation required.

I commend the bill to the Senate.

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

Leave granted; debate adjourned.

SIEV X

Senator BARTLETT (Queensland) (10.20 am)—I, and on behalf of Senator Lundy and Senator Nettle, move:

That the Senate—

(a) notes:

(i) that 19 October 2006 is the fifth anniversary of the sinking of the boat known as the SIEV X, which was bound for Australia and sank with the loss of 353 lives, including 146 children,

(ii) that a ceremony was held on 15 October 2006 at Weston Park, Yarralumla, on the shores of Lake Burley Griffin in Canberra to mark the anniversary and to display a proposed memorial, featuring 353 decorated wooden poles, which was created by people from more than 200 church, school and community groups from every state and territory in Australia, and

(iii) the continuing grief that is still suffered by those who lost husbands, wives, mothers, fathers and children in the event;

(b) calls on the National Capital Authority to give permission for the SIEV X memorial project to be established as a permanent memorial on the Canberra lakeshore as soon as possible; and

(c) expresses its regret and sympathy at the tragic loss of so many innocent lives.

Question put.

The Senate divided. [10.24 am]

(The President—Senator the Hon. Paul Calvert)

Ayes............ 28
Noes............ 31
Majority......... 3

AYES


NOES

I move:

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.

Question put.
The Senate divided. [10.28 am]

(The President—Senator the Hon. Paul Calvert)

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

AYES

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

NOES

Adams, J. Barnett, G.
Bernardi, C. Boswell, R.L.D.
Calvert, P.H. Chapman, H.G.P.
Colbeck, R. Coonan, H.L.
Eggleson, A. Ellison, C.M.
Ferguson, A.B. Ferris, J.M.
Fierravanti-Wells, Joseph, M.P.
Heffernan, W. Humphries, G.
Johnston, D. Joyce, B.
Kemp, C.R. Lightfoot, P.R.
Macdonald, J.A.L. McGauran, J.J.J.
Nash, F. Parry, S.
Patterson, K.C. Payne, M.A.
Ronaldson, M. Santoro, S.
Scullion, N.G. * Trood, R.B.
Watson, J.O.W. Vanstone, A.E.

* denotes teller

Question negatived.

AUSTRALIAN WHEAT BOARD

Senator LUDWIG (Queensland) (10.27 am)—I move:

That the Senate:

(a) notes:

(i) the recent study by Johns Hopkins University that estimates more than 650 000 Iraqis have died since the invasion of Iraq in March 2003, as a result of the conflict and that more than a third of the deaths are attributed to the actions of Coalition forces, and

(ii) the recent study by Johns Hopkins University that estimates more than 650 000 Iraqis have died since the invasion of Iraq in March 2003, as a result of the conflict and that more than a third of the deaths are attributed to the actions of Coalition forces, and
(ii) that more than 3 000 Coalition troops have died since the invasion; and
(b) calls on the Government to immediately withdraw Australian troops from Iraq.

Question put.
The Senate divided. [10.36 am]
(The President—Senator the Hon. Paul Calvert)

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<th>AYES</th>
<th>5</th>
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<tr>
<td>Noes</td>
<td>50</td>
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<tr>
<td>Majority</td>
<td>45</td>
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AYES
Allison, L.F. Bartlett, A.J.J.
Milne, C. Nettle, K.
Siewert, R. *

NOES
Adams, J. Barnett, G.
Bernardi, C. Brandis, G.H.
Brown, C.L. Calvert, P.H.
Campbell, G. Chapman, H.G.P.
Colbeck, R. Conroy, S.M.
Coonan, H.L. Crossin, P.M.
Eggleston, A. Ferguson, A.B.
Fielding, S. Forshaw, M.G.
Fifield, M.P. Forster, J.R.
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ated time, we have agreed to share the time amongst us.

I want to commence the comments today by paying great tribute to all the people who gave their time, their effort and their genuine courage to come before our committee, sharing their stories and encouraging us as a committee to move forward on this very important challenge. The challenge before all of us as members of the committee is to accept that gynaecological cancer is killing too many women in our community and we must share in the efforts to stop that happening. That sharing will be done by all of us, and indeed our committee has looked closely at moving forward to encourage awareness campaigns and genuine research efforts to reinforce the wonderful work that is already being done.

One of the marvellous parts about being a member of this committee is to meet with the people who are currently working in this field in our country. Most of us knew a little bit about gynaecological cancer before we commenced on this committee, but we were empowered by the examples of the efforts that came before us and we want to thank the people, particularly the gynaecological oncologists, the nurses, the social workers and all the medical professionals, that gave their time.

I know other senators will also be speaking on this, but I want to pay particular tribute to our secretariat, because the secretariat walked this journey with us. It was their commitment, help, support, knowledge and humour that kept many of us going at times when we came very close to being emotionally troubled by the evidence we heard. I thank Elton Humphry’s team, and most particularly this time Ms McDonald, Kerrie Martain and Kate Palfreyman with the great support of Leonie Peake and Ingrid Zappe. Thank you so much. You made our work easier and we now have the challenge to move forward, supporting the work that was put in place earlier by the cancer inquiry under the auspices of former senator Peter Cook. I know he is watching us and wishing us well. We will talk many times in this place about the recommendations that came out of this wonderful effort. The Community Affairs Committee has learnt. We will work and make sure the messages are heard. I now ask other senators to join in this debate.

Senator FERRIS (South Australia) (10.45 am)—I too want to speak on the Community Affairs Committee report *Breaking the silence: a national voice for gynaecological cancers*. On this day last year, I had just begun to learn about gynaec cancers, in particular ovarian cancer. At this time last year I had just undergone surgery for ovarian cancer and had joined thousands of women in Australia who are on this, until now, largely silent journey. It was a steep learning curve for me and one which was at times quite frightening.

Gynaecological cancers are often not spoken of in the community and those several hundred women who are diagnosed each year are often unable to find the support they need. Some women say that when speaking of gynaecological cancers they have feelings of guilt, shame and embarrassment, and as a result their gynaecological cancer journey is often made alone and in silence—as silent as the early symptoms of some of these cancers, because symptoms of ovarian cancer are often vague. As with many women who gave evidence to our committee, I paid several visits to doctors before an accurate diagnosis was made. That usually occurs only after a CT scan or an ultrasound.

There are some very frightening statistics that were reported to the committee that I want to note today. In 2001, 1,537 women were diagnosed with uterine cancer, 735
women were diagnosed with cervical cancer and 252 women were diagnosed with vulval cancer. One of the most disturbing figures in the report is the statistic for ovarian cancer. In 2001, 1,295 Australian women were diagnosed with ovarian cancer; 846, sadly, died. Unfortunately some of these cancers carry a very poor survival rate—unlike breast cancer, which in Australia is now curable in more than 80 per cent of cases. What a wonderful outcome that is. There is no doubt that this is partly due to the significant financial support which has been given to breast cancer by this government and the previous government. A total of $34.5 million has been made available by this federal government and in the final two years of the previous government. Sadly, for ovarian cancer only $800,000 has been made available over the same period, with little or nothing available to the other, equally important, gynaecological cancers. The future statistics tell their own awful story. In the year 2011, 1,645 women will be diagnosed with ovarian cancer, 1,967 women will be diagnosed with cancer of the uterus and 461 women will be diagnosed with cervical cancer.

The Senate committee’s task was to define the need for a national ‘voice’ for gynaecological cancers to focus the effort and resources throughout Australia, and to examine the adequacy of research funding in both basic research and clinical trials; the adequacy of access to screening, treatment and wider health support services, particularly for Indigenous women and women from other cultural backgrounds; the adequacy of education for the medical community, women and the broader community; and the adequacy of representation of expertise and experience in gynaecological cancers in national health agencies, including the newly established Cancer Australia.

After extensive evidence from highly qualified experts and representatives of the community and support groups, the committee agreed on the urgent need to establish a national voice for gynaecological cancers. This is a key recommendation that impacts on all areas of gynaec cancers and the carers of people with those cancers. We concluded that real change requires a national focus and that the gynaecological cancer sector of our community would benefit enormously from having its own structure, its own infrastructure and its own national voice.

We recommend that initial seed funding of $1 million be found from the Commonwealth government for the establishment of a stand-alone centre for gynaecological cancers in Australia, within Cancer Australia. This recommendation recognises the importance of Cancer Australia and encourages collaboration and a cohesive approach to cancer care. We concluded unanimously that there is value in bringing people together to strengthen the understanding of gynaec cancer issues at the political and policy level and to provide many of the ‘answers’ that are needed to lessen the impact of these cancers on women and their families.

The committee believes that there should be increased and better coordinated funding to drive new developments in gynaecological oncology and to make more effective use of Australia’s talented researchers and investigators, the priority being the development of a screening test for ovarian cancer to enable earlier identification of the disease and successful treatment—hopefully lowering those awful statistics that we heard about in evidence. Recurrent Commonwealth government funding is essential for maintaining the vitality and the enthusiasm of researchers and for minimising the burden of fundraising for research by community groups and the very willing volunteer organisations.

The provision of high-quality treatment and wider health support programs is a criti-
cal element in improving health outcomes for women with gynaec cancers. Evidence showed that access to treatment was not equal across the community, with disproportionate numbers of women from rural and remote areas, Indigenous populations and culturally diverse populations generally having very limited access to the services they need. This is unfair. It has to change.

Improvement is urgently needed in the delivery of treatment and wider health support programs, including the very significant input of multidisciplinary care and the multidisciplinary care teams, and access to appropriate psychosocial and psychosexual care and lymphoedema management—a very important side effect of many of these cancers. Allocation of increased funding for treatment and support programs and more targeted national health strategies were also considered to be very important areas of need.

The committee found there was a varying level of awareness amongst the medical community, women and the wider community. More effort was needed to continually improve the delivery of gynaecological oncology education on a formal and continuing basis. General practitioners and nurses were identified as being crucial to the appropriate referral of women to gynaecological oncologists and it was critical for GPs and nurses to be given opportunities to further pursue education in treatment for gynaecological cancers. We believe that a more targeted approach in the delivery of messages is needed, and programs are thought to be a key area in the referral of women to gynaecological oncologists. Information needs to be visible and accessible to women and the broader community to raise the awareness of gynaecological cancers and to assist women to make informed decisions about their treatment.

A national awareness campaign is urgently needed, with the coordination of existing education efforts and the development of clear and consistent messages to women and the community. How wonderful it would be for women who have been newly diagnosed with a gynaecological cancer to receive from a survivor something like the very informative My Journey Kit for breast cancer, which women who are diagnosed with that disease can read through with their families. That would allow people to know the journey they are about to undertake. This information is currently not available to women. Those women who try to look on a website to find information about these cancers often find themselves going to the United States websites to get information. How much better would it be for it to be handed to them in their hospital bed by a survivor or in their doctor’s treatment room. That is another very important recommendation of this committee.

In conclusion, I particularly thank all of those women—all of them—who courageously came to give evidence to our committee, including survivors of the various gynaecological cancers, the medical experts who treat them, the community groups who support them and the families who care for them. The families who love and support these women and the researchers who are seeking improved treatments for them are an enormously important part of this journey that women undertake.

This has been one of the most interesting and, for me, most significant inquiries that I have been a part of in my 10 years in this place. I look forward very much to the establishment of a national voice for gynaecological cancers which will equal the success of the National Breast Cancer Centre, which has so successfully raised the profile on breast cancers in this country. I look forward very much to being a part of that.
In conclusion, I add my thanks to the wonderful staff in the committee secretariat. They have worked very hard on this inquiry.

**Senator ALLISON** (Victoria—Leader of the Australian Democrats) (10.55 am)—It is a great pleasure for me to join this debate on the Community Affairs Committee report *Breaking the silence: a national voice for gynaecological cancers*. Most of us have been touched by cancer, whether it is our own experience or that of our partner, our father, our mother, our child or a friend. It is a very life-altering experience for anyone who has suffered from it and for those who are around them.

At the outset, I want to pay tribute to all of the women who shared their experiences with the committee during the course of this inquiry. I know it was not easy for many of them. Their stories were very moving; I hope that they feel that the report reflects their hopes for a better approach to gynaecological cancer in the future.

I also want to recognise the efforts of two people in particular. It is unfair to single out two people, but I will do that because they were the instigators of and the reason that we had this inquiry. They were Margaret Heffernan and Kath Mazzella, whose work on a petition directly led to the inquiry. What was presented to this place was a petition with some thousand signatures of women. For a long time I have felt that we do not pay enough attention to petitions. For this reason—and I thank the Senate for this—we were able to refer this petition to the Community Affairs Committee, which then chose to conduct a roundtable discussion to see whether this had substance and should be followed further. Then, as we all know, by joint referral across parties, a referral was made to the Community Affairs Committee for a full inquiry. That was a heartening process, because it involved each party in this place but it also involved the community. That is the great strength of the Senate—that people can speak directly to us. In this case I think there has been a fantastic outcome as a result. I also want to thank the committee secretariat, who once again have done a fabulous job in bringing together all of the evidence and submissions that contributed to this report.

Fortunately, in the past few decades we have made a lot of progress in the area of cancer. We now know more about the causes of some types of cancers. There are more treatment options, and today people with many forms of cancer, including previously fatal forms, can and should expect a cure. But our progress in the area of cancer has not been even, as this report demonstrates.

This week we heard good news on the breast cancer front. We heard that, although the incidence of breast cancer is rising, women diagnosed with the disease have a better chance of survival now than ever before. Major advances in early detection and treatment mean that 86 per cent of women diagnosed with breast cancer today can expect to be alive in five years time. But that is not the case for all cancers. Each year, thousands of women will get some form of gynaecological cancer, whether it is cancer of the ovary, fallopian tube, uterus, cervix, vagina or vulva, and many of these women will, sadly, die.

In 2004, 1,530 women died as a result of gynaecological cancers. If we do not change the way we deal with these cancers, women will continue to die unnecessarily. This group of cancers is more common than lung cancer or melanoma but far less visible. Gynaecological cancer remains stigmatised and there is a silence, uncomfortableness and unwillingness to talk about these conditions that impedes efforts to end the death and suffering caused by these cancers. Natalie Jen-
kins, chairperson of the Gynaecological Awareness Information Network, told the committee:

GAIN continues to be surprised and dismayed at the lack of knowledge and awareness of gynaecological conditions among the general populace. We believe this is the result of the social taboo surrounding the subject.

Women do not know what symptoms to look for, nor do their doctors in many cases. They do not know that gynaecological cancers are some of the hardest cancers to detect, because many of the symptoms are similar to other conditions and so they get overlooked or attributed to other problems or middle age.

They do not know that cancers of the uterus, the ovaries, the vulva and vagina are on the increase and that we do not have effective screening processes, except for cervical cancer, and even that is worryingly underused. They do not know that some gynaecological cancers are amongst the most deadly types of cancers. Ovarian cancer kills about 60 per cent of those diagnosed within five years—three times the death rate for breast cancer.

Education and communication have to be the first steps in bringing these diseases to the forefront of our minds and in promoting earlier detection, thereby increasing survival rates. Gynaecological cancers affect all women. All women, irrespective of their age, need to be aware of these diseases and need to be advised and guided with care and consideration in their early detection. Healthcare professionals must be informed and as active as possible in spreading information about the need for self-examination and vigilance about the symptoms. If women and their doctors know the risk factors and early signs, they will make use of a specialist to rule out cancer or detect it in the early stages. It is my hope that the report of this inquiry will lead to changes that mean that every patient will find out their diagnosis as quickly as possible and that information will be easily available to women to enable them to become as educated as possible about their condition.

However, information is not enough—we also need to have good services. We hear that, while many women with gynaecological cancers did receive treatment and access to services, many missed out because those services were deficient, uncoordinated, underfunded or simply not available. Gynaecological cancer cannot be treated appropriately if care is not delivered in a comprehensive and coordinated manner. That means that doctors, specialists and other healthcare professionals must work together to meet the patients’ specific needs. Women have a far greater chance of survival, for instance, if they are treated by gynaecological oncologists and by treating specialists in public hospitals. One of the key messages in our inquiry was that multidisciplinary care is best practice and provides better treatment, better outcomes, more satisfaction and much less distress.

This is not just about treating the affected organ. We must also do more to manage and help women, their families and their caregivers during and after treatment. We must help them to live with their disease and to cope with life after cancer. That can be very difficult for many women and their families. Women need to have a range of practical and financial supports and some women will need to make very difficult end-of-life decisions. We must cultivate a more humane response to the totality of women’s experiences. We need, for instance, to address some of the results of cancer treatment, like lymphoedema, which at least one of the members of the committee is affected by. We need masseurs who specialise in this area and physiotherapists who are available. By ‘available’ to women I also mean affordable. We need more research, too. Gynaecological
cancers, like many other diseases, will finally be overcome through research. Research can bring that day much closer. We need additional means, improved organisation and better coordination.

Most of all, we need a powerful voice to improve the profile of gynaecological cancers. Science, medicine and education can do much, but they will only do so by joining forces. This is why the committee has recommended a centre for gynaecological cancers as being essential to achieve that. A centre such as this can be a linchpin and provide the impetus to solve the problems and questions in the area of gynaecological cancers in much the same way as has been done with breast cancer. We need to work together to make sure we use the resources available to maximise advantage for patients.

Finally, I would like to thank my fellow committee members for their involvement in this inquiry. It was an empowering inquiry, if I can put it that way. It was a pleasure to work with so many committed women. I recognise and acknowledge here the personal insights that came from women on this committee who have had more than a brush with cancers. I felt rather daunted by the experience that surrounded me in this committee inquiry. I also learned a great deal about my own body, as much as about cancer. So I thank the Senate for giving the committee the opportunity to conduct such an important inquiry.

Senator ADAMS (Western Australia) (11.04 am)—I join my colleagues in congratulating all those who were involved in the inquiry into gynaecological cancers by the Senate Standing Committee on Community Affairs, especially our witnesses. As a Western Australian and rural member of the committee, I would like to focus more on the problems of rural women who have gynaecological cancers. One of our main recommendations—which I am so pleased the committee agreed to put forward and which we have a comprehensive chapter on—is patient assisted travel. One of the biggest problems for rural patients—whether or not they have cancer—is the need to travel long distances for treatment, which makes the experience even harder.

Today I am thrilled to be hosting 30 members of the National Rural Health Alliance. The alliance is made up of allied health people—doctors, nurses and consumers, anyone who knows anything about rural health. This morning the Minister for Health and Ageing, the Hon. Tony Abbott, addressed the alliance, and its members raised the issue of patient assisted travel. We have a recommendation that the Council of Australian Governments, as a matter of urgency, improve the current patient travel assistance arrangements in order to establish equity and standardisation of benefits, ensure portability of benefits across jurisdictions and increase the level of benefits to better reflect the real costs of travel and accommodation.

Something that was raised this morning was the importance of an escort to accompany the patient. There is nothing worse than having to travel huge distances to be diagnosed with gynaecological cancer, as you can imagine—it is such a shock. You have heard from Senator Ferris about how she felt. How would you feel having to travel thousands of kilometres by yourself to hear the diagnosis and have your treatment? At the moment, women in the Northern Territory cannot access radiotherapy treatment in the Northern Territory; they have to go to either Adelaide or Brisbane. They are not allowed an escort unless that person can give them medical advice or medical assistance. The psychosocial aspect, unfortunately, has not been taken into consideration. I would like to see this taken up. It is so unfair.
The other issue I want to refer to, having had lymphoedema myself from having had breast cancer, is that when women with gynaecological cancer problems have lymphoedema it affects their legs and their bodies. They have to wear restrictive garments, which cost a terrific amount of money. We are hoping that another of our recommendations is taken up, which is that the Commonwealth government consider a Medicare item number for lymphoedema treatment by accredited physiotherapists. Getting physiotherapy in rural areas is difficult. For me to get a physiotherapy appointment I have to wait three weeks. For a lymphoedema treatment, you have to have at least two weeks of continuous appointments. There is no way that someone living in a rural area can get that assistance. There are so many things that happen to women who have gynaecological cancers that are really unfair, such as trying to access the garments and trying to get treatment.

I refer to an article from the front page of the Albany Advertiser on 17 October 2006. The headline on the front page says, ‘Why are we still waiting?’ The article states:

Who would want to be a woman in Albany? That is the question that visiting specialist Dr Michael Price asked last week when he heard that Great Southern women were still waiting for their resident obstetrician/gynaecologist.

Dr Price said:

I think it’s dreadful. Who wouldn’t? All I can say is, who would want to be a lady who needs a gynaecologist in Albany. This is very disappointing yet again.

Once again, the WA Country Health Service has not found anyone to go to Albany. They do not have an obstetrician. Albany is a city on the lower part of the coast of Western Australia. It has over 22,000 people, with a catchment of probably another 10,000 people, but they do not have a resident obstetrician or gynaecologist. What happens to these women? A local GP, Dr David Tadj, says:

Our need is rather for increased gynaecology services in the Great Southern. The irony is that our visiting gynaecologist, Dr Price, has asked to be allocated more operating time at the Albany Regional Hospital in order to reduce the waiting list. Unfortunately, this request for more operating time has, I understand, been refused by the local health service.

That just illustrates the situation in the area of Western Australia where I come from—I am two hours north of Albany. What happens to our women? They have to travel to Perth. They have to travel to the metropolitan area from other isolated areas such as the Northern Territory. The number of rural women who came forward is highlighted in our report. It is not easy to talk about gynaecological cancer. It has been a taboo subject. I am a nurse and a midwife so for me it is not a problem, but for other women to come and talk about a condition to a group of strangers, knowing full well that what they said was being recorded for a public document, can be difficult. They came forward and were so grateful to be given the opportunity to do this.

Another issue that has been mentioned briefly is that a lot of people do not realise the number of young women who have gynaecological cancer. They have to have chemotherapy and they have to have radiotherapy, so then they go into an early menopause. This is absolutely dreadful for them, especially when they are still of childbearing age. Their whole life changes. What can we do to help these women? I believe that in this report we have tangible evidence that we can proudly present to the public. I do hope that the report will improve the lot of women as a whole, particularly rural women because they do have a much bigger disadvantage, especially if they do not have a
GP in their area. It is not easy. I just cannot express just how hard it is.

I listened to all those people who came forward to give evidence, and they are wonderful people. I would like to thank the secretariat. They were just brilliant. For the women on the committee it was great. I think I have Senator Humphries, a male senator, who is the chair of our committee, sitting behind me now, and I know that he learned an awful lot. It was great to have Senator Humphries with us to really give us the support that we had. Thank you.

Senator POLLEY (Tasmania) (11.12 am)—I too rise to speak on the report of the Senate Standing Committee on Community Affairs inquiry into gynaecological cancers entitled Breaking the silence: a national voice for gynaecological cancers. Firstly, I add my thanks to those of the speakers before me to all the people who put in submissions and to all of those who came before us at the hearings. Each one of us in the chamber, and I am sure our wider families, has unfortunately been directly affected by these types of cancers. It is still not easy for some of us, including me, on that committee to talk about those experiences.

This inquiry was a long and thorough one. The focus of the inquiry was, of course, on women, who are at risk of gynaecological cancers, and their needs. I think the scary thing that impacted on everyone involved in this inquiry is that all women are at risk. Over the years, other forms of cancers have gained a certain level of community awareness through education campaigns, diagnostic breakthroughs and a widespread realisation amongst many people today that if you feel unwell, or if there is something wrong, you should follow up with your medical professionals until you get your answers. I think that is the key message I want to leave today: do not just take what the first diagnostic expert tells you. If you still feel unwell, you have to pursue that.

It is critically important that women are listened to. Unfortunately, gynaecological cancers remain an enigma for exactly that reason. Symptoms are not generally recognisable in the early stages due to the nature of the female reproductive system. Cancers are harder to detect than something more easily recognisable to a woman, such as the symptoms of breast cancer.

In addition, the committee was told that many of the identifiable symptoms of gynaecological cancers are common and can be similar to symptoms occurring in women during their monthly menstrual cycles or may be related to other medical conditions. From the evidence presented, it was clear to members of the committee that there was a critical shortage of attention being directed at this area of women’s health. The main concern voiced by witnesses to the inquiry was that the combined voice of women with concerns for their gynaecological health was often overshadowed by other cancers or not heard at all.

The Chairman of the Gynaecological Awareness Information Network, Ms Natalie Jenkins, said:

A powerful voice is required to implement national campaigns and programs similar to that of the successful breast cancer movement, which has achieved a great deal for the Australian community.

I seek leave to have the rest of my speech incorporated.

Leave granted.

The speech read as follows—

It is for this reason that the committee’s recommendations relate to the direct need for the Government to provide funding and support to establish a Centre for Gynaecological Cancers under Cancer Australia, which would provide a national focus and coordinate existing medical, commu-
nity and support services. The centre’s main aim would be to educate women about the causes, symptoms, treatments and support services available relating to gynaecological cancers.

On top of this, the committee recognised the limitations of research into gynaecological cancers and recommended that the Government commit to further funding for basic research and clinical trials, as well as working with Cancer Australia to review the current levels of funding allocated for research; provide leadership in relation to the allocation of research funding and improve awareness of research being undertaken to minimise duplication of studies.

The committee also found that women with gynaecological cancers are receiving varying levels of care and treatment due to several factors including:

- Inadequate levels of Commonwealth, State and Territory funding
- The differences in services through public and private treatment centres and funding channels
- Cultural differences and language barriers in seeking treatment, and
- Geographical location.

Of these factors, the most challenging appears to be the problems women in rural, regional or remote areas are faced with relating to gynaecological cancer and other serious health issues. This is not something that is specific to these types of cancers. Unfortunately it is a well known fact that women in some geographical areas face significant and unacceptable delays when it comes to diagnosis, treatment and referral to specialists, relating to any medical condition.

Director of Obstetrics and Gynaecology and Director of Outreach Services at Cairns Bass Hospital, Dr Paul Howat put it this way, and I quote:

“Gynaecological oncology is very much a private practice sub-speciality. This means that rich white women, not surprisingly, have the best outcomes in the world for treatment of their malignancies.”

Blunt yes. But unfortunately, it is very much a true statement. And that is why the majority of the committee’s recommendations relate to the need to raise, not only awareness amongst ALL Australian women of the prevalence of gynaecological cancers, but also for all levels of Government to work together to provide high quality treatment and health support programs for women affected.

The inquiry found that headway is also needed to improve the general level of awareness amongst medical professionals and the delivery of gynaecological oncology education on a continuing basis.

The lack of knowledge we have about gynaecological cancers means tackling the problem is a huge challenge for all Australians.

At the moment, the cause is ambiguous and research must continue and be a priority. But with no known prevention, our focus must also be on raising awareness, not only for Australian women, but for their spouses, their families and their friends.

We must work on providing high quality treatment and support services for women affected and aim to turn around the alarming statistics associated with gynaecological cancers.

Finally I would like to thank my colleagues on the Committee and acknowledge the enormous amount of work that has gone into this report. Although I normally don’t like to nominate any one person to mention I must thank Senator Ferris for her contribution. Again I join with my Committee members in thanking the Secretariat.

I urge the Government to act on this important report and I commend all our recommendations.

Senator CAROL BROWN (Tasmania) (11.15 am)—This inquiry into gynaecological cancers provided for many witnesses, particularly cancer survivors and their families, an invaluable opportunity—some for the very first time—to give voice to their concerns and present their views at a national level. We are indeed fortunate in Australia to have access to standards of medical care considered by many to be among the best in the world. Our researchers are often at the forefront and cutting edge of fields of medical inquiry. Our healthcare professionals are to be revered. Our associated consumer advocacy groups and representative bodies show
a commitment to the betterment of health outcomes for all Australians, and the spirit of those in need of treatment is so often an inspiration to us all.

The above cross-section of individuals and groups is representative of those who gave evidence to the Senate committee on gynaecological cancer. This depth of interest is indicative of the depth with which health issues are engaged with in this country. This diversity, however, can sometimes be a barrier to ensuring greater utilisation of and coordination and cohesion in the services, support and treatment currently provided. It became evident in the inquiry that bringing people together with experience and expertise in the engagement of treatments, professionals and/or technologies was needed. Sometimes there is too much or conflicting information. Sometimes there is little or none.

I will take this moment to talk about the provision of a national voice for gynaecological cancer. Witnesses giving evidence to the inquiry voiced the opinion that a national approach to gynaecological cancers, with the accompanying establishment of a dedicated body, would make a significant difference to the lives of women with, or at risk of, gynaecological cancers.

The inquiry recognised the wisdom of this unified call and framed a recommendation in accordance with this. The need for a powerful voice to help in the consolidation, coordination and enhancement of gynaecological cancer awareness and services is given due importance in the title of the committee’s report, Breaking the silence: a national voice for gynaecological cancers. The committee commended the establishment of Cancer Australia by the Commonwealth government yet recognised that this is but an initial step in the process of improving the approach to cancer prevention and care in Australia. Under the auspices of Cancer Australia, it is recommended that a new centre be established for gynaecological cancers so as to focus on issues surrounding the disease. It is clear from the inquiry that gynaecological cancer occurs in significant enough numbers to warrant this stand-alone body.

An equally important recommendation surrounding the issue of gynaecological cancer care is the development of a website as a hub of information for the use of any and all concerned. One of the significant factors for this being made a priority is to ensure that Australian women and their families can have access to the latest information and services with ease as well as with faith in the information provided. A website also represents a vital link for those in remote areas who have until now experienced the tyranny of distance, with sometimes unfortunate consequences. This group of Australians was particularly noted by the inquiry as being of concern. Time is such an important factor in dealing with any cancer, particularly those which have reached advanced stages before diagnosis, such as gynaecological ones.

In 2004, 1,530 Australian women died as a result of gynaecological cancer. It is projected that this number will increase in coming years. Advances in screening and treatment are needed to halt this increase, as are wider health support programs. Given the breadth of the cancer problem and the extreme diversity of forms it takes, a single body overseeing gynaecological cancer is needed. Submissions to the committee concerning representations were overwhelmingly in favour of this distinct voice.

I wish to highlight recommendation 4 of the report, which states:

The committee recommends that the Commonwealth government provide the centre for gynaecological cancers with seed funding of $1 million for the establishment and operational costs.
I believe this recommendation is extremely important to ensure the success of a centre for gynaecological cancers. I will take this moment to echo the comments of senators and add my sincere thanks to the committee secretariat for their work. I commend to the Senate the report *Breaking the silence: a national voice for gynaecological cancers* and its 34 very important recommendations.

Senator WEBBER (Western Australia) (11.20 am)—I rise to make some brief remarks on this report. First, I would like to thank Senator Allison for bringing the issue to the attention of the Senate in the first place and for the work that she has done. I would also like to thank Senator Ferris not only for being the strongest voice on our committee but also for going that extra step and sharing her very personal journey with the entire Australian community. I would like to thank the committee secretariat, including one of our two token blokes, Elton Humphery. Of course the other token bloke on the inquiry was Senator Gary Humphries, who was chair from halfway through the inquiry but deputy chair for the first bit. I would like to particularly place on record my thanks and, I am sure, our thanks to Kerry and Kate from the secretariat for the magnificent job they have done.

I would like to thank Kath Mazzella and her team, again, and Ms Margaret Heffernan from Victoria for being the driving force behind the petition which Senator Allison first brought to the attention of this chamber and which initiated our journey. I would like to thank all of the experts who took time out of their very busy and committed lives to share their views on the path forward, particularly Professor Neville Hacker and Professor Rob Sutherland from Sydney. I would like to thank the Lymphoedema Association for bringing to us what is the other half of the silent journey that these women go on, making sure our committee was aware of the tragic side effects.

I particularly want to place on record my thanks to the women who appeared before us and shared a very personal and painful journey—not just Senator Ferris but many women, particularly Ms Tanya Smith from Western Australia. Her journey has been particularly confronting and difficult and I would really like to thank her for going public. Through the efforts of all of those women we now have a national voice. It is time for national action. I am sure that those of us on the committee, particularly the most powerful voice, Senator Ferris, will ensure that there is national action. I seek leave to continue my remarks later.

Leave granted; debate adjourned.

Treaties Committee

Reports

Senator WORTLEY (South Australia) (11.23 am)—On behalf of the Joint Standing Committee on Treaties, I present two reports of the committee, report No. 79, *Treaties tabled on 10 May, and 5 and 6 September 2006*, and report No. 80, *Treaties tabled on 28 March and 5 September 2006*. I move:

That the Senate take note of the reports.

I seek leave to incorporate a tabling statement in *Hansard* and to make comments on report No. 80.

Leave granted.

The statement read as follows—

Reports 79 and 80 contain the findings and binding treaty action recommendations of the Committee’s review of 12 treaty actions tabled in Parliament on 28 March, 10 May and 5 and 6 September 2006. The Committee found all the treaties reviewed to be in Australia’s national interest. I will comment on all the treaties reviewed.

The Mutual Assistance Treaty with China and the Mutual Assistance Treaty with Malaysia provide a formal process enabling Australia and Malaysia and Australia and China to assist each other in
investigations, prosecutions and proceedings related to criminal matters. As both Malaysia and China retain the death penalty for a range of offences, the obligation to provide mutual assistance is limited by a number of internationally accepted grounds for refusal. These grounds are well recognised and are already reflected in Australia’s domestic laws. The Extradition Treaty with Malaysia provides for the surrender of an accused or convicted person from Australia and Malaysia to face criminal charges or serve a sentence and will provide a modern and effective extradition relationship between Australia and Malaysia.

The Conventions with France and Norway for the Avoidance of Double Taxation are expected to meet Australia’s most favoured nation obligations with both countries, reduce barriers to trade and investment caused by overlapping taxing jurisdictions and help prevent tax evasion.

Amendments to the Agreements with China and Japan for the Protection of Migratory Birds and Birds in Danger of Extinction and their Environment update the scientific nomenclature and add the Roseate Tern to both Agreements. Australia supported the addition of the Roseate Tern following a banding and colour flagging study which demonstrated that the Roseate Tern regularly and predictably migrates between the Swain Reef, Queensland and Chinese Taipei and the Swain Reef and Okinawa, Japan.

The Air Services Agreements with India and China both provide a framework for the operation of scheduled air services by designated airlines between Australia and India and Australia and China. Both Agreements improve access for Australian airlines to the international Chinese aviation market and the international Indian aviation market and include reciprocal provisions on safety, security, customs regulations and commercial matters.


The Amendments to the Australia-United States Free Trade Agreement Annexes incorporate further changes to ensure compliance with changes to the Harmonized Commodity Description and Coding System that will come into effect on 1 January 2007.

Senator WORTLEY—The Australia-New Zealand Closer Economic Relations Trade Agreement changed the method that the two countries used to determine whether goods imported from the other country meet rules of origin requirements to be free of import duty. Late in the inquiry, the committee received evidence that an Australian based detergent manufacturer, Albright and Wilson Australia, may be negatively affected by the agreement, which would likely lead to the loss of 65 jobs at its Yarraville factory and possibly even more jobs indirectly.

As a result, opposition members have included a dissenting report. In the dissenting report, opposition members of the committee support comments included in paragraph 2.69, which states:

The Committee believes there should be ongoing negotiation between Australia and New Zealand in order for tariff line 3402.20 to be exempted from the new ROO as was done, for example, for men’s suits.

Opposition members of the committee dissented from recommendation 2 and made a new recommendation. In doing so, members note that, on balance, they recognise that the agreement will increase trade between Australia and New Zealand in a mutually beneficial way and serve to strengthen existing economic ties between the countries. However, the opposition members of the committee remain extremely concerned about the impact on jobs as a result of the change to the rules of origin in respect of the category of goods manufactured by Albright and Wilson Australia. Therefore they make a new recommendation 2:
The Committee supports the Exchange of Letters constituting an Agreement between the Government of Australia and the Government of New Zealand to amend Article 3 of the Australia New Zealand Closer Economic Relations Trade Agreement (ANZCERTA) of 28 March 1983 and recommends that:

(a) binding treaty action be taken; and

(b) negotiations between Australia and New Zealand commence immediately to secure agreement on retention of the RVC method of calculating ROO under the current ANZCERTA for tariff line 3402.20 before the Amending Agreement comes into force.

If this recommendation were accepted, it would mean that the government would then have the opportunity to negotiate before the implementation of the agreement on 1 January. So, in commending the report to the chamber, I also commend the recommendations in the dissenting report.

Question agreed to.

Australian Crime Commission Committee Report

Senator IAN MACDONALD (Queensland) (11.27 am)—As chair of the Parliamentary Joint Committee on the Australian Crime Commission, I present the report on the examination of the annual report for 2004-05 of the Australian Crime Commission, together with the Hansard record of proceedings.

Ordered that the report be printed.

Senator IAN MACDONALD—I move:

That the Senate take note of the report.

The duties of the Parliamentary Joint Committee on the Australian Crime Commission are prescribed in section 55 of the Australian Crime Commission Act 2002. These duties include the examining of each annual report of the Australian Crime Commission and reporting to parliament on any matter appearing in or arising out of that report. In the course of its scrutiny of the Australian Crime Commission report, the committee held a hearing in Canberra on 28 March. The committee made a number of recommendations which I draw to the attention of the Senate.

Briefly, I highlight the first recommendation that the act be amended to provide for the appointment to the board of the Australian Crime Commission of the Commissioner of Taxation. The committee thought that the appointment of the taxation commissioner would enhance the role of the Australian Crime Commission and lead to better administration of the fight against serious and organised crime.

One of the other recommendations that I would highlight to the Senate is that the act be amended to prescribe the maximum number of examiners to be appointed. Examiners have very wide coercive powers and the use of examiners has extended—and I think for all the right reasons. However, the committee thought that, because of the very extensive powers of examiners, parliament should keep an eye on just how many examiners were appointed. The other recommendations are worthwhile, but time does not permit me to go through them in any detail.

In conducting the evaluation of the annual report, the committee particularly wants to acknowledge the assistance of the Chairman of the Australian Crime Commission Board, Commissioner Mick Keelty, and of the CEO of the Australian Crime Commission, Mr Alastair Milroy, and his officers. Throughout the reporting period, the ACC provided considerable assistance to the committee through written reports and briefings as well as through verbal presentations. The commission’s willingness to assist the committee has been of great assistance and has contributed to a transparent and cooperative relationship. On behalf of the committee, I would also like to acknowledge the considerable assistance
given by the Commonwealth Ombudsman, Professor John MacMillan, and his staff.

Finally, I want to recognise the committee secretariat for their work and assistance. I must say that, as a former minister and now a backbencher, without the research and clerical staff to which I had become accustomed, I perhaps more than many understand how important it is to have the assistance of qualified, talented advisers in performing the duties which both the parliament and the Australian public expect the committees of the Senate and the parliament to do.

Question agreed to.

**BUDGET**

Consideration by Estimates Committees

Additional Information

Senator PARRY (Tasmania) (11.31 am)—I present additional information received by various committees relating to estimates as follows:

Community Affairs Committee—2006-07 budget estimates
Economics Committee—2006-07 budget estimates
Employment, Workplace Relations and Education Committee—2006-07 budget estimates
Foreign Affairs, Defence and Trade Committee—2006-07 budget estimates
Legal and Constitutional Affairs Committee—2006-07 budget estimates
Rural and Regional Affairs and Transport Committee—2003-04 additional budget estimates and 2006-07 budget estimates

**BROADCASTING LEGISLATION AMENDMENT (DIGITAL TELEVISION) BILL 2006**

**BROADCASTING SERVICES AMENDMENT (MEDIA OWNERSHIP) BILL 2006**

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

**Returned from the House of Representatives**

Messages received from the House of Representatives informing the Senate that the House has agreed to the bills without amendment.

**COMMUNICATIONS LEGISLATION AMENDMENT (ENFORCEMENT POWERS) BILL 2006**

**Returned from the House of Representatives**

Message received from the House of Representatives agreeing to the amendments made by the Senate to the bill.

**TRADE PRACTICES LEGISLATION AMENDMENT BILL (No. 1) 2005**

Consideration of House of Representatives Message

Debate resumed from 18 October, on motion by Senator Abetz:

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 ABETZ (Tasmania—Minister for Fisheries, Forestry and Conservation) (11.33 am)—I understand that when the Senate suspended yesterday evening, Senator Fielding was in continuation in relation to general discussion, and I do not think Senator Joyce had formally moved his amendments. The government has certain views that it would like to put in relation to the debate thus far. If Senator Milne is ready to speak, it would be appropriate for her to do so, but on the understanding of all colleagues that Senator Fielding is part heard.
The TEMPORARY CHAIRMAN (Senator Hutchins)—Senator Fielding is not here at this stage. I call Senator Milne.

(Quorum formed)

Senator CONROY (Victoria) (11.37 am)—In the absence of a number of other senators, particularly one who was in the middle of a rare contribution, I will happily speak again on House of Representatives message No. 419. The Trade Practices Legislation Amendment Bill (No. 1) 2005 is a bill that the government continually champion because they want choice. They said, ‘We’re going to give independent contractors the choice of being collectively represented by farmer groups,’ and Labor says that that is a fair and reasonable thing. They are going to allow business groups to represent independent contractors, also a fair and reasonable thing—choice. But in this legislation is a nasty little surprise, if you truly believe in choice, because this legislation makes it clear that independent contractors cannot be represented by their union. My union, the Transport Workers Union—and I know a number of other senators who are also proud members of the same union—is not allowed to represent its 10,000 members. What happened to choice? Choice hits the fence pretty quickly when it comes to the ideological binges of this government. John Howard talks about choice, but John Howard has really changed since he won control of the Senate.

Senator Murray—Prime Minister Howard.

Senator CONROY—Thank you, Senator Murray. You do not just need to be here in this chamber to realise how arrogant and out of touch this government has become, with the ramming through of legislation, ridiculously tight deadlines for legislation, changing the sitting pattern all the time and using the guillotine. It is turning this chamber, which for 30 or 40 years has been a chamber of accountability and scrutiny, into a farce.

In fact just yesterday we saw one of the government senators express complete disgust following the Scrutiny of Bills Committee’s examination of one piece of legislation. Senator Johnston stood up and said, ‘This environmental legislation has to go back to the drawing board,’ because it was so slipshod and such a damaging piece of legislation in terms of its poor quality, never mind its policy intent. It was tabled in one chamber and brought on for a vote within 24 hours, and it has hundreds and hundreds of pages of legislation. This is a government that will not accept scrutiny and that will not accept dissent.

To their credit, a number of senators have stood their ground on this. Senator Joyce understands the implications of this legislation. Senator Fielding understands the implications. Senator Fielding is not somebody who is antiunion. Senator Fielding has worked for many years in close association with some trade unions. But what Senator Fielding has to justify when he comes in here today and continues his remarks is exactly why the idea of choice has gone in this legislation. If it is okay for business groups and if it is okay for the National Farmers Federation and other farmers’ groups to represent their members collectively, what is wrong with the Transport Workers Union being able to represent its 10,000 members and their families in a collective bargain? This is just ideologically extreme behaviour by this government. This government is not interested in choice, and people should not be fooled by the rhetoric of choice.

I look forward to Senator Fielding giving an explanation of how he can support a piece of legislation that specifically mandates against freedom of choice by independent owner-driver contractors to have whom they
want to represent them—and in this case the 10,000 members nationally of the Transport Workers Union. Senator Fielding may be feeling a little precious at the moment and that he is being criticised unfairly, but, as is made clear in a number of commentaries in today’s papers, Senator Fielding has an obligation to this chamber to explain the basis upon which he votes. It is an open and democratic process.

The tactics of Senator Fielding mimic those of former Senator Harradine, who famously played his cards close to his chest. But when it came to the vote, Senator Harradine would always give a comprehensive explanation of the basis upon which he voted. He played it close to his chest and he voted for us and he voted against us, but Senator Harradine had the capacity to come into this chamber and actually explain himself. He had a longstanding 50-year involvement in public policy debates and people understood the principles on which he made his decisions. When Senator Harradine made arrangements and had discussions, he would put them on the public record. He would say, ‘I’ve made this arrangement with the government’—much to the fury of many on our side occasionally and much to the fury of the government in other circumstances. But he had the courage to come into the chamber and articulate his position, and he was not bad at it at all. And you could certainly say that his state benefited at the expense of every other state from the cleverness and the tough negotiating style of Senator Harradine. Tasmania certainly was a beneficiary of Senator Harradine’s style.

Senator Murray—He wasn’t cheap.

Senator CONROY—He was not cheap. Senator Harradine got some of the biggest packages for Tasmania that this country has ever seen.

Senator Abetz—All on merit.

Senator CONROY—All on merit. But he was always prepared to face up to it and to detail why it was that he was taking the position that he was. I have to say that, so far—to borrow an old phrase—Senator Fielding is no Senator Harradine. You cannot hide behind ‘I haven’t made a decision’; you cannot hide behind ‘Family First policy is’. You have to explain it. You have to be prepared to front up at press conferences and answer questions. If you have met with James Packer, just say you have. Do not spend five minutes trying to avoid the question. There is nothing wrong with meeting media moguls; there is nothing wrong with meeting James Packer; there is nothing wrong with being genuinely involved in the discussion on this issue. But always be prepared to articulate your position. Labor has a position on this bill and on the cross-media bill. Labor has always been prepared to argue its case. Sometimes that case does not have the support of this chamber; sometimes it has. But we will always have our spokespeople stand up and argue our case.

I am not sure whether Senator Fielding is going to come back and finish his contribution. I am disappointed he is not here. I know we are all very busy in this chamber. He could be at a committee hearing; he could be involved in serious discussions on other policy matters. But when he is changing his vote he has an obligation to the chamber to explain why. He particularly has an obligation to explain to the 10,000 Transport Workers Union independent contractor members and their families why it is that he is going to vote to take away their right to choose who represents them in certain legal forums.

Senator MURRAY (Western Australia) (11.47 am)—In his absence I think I should mount a defence of Senator Fielding. But, before I do so, with respect to the bill that we
have before us and the clause that Senator Conroy was just referring to, which is the anti union choice clause, I make this point: that was already passed by the Senate. We should remind the Senate that the only schedule that did not pass the Senate was the mergers and acquisitions schedule, which is schedule 1. If the House of Representatives had chosen to accept the bill as amended, the antichoice legislation would already be in, as of course would the collective bargaining provision for small businesses. We should be alert to that and, by sending it back to us, it means we are able to consider the matter wholly.

In defence of Senator Fielding, I think there is an absolute logic—and I am not at all surprised—in him supporting this bill. It is quite plain that if you support the media ownership bills as he did, which allow for fewer, larger competitors, then the obvious and logical thing to do is to support this bill, which will allow mergers and acquisitions to occur on an easier basis and will facilitate the very media concentrations which he has already voted for. I think it is a perfectly logical decision, and I am surprised that anyone would think that he has switched tack.

Last night Senator Joyce made the point very clearly that these bills are effectively linked in policy terms. The media ownership bills allow for a greater concentration of large media, and schedule 1 of this bill will do the same. In defence of Senator Fielding, I think it is perfectly logical that, if you support big business being able to be even bigger, you have to support this bill.

I have heard, both in the corridors and I think in here, Senator Fielding being accused of being naive or doing a deal. I would like to defend him there too, because I know being called naive made him very angry. That would indicate, of course, that he believes he knew exactly what he was doing and that he was not being naive. If he knew exactly what he was doing, the only other thing you have to look at is whether he struck a deal. If he had struck a deal, the only person he could have struck it with would be the Prime Minister with respect to parliamentary affairs. Whatever people may say in this place about Mr Howard—and they say the most amazing things, from all points of view—he would be absolutely daft to ever strike a backroom deal on legislation or policy which was not made public. It would bring his reputation and Senator Fielding’s down, so I do not accept that there has been a deal on legislation or background policy issues.

The second area where a deal might have been struck is with respect to preferences, but Senator Fielding would never be so foolish as not to know that he is going to get the preferences of the Liberal and National parties. Why would you do a deal for preferences? You are going to get them anyway, so there cannot be a deal there. The other possibility is that he is going to get money from big business somewhere, but of course that has to be declared. If, as a result of this legislation, very substantial sums of money from media companies, for instance, landed in Family First coffers, Senator Fielding’s reputation would be ruined, and he would not be daft enough to do that. So I dismiss the idea of money.

So is it mateship? I have heard Senator Fielding talk about things. As far as I know he is not friends, pals or mates with Mr James Packer, and since he is an avowed Christian I cannot imagine he is very fond of Mr Packer’s mogul activities in gambling. I do not know all that much about it, but I do not remember gambling being particularly popular with Christians and so on. So I do not think it is mateship.

The last area would be publicity. Is anyone naive enough to think that Senator Field-
ing would be naive enough to believe that by doing this deal he would get favourable publicity through the media? Frankly, they do not care. Whatever laws we pass, they will take advantage of them. Of course, if we get these new private equity owners—the Russians, the South Americans, the Middle East backers of private equity funds and all those sorts of people—buying up our media, they will be new into the game; they are not going to be giving him publicity. So I can’t see, from a cursory examination, that any of the grounds on which Senator Fielding would be accused of doing a deal stand up.

You then have to come back to the policy matter. The fact is that he, through his vote—and he is perfectly entitled to do so; and in doing so he shares the votes of Liberals and Nationals—has voted for more concentrated, larger businesses in media and in other areas. He is entitled to do that. That is a policy he can support. I don’t support it. I also think the idea that he is not a very disciplined politician is wrong. The other night I heard him speak in an adjournment debate. He spoke very briefly—560 words, in fact. He spoke about the Millennium Development Goals. When you read the speech, you see that it was beautifully crafted as a political statement, closing and ending with the affirmation of the party name. Senator Fielding often talks in the third person; he always says ‘Family First this’ and ‘Family First that’. It is a bit like priests—they say ‘God this’ and ‘God that’ when what they really mean is ‘Father this’ and ‘Father that’. But he started the speech very well. ‘Family First’ is referred to twice in the first paragraph and twice in the closing paragraph, and ‘Family First’ also appears slap-bang in the middle of the speech—in other words, repeating the message, reinforcing it. That is the sign of a disciplined political message.

This was a message about the Millennium Development Goals, which I think are very admirable, and what he has been doing is pretty admirable. He said he has been sponsoring a young man named Abdurahman for 11 years. He also said:

As far as Family First is concerned, Abdurahman is a human face of the Millennium Development Goals ...

Of course, he was sponsoring Abdurahman long before Family First was ever created, and I presume he would be sponsoring him through one of the agencies, although that is not mentioned. But there it was—the carefully crafted political message about what you should support, that he supports it, and reinforcing the Family First name. These are the words of a disciplined political person with a particular political objective.

The question, of course, is whether his own determination to support the concentration of big media business and fewer competitors at that level is his policy or Family First’s policy. As far as I am aware, it is not on their website in that form, which of course is why I want to hear back, as Senator Conroy outlined, as to his precise motives. If you dismiss the ‘naive’ argument and if you dismiss the ‘deal’ argument, which I have just done, and you see the evidence of a carefully crafted campaign of a political operator who, like every other political party and political person, wants to increase his number of seats and his political power, you have to see this in both political and policy goals. So I look forward to him explaining things on that basis.

Returning to the government’s motion regarding the House of Representatives message, it has two parts to it. The first is that it wants the Senate to pass the bill as a whole; therefore it is saying exactly that to us. I have had mixed messages, frankly. I have heard messages that it does not matter that much in the scheme of government policy. However, I have heard other people say that
the Treasurer wants this so badly that you can taste it. I do not know what the answer is to that. What I do know is that I am subject to lobbying, as others are, by both big business and small business, and I can tell you that big business organisations badly want schedule 1. They are perfectly entitled to lobby for their needs, and I will freely admit that any time any big business man or any small business man wants to see me on an issue, I will see them, if I can fit them in and if it is the right thing to do. I do not have a problem with big business pursuing their agenda, but none of us should be in the dark and think that big business does not, very badly, want schedule 1, which means they expect it to result in faster, quicker, more easily resolved mergers and acquisitions, more fluidity in the market and more concentration for big players. That is a legitimate objective of theirs. It is not one that I support but it is legitimate.

I think the end result of schedule 1 is that it is likely to damage a highly effective, well-established, extremely professionally evaluated, flexible discretionary regulatory environment which has quite properly rejected a minor percentage of mergers and acquisitions and has allowed the rest through on basically commercial grounds. I am not persuaded as to schedule 1’s policy advantages. However, I am not going to tear my hair out any more about this; numbers are numbers, and I accept that.

What does bother me, because this is in line and is consistent with government policy over a long time—government does, by and large, try and facilitate big business needs where it can—is that the choice issue with respect to the unions is entirely against government philosophy. It is entirely against everything I ever hear it say that it stands for. And that does disturb me. I respect consistency in people, even where I disagree with their views—whether they are people from the Right, the Left or the Centre, consistency appeals to me. But this is an inconsistent policy. It did not arrive from the Dawson evaluation; it came out of left field. It seems designed just to hurt unions. I do not think it reflects well on the government for introducing it in this legislation. However, it does have the numbers and it will happen. It will not advance the cause of mankind at all.

Senator Brandis and probably others have said that section 46 and strengthening the ACCC issues have nothing to do with the Dawson bill. I agree with that. The Dawson bill is a discrete area of consideration. Why I have argued for a section 46 amending bill to be debated cognately and passed cognately with this is that I think if you loosen up the mergers and acquisitions side, you need to strengthen the anticompetitive provisions—it is just a simple argument—simultaneously. I have argued consistently that, whilst the government does not want to go as far as I and others do, it has accepted that argument. It accepted through its positive response to a number of the recommendations of the March 2004 Senate Economics References Committee inquiry into the Trade Practices Act, as long as 2½ years ago, that the act needed to be strengthened.

So my argument is not that those things need to be in this bill but that that section 46 bill needs to be debated cognately because on the one hand you are weakening the Trade Practices Act with the Dawson bill and I believe you need to simultaneously strengthen the Trade Practices Act anticompetitive and abuse of market power provisions. That is why I have argued that case. I hope that in the absence of Senator Fielding I have done a respectable job of defending him, and maybe my speaking for him means he does not need to come down here.

Senator HUTCHINS (New South Wales) (12.01 pm)—I wish also to speak in commit-
tee on this bill and express some of my concerns about the procedures that have occurred in the progress and passage of it. As I recall, and I am sure others will have the opportunity to correct me if I am wrong, we delayed the bill in this place on a number of grounds. One of the grounds was that articulated by Senator Murray at the end, which was in relation to the choice issue. It went back to the House of Reps and they chose not to adopt our position. So we are being consistent in our views on this matter. I do wish to express that I am disturbed, like a number of my colleagues, about what we are about to see occur in relation to this bill today.

Why will a union be prevented from negotiating collectively on behalf of small business if that union is chosen by those small business men and women to represent them? Why are they going to be precluded? It is clearly because of the ideological bent of the government. In my own experience, and I know Senator Sterle will follow me in this, in my previous occupation I dealt with a number of large and small companies on behalf of small businesses and I negotiated on their behalf with their major employers the rates and conditions under which they worked. I saw on many occasions in the 18 years that I did that job that accountants—and no offence to accountants; I am not having a go at the accountant who may follow me at some stage in this debate—had very little experience in how to set and negotiate rates in road transport.

I had 18 years of experience, and the organisation I worked for and represented has had decades of experience and information available on how to represent those small business men and women. But under this legislation the experience that that organisation, the TWU, and its officers—who, as I say, have four or five decades of experience in dealing with, knowing the ins and outs of and how to cost the operations of a heavy or light vehicle—will be precluded. That is not fair. It is just unfair that the people who have experience and can do the best job for those men and women, if they choose to have the TWU represent them, are going to be precluded.

Under this legislation the national farmers, chemists, newsagents, probably milk vendors and customs brokers can all seek leave to collectively negotiate with another group. Only in the last year the customs brokers got permission to negotiate collectively with the stevedores. Both those groups are in powerful positions, but the customs brokers sought to do that collectively. That was their choice; they were given that opportunity. Those customs brokers and stevedores have lorry owner-drivers that work for them. If they choose to have the TWU represent them with the stevedores or the customs brokers, under this legislation they will be prevented. However, their bosses can deal with each other collectively under this bill that is before us. I am pretty angry about why we have gotten to this stage.

I thought Senator Conroy was a bit gentle on Senator Fielding. I object to the fact and I find it obscene that Senator Fielding sits in Senator Harradine’s seat. Senator Harradine, in all his years as a member of this Senate from 1975, always operated morally and ethically. He always operated in any area which he pursued—from industrial relations to communications, health and social security matters—with that beacon that guided him, and that was his faith. I have always felt that somehow or other Senator Fielding should be prevented from sitting in that spot on that basis. I do not believe he has—
and on his motives. I would suggest to Senator Hutchins that if he wants to make a political point he do so in another manner.

The TEMPORARY CHAIRMAN (Senator Moore)—Thank you, Minister. Senator, I draw your attention to the standing orders. We are listening very closely to your comments, and I would ask you to be very careful about comments that you make. We are listening.

Senator HUTCHINS—Indeed I will, and if I have stepped over the line I withdraw my comments. If that is what the minister feels then I will.

The TEMPORARY CHAIRMAN—Thank you, Senator. Please continue.

Senator HUTCHINS—I do not know what Senator Fielding’s motives are. It has been commented on that we seldom find out in this chamber why he has decided to do what he has done. If we go and stand out the front of the Senate in the mornings between 7.30 and, say, quarter to nine, we can probably find out more there when he does his doorstops for the press. But we do not have the opportunity to hear exactly why there has been this backflip on this piece of legislation.

I am reminded of a novel by an American winner of the Nobel Prize in Literature, Sinclair Lewis. He wrote a number of famous books; one called Elmer Gantry, which is about the hypocritical religious revivalism that was occurring in America. The one that I recall reading years ago was called Babbitt, and the central theme of Babbitt is that Babbitt, in a little town in Middle America called Zenith, is surrounded by conformity. At some point Babbitt tries to escape from this conformity and is crushed by the forces that are in control of the town. The book says about Babbitt:

But Babbitt was virtuous. He advocated, though he did not practise, the prohibition of alcohol; he praised, though he did not obey, the laws against motor-speeding; he paid his debts; he contributed to the church, the Red Cross, and the Y. M. C. A.; he followed the custom of his clan and cheated only as it was sanctified by precedent; and he never descended to trickery—which, as he explained to Paul Riesling—

his friend—

“Course I don’t mean to say that every ad I write is literally true or that I always believe everything I say when I give some buyer a good strong selling-spiel. You see—you see it’s like this: In the first place, maybe the owner of the property exaggerated when he put it into my hands, and it certainly isn’t my place to go proving my principal a liar!...”

I quote Babbitt because one of the themes in the book is a growing industrial unrest in the 1920s in America, and the local chamber of commerce—which all businesses in the town had to be members of—sought to crush the rise of the trade unions because they saw it as against their interests. So on the one hand he had to be a member of the chamber of commerce to progress through and get that conformity, but on the other hand they sought out and viciously crushed any collective actions by the men and women in that town.

This is only fictional, of course, but it reminds me of exactly the position we are in now, and that is that this dedicated antiunion stance by the government is going to unravel them because people will seek the opportunity to be represented by the people they think are in their best interests. And, if that is a trade union, well, they should be allowed to do it.

Senator McGauran—Good, that’s their choice.

Senator Sterle—They don’t have a choice. That’s the whole point of this legislation.

Senator Conroy—Are you not listening at all?
Senator Sterle—You’re not for real!

The TEMPORARY CHAIRMAN (Senator Moore)—Order! Senators, I remind you about the standing orders.

Senator MILNE (Tasmania) (12.11 pm)—I rise today to comment on this quickly. I am aware of the time and I am concerned that the government will move the gag. I first of all want to remind the Senate that last year Senator Fielding moved to split this bill to take out the section relating to mergers, because he said at the time that the changes effectively sideline the ACCC and significantly boost the powers of the tribunal, which is a quasi-judicial body staffed by judges and business executives. Small business and consumers will need legal representation to appear before the tribunal, and my concern is that the tribunal will not be exposed to the wide range of views and concerns on mergers that are currently put to the ACCC and that form a key part of the ACCC’s decision-making process.

So I think the Senate deserves a detailed explanation as to why last year Family First said it was concerned about small business and this year is doing everything in its power to facilitate big business getting bigger. That is exactly what has happened in the last few days: big business getting bigger. It happened with the media laws and now it is happening here, because what Family First is about to do is to support a move that will allow companies to take their merger plans straight to the Australian Competition Tribunal rather than to the competition watchdog. The competition watchdog will no longer have the decision-making powers it currently has; it will merely have a consultative and advisory role. That is the difference, and big business know it. That is why they are rubbing their hands together. That is why they are really keen to see this pass.

And let us not have any pretence into the future that Family First has anything to do with small business. It has got everything to do with facilitating the big end of town and rushing the big end of town to the tribunal, where, as it currently stands, there is an insufficient period of time for the tribunal to look at the huge complexity. That is why I will be supporting the amendment from Senator Joyce to extend the time, at least, in which the tribunal is able to consider these matters. We all know these are commercially complex matters and the way it is being structured is to avoid the ACCC, take away the ACCC’s decision-making role and give them an advisory role. It is unconscionable that someone who said last year that was something we could not tolerate this year suddenly finds it not only tolerable but desirable.

I want to say that, unlike Senator Murray, I believe that a deal has been done in relation to this legislation and I am looking forward to hearing Family First tell us what it is. I am not at all surprised that the government wants to move the gag on this. It wants to protect Senator Fielding and Family First from the scrutiny of the Senate, because it is much easier to just do a doorstep saying that families matter rather than coming in here and explaining to small business families why they do not matter and why, in fact, the Packer family matters much, much more than the corner stores.

Senator Abetz—Why do all the small business groups agree?

Senator MILNE—And let us have a video blog on that, Senator Abetz. Let us go out and do a video blog on that.

I remind the Senate that in the lead-up to the 2004 election it was Peter Harris from Family First who met with Prime Minister Howard and a deal was done that Family First would run an advertising campaign at-
tackling the Greens and in exchange would get preferences from the Liberal Party. That was on the front page of the *Australian*. The amount of money that the advertising campaign constituted was not listed, but it was estimated to be a $1 million campaign. Certainly, there was television advertising throughout rural and regional Australia doing just that. That kind of deal has already gone down.

We also remember the family impact statement. Where is the family impact statement on small businesses as a result of these merger arrangements? It is not there. I totally support what the Labor Party is saying in relation to the collective bargaining issue here today.

**Senator Abetz**—Surprise, surprise!

**Senator MILNE**—I support collective bargaining as a principle and I do not understand how, if you support a principle, you can support that principle in one set of circumstances but not in another. I have never understood the ability of Family First to say on the one hand that they support the principle of collective bargaining for small business but they do not support the principle of collective bargaining when it comes to unions. I would like an explanation on how you split principle in this matter. I would like to know where the family impact statement is; it got lost in the proceedings. We would actually like to know the nature of the deal such that the ability of the ACCC to prevent anticompetitive mergers is now reduced. That is what is happening in relation to this.

I do not want to confuse the matter by talking particularly about collective bargaining or the other measures in relation to section 46. I want to concentrate solely on schedule 1, the mergers, because that is the issue on which this was voted down last year, quite rightly. It is the issue that big business has been rubbing its hands together waiting for, it is the issue that the Treasurer is so excited about and it is the issue about which the Australian community deserves to know what it is that Family First negotiated to facilitate this change of position. That is precisely what we have got now—a complete change of position. Was it a deal on tax? What was the deal that led to this change of position? Nobody is going to convince anybody that Family First, which began its involvement in politics with a deal on preferences in exchange for attacking another political party, would not be engaged in deals right now.

We also had Family First telling people in Victoria that the Greens are anti business. That in fact is bearing false witness against the Greens because in this Senate you will find no group of people who have been stronger advocates for small business than the Greens. And we will stand here today for small business against big business in supporting the ACCC’s decision-making role and not supporting the kind of merger that will occur quickly as a result of this legislation—as has occurred with the cross-media ownership. Hopefully, the Australian community is going to start waking up and asking some questions about the role that people play.

We are coming into next year’s federal election and the community will want to rescue the Senate from a Howard government majority. Who gets the balance of power in this Senate matters. That is why deals of this kind need to be exposed. Who gets the balance of power matters, and if the government loses its majority it would love to make sure that Family First gets the balance of power in here because then deals of this kind can be facilitated without explanation to the Senate and without any explanation of principle.

I want to know the principle. I am waiting for the principle. I am waiting for an expla-
nation as to why the principle of collective bargaining matters in one case and not in another and why last year strengthening the powers of the ACCC was so important and this year taking the decision-making role of the ACCC and making it an advisory role becomes acceptable. I want it written up in lights: Family First equals Packer equals big business. That is what people are voting for.

Senator Joyce (Queensland) (12.19 pm)—At the end of my contribution I will move further amendments to the bill in the terms circulated by me on sheet 5108. I think it is very important that we try to mitigate the effects of what is currently happening out there in the marketplace, that we at least instil some time frame back into the watchdog, the ACCC, and that this amendment actually allows, on complex mergers when required, the ACCC to say: 'This is a bit difficult; there is a lot of information that we have to go through. The Australian people have a right for us to know exactly the ramifications of this merger. So we need a bit more time.' I have suggested 80 days, so 40 and 80 is 120 days. That is four months. Let us think of some of the mergers you might have to deal with—PBL and News Ltd or Coles and Woolworths. It is going to take more than 40 days to get through those.

Senator McGauran—Are Coles and Woolworths merging?

Senator Joyce—you might know that KKR is going to break up Coles. Senator McGauran, if you had been reading the papers. We have these issues before us and this is an extremely important step. It is the emergency parachute on the current media laws. There is a big concern amongst the Australian people about what is going on with the fourth estate. To say anything else is to not be sincere and fair dinkum about exactly what is going on. The media laws have passed and we cannot, unfortunately, change that. We have a chance here, though. I see that Senator Fielding has moved an amendment very similar to my own, except he has given them only 20 days. Obviously, Senator Fielding now has a concern as well about the powers of the ACCC being circumvented. If this is truly his concern, he cannot possibly vote for not having any extension. That would not make sense. That would mean that you had two completely different positions in the chamber at the same time.

The amendment I am moving gives an extension for 80 days. I really think that is a minor ask. With all that has gone through the parliament, this is an extremely minor ask by the Australian Senate to try and give the Australian people some confidence that we are still watching and that we are very mindful of exactly what is going on in our nation. I believe sincerely that right up to the Prime Minister there are concerns about exactly how things are panning out at the moment. I do believe that. And that being the case, I believe that we have to think of what we can do to keep this on some form of leash.

A private equity firm is going to become one of the major owners of PBL. It is based overseas and you do not have a general interest in its shareholding; you have no idea who owns that. But they are commercial people; they are investing money. Of course they have an interest, and that interest allows them to try and direct activities—and at times to manipulate or cajole.

Do I think that is going to happen tomorrow? No. It is like wearing a seatbelt. Putting on a seatbelt does not mean that you are intending to have an accident. Having media control does not mean that you think that tomorrow everybody who is involved with the fourth estate becomes inherently bad. But that is not our job; our job is to protect ourselves from the contention that that might happen at some time in the future and to
make sure that we have those protection mechanisms in place.

I hope that this amendment gets support. If it were to get passage, I would vote for the bill. I think that is being about as reasonable as you can possibly be. But if it does not get support, obviously I cannot vote for the bill. I move:

At the end of the motion, add “and agrees to the following further amendments to the bill:"

1) Schedule 1, page 4 (after line 2), after item 6, insert:

**6A After subsection 30(2)**

Insert:

(2A) Where the Tribunal is exercising its powers to consider merger clearances and authorisations in accordance with Division 3 of Part VII, the Tribunal shall include such other members as are appointed in accordance with this section as follows:

(a) one member with sufficient experience and expertise to represent small business interests; and

(b) one member with sufficient experience and expertise to represent consumers and consumer protection interests.

2) Schedule 1, item 27, page 10 (line 23), after “agrees”, insert “or the ACCC so requests”.

3) Schedule 1, item 27, page 16 (line 22), after “is”, insert “subject to subsection (3)”.

4) Schedule 1, item 27, page 16 (after line 30), at the end of section 95AO, add:

(3) The ACCC may seek an extension of time of 80 business days to consider the application before the Commission makes a determination. If the ACCC does, the time of 120 business days is taken to be substituted for the period of time referred to in subsection (1).

5) Schedule 1, item 27, page 19 (line 14), after “is”, insert “subject to subsection (8A)”.

6) Schedule 1, item 27, page 19 (after line 21), after subsection 95AR(8), insert:

(8A) The ACCC may seek an extension of time of 80 business days to consider the application before the Commission makes a determination. If the ACCC does, the time of 120 business days is taken to be substituted for the period of time referred to in subsection (7).

7) Schedule 1, item 27, page 22 (line 14), after “is”, insert “subject to subsection (11A)”.

8) Schedule 1, item 27, page 22 (after line 22), after subsection 95AS(11), insert:

(11A) The ACCC may seek an extension of time of 80 days to consider the application before the Commission makes a determination. If the ACCC does, the time of 120 days is taken to be substituted for the period of time referred to in subsection (10)".

**Senator STERLE** (Western Australia) (12:26 pm)—I would like to comment on the Trade Practices Legislation Amendment Bill (No. 1) 2005. The collective bargaining aspects of the bill have been touted as a win-win for small businesses in their dealings with big business.

**Senator Conroy**—No! Who said that?

**Senator STERLE**—Not guilty. If that were the case, let me tell honourable senators opposite that we would be screaming from the rooftops in support of this bill. I want to make a contribution before honourable senators jump up and down about my activities as a union official for 14 years. I want to go back to 16 years before that, when I actually was a small business contractor.

**Senator Abetz**—How old are you?

**Senator STERLE**—Mate, I tell you, I hold up pretty well, especially on a Thursday. I would like to share my thoughts with honourable members opposite, especially Senator Fielding. As Senator Conroy said, there are some 10,000 transport workers who are owner-drivers. They are in small business—they are a cross between a small businessman and an employee—but they have
very expensive tools of trade. What usually happens is that contractors go out there and hock their family home. They have the first payment for the truck and all of a sudden they are given anywhere between $50,000 and $350,000 or $400,000 to buy a vehicle.

While these vehicles are being kept busy running up and down the highway, owner-drivers and their partners and the women in transport do not have the ability to go one on one and negotiate with big business. There is a misconception that small business operators in the transport industry have the luxury of knocking on the boss’s door and saying: ‘Hey, boss, fuel’s gone up and tyres have gone up. I need a pay rise.’ ‘No worries; sure, you’ve got it. Go away.’ It does not happen like that.

Very clearly, a lot of truck drivers and small business contractors rely on the Transport Workers Union to negotiate for and on behalf of them in every state of Australia. Senator Conroy was being generous in his speech when he said there were 10,000. I dispute that. I say there are a heck of a lot more. But there are also a heck of a lot more small business owner-drivers in the transport industry who rely on unions to negotiate their conditions and remuneration and who are not members of the Transport Workers Union. They do not have a baseball bat put to their head to say that they have to be a member of the Transport Workers Union. It does not work that way. But those that are represented by the Transport Workers Union have to rely on these guys to do the dealings for them. They are too damn busy to do it themselves. They are up and down the highway trying to pay off an investment they are not getting a proper return for.

Big business will exploit them. Make no doubt about that. Through you, Mr Temporary Chairman, I would like to say to Senator Fielding that I would like to see the family impact statement. And if you ever visit Western Australia, Senator Fielding, I would love to take you out to Kewdale and Welshpool, the trucking centres of that great state of Western Australia, and have you explain to the subcontractors out there that because of your vote this bill has gone through and they can no longer have the union negotiate for and on their behalf while they are up the road working day and night trying to pay off an investment to keep the wolves away from the doors. Senator Fielding, I know that you are still on the phone but I urge you to read the Hansard so you do not miss anything. It is your vote that will do this. It is your vote. You changed your mind. I would love to hear your input to this debate. I would love you to tell us why you changed. Then I would love to see you front up to the small business people of Australia. Thousands of small businesses—and not only in the transport industry—have the ability to engage unions to negotiate for them on their behalf. Schedule 1, on page 17 of the bill, talks about unions and says that a union, or any official of a union, cannot under any circumstance represent or make application to negotiate. I pose the question to honourable senators opposite: what if a group of small business men were to engage the Hell’s Angels? Would they be able to come in and negotiate for them, on their behalf? Is that what would happen?

I strongly urge all senators opposite to be very aware of what they will be voting on today. They should not take their right-wing ideological view of the world—‘we can stamp out the unions’—but think about the small business people who rely on unions to negotiate for and on their behalf. Senator Fielding will take away that right today. After he walks out of this chamber I am sure he will be reminded on many occasions by many small business people what he has done to them.
This bill is absolutely no win for small business people. This bill will help the big end of town. In the trucking industry, God help us when Toll start pulling out this bill and whacking their subcontractors—and not only Toll. I use Toll as an example because they are the largest employer of subcontractors in this country. A multitude of transport companies who have subcontractors will rip up their subcontractors’ conditions and the contractual arrangements they have had with them and whack them around the head with the bill: ‘This is the law now. You can’t use a union. You have a $350,000 investment to pay off, so we will tell you what you will work for. If you don’t like it, tough, because the law—with the help of Senator Fielding and others—says that we can do this to you.’

I strongly urge Senator Fielding to put his case, through you, Mr Temporary Chairman. I am dying to hear Senator Fielding’s reasons as to why he has done this spectacular backflip and why he is happy to side with the government to put through this obnoxious bill. That is the reason why Family First will support it. The legislation streamlines collective bargaining for small businesses. It gives more of a role to the ACCC, which had none when the tribunal were looking at authorisations.

Changes have been made that give more of a role to the ACCC—new powers that it currently does not have. The changes not only improve the ACCC’s position from what was being proposed last year but improve its current position. It is common sense. I do not understand why common-sense arguments are not listened to. Small businesses right across this country will benefit from this trade practices legislation. That is the reason why Family First will support it. The legislation streamlines collective bargaining for small businesses. It gives more of a role to the ACCC, which had none when the tribunal were looking at authorisations.

Honourable senators interjecting—

The TEMPORARY CHAIRMAN (Senator Forshaw)—Order! I am having trouble hearing myself think, let alone hearing you speak, Senator Fielding.

Senator FIELDING—This bill—

Senator Murray—Mr Temporary Chairman, I take a point of order. To clarify, we are trying to understand how, and he is not giving us that; he is giving rhetoric.

Senator Abetz—That’s a cheap point.

The TEMPORARY CHAIRMAN—Order, Senator Abetz! That is not a point of order, Senator Murray. I am also trying to get myself up to scratch as to where precisely the debate is, for when the divisions come on.

Senator FIELDING—Before the interruptions, which were frivolous, I was explaining that the issue here is as follows. Let us just look at one area—say, the authorisation process we had before. The ACCC would look at something, and then if there was an appeal to the tribunal the ACCC had almost no role in the tribunal process. This bill cuts it in, and allows it to call witnesses to put forward their case strongly. Clearly,
the ACCC has more powers, not fewer, and that is the reason why Family First supports this legislation.

Senator CONROY (Victoria) (12.35 pm)—That was an embarrassing contribution. Senator Fielding said that small business are better off because of a bunch of organisations that have been nobbled. Let us be clear about what happened to NARGA. Let us not pretend that NARGA are the organisation that they were 12 months ago. Senator Fielding, you may not be aware of the fact— you may have missed it—but when NARGA come into your office now there are a couple of new people. You should understand the background of what happened.

The TEMPORARY CHAIRMAN (Senator Forshaw)—Senator Conroy, you should direct your remarks through the chair.

Senator CONROY—I accept your admonishment. Thank you, Mr Temporary Chairman.

The TEMPORARY CHAIRMAN—No, just advice, Senator Conroy.

Senator CONROY—I accept your advice, as always. NARGA have been gutted. The big business community have got together and monstered these small business organisations and NARGA, in particular, have been gutted. They are not the organisation they were. The personnel have been changed, not by accident, not by willingness and not by design. NARGA in particular, who were the chief opponents of this bill 12 months ago, have been dunned by the big business community. Senator Fielding may be unaware of this. If anyone in the chamber is unaware of this, they should be made aware. Senator Joyce is absolutely aware of this. So let us make no pretence that small business have had some road-to-Damascus conversion on this bill—they have been monstered. This is a result of big business’s absolute determination to achieve their aim to bypass the ACCC.

Has the proposal to suddenly allow the ACCC to have representation achieved some sort of increase in their powers? You are deluding yourself. This is a fig leaf that achieves absolutely nothing in terms of more powers, as Senator Fielding has just articulated. There are no more powers by being able to present your case; they are simply not locked out. The purpose of this is to undermine the ACCC’s position on behalf of small business. There are no more powers here.

Senator Fielding, if you have done a deal to deliver more powers under section 46, stand up and explain what it is. Stand up and explain the extra powers that will be delivered in some future piece of legislation. That is the challenge, Senator Fielding—not to stand up and say, ‘The ACCC have been given more powers.’ They have not been in this bill. If you have done a deal, tell us what it us. Explain what those extra powers under section 46 will be. Are they perhaps drawn from the reports written by Senator Brandis, the Labor Party, the Greens or Senator Murray, which we all did—for those of us who have worked on this bill for years. Are those the powers you are referring to?

I think Senator Brandis wants to claim ownership of them. Senator Brandis does make a contribution; I do not always agree with him, but he does make a genuine contribution. So are you supporting Senator Brandis’s proposed changes in a future bill? If you are, just say so. But do not come in here and pretend that the ACCC have been given more powers in this bill. They categorically have not. The purpose of this bill as declared by the Business Council, who have pursued this for years, is to undermine the position of the ACCC. So if you have achieved something in this bill for a future bill, you have done a deal. So just come
clean and admit it. Do not stand up and parrot the same sentence over and over again.

There are no extra powers in this bill for the ACCC. This bill guts the ACCC. The entire purpose of this bill was a desire born when the ACCC had Professor Fels as its articulate champion on behalf of small business and competition policy.

Senator Murray—This weakens it.

Senator CONROY—This weakens it. This is the Business Council’s dream from four years ago, prior to Graeme Samuel becoming its chairman. They set out to undermine and weaken the ACCC. Senator Joyce understands that. Senator Joyce has understood it and worked with genuine representatives of the small business community. That is why we successfully defeated it last year. But do not come in here and pretend that this bill delivers. Stand up and tell us what extra powers the government is intending to put into section 46 or whatever else it is on predatory pricing. At least articulate them, Senator Fielding. Because you are in here championing small business at the moment let’s hear you, not Senator Brandis, explain the benefits to small business of future promises from this government.

As I said yesterday in the chamber, but you may not have been watching—because I am sure you are very busy on many things, and I am quite genuine when I say that—the Labor Party to this day still has a letter signed by Treasurer Peter Costello, saying that the government would introduce legislation about the alienation of personal income as part of a package on the Ralph business tax reforms. I know that Senator Murray knows about this, because he signed up on the same basis. Peter Costello and the Howard government ratted on a written commitment. I could give you chapter and verse on the ratting on the promises made to the Democrats when they did their deal with the government on the GST.

Senator Murray—A public deal!

Senator CONROY—That is right: it was a public deal, to be fair.

Senator Murray—Fully explained!

Senator CONROY—Fully explained—and they had a spokesman who could explain it. I did not agree with it. You have paid the price for it, Senator Murray, but that is a different argument for a different day. I do not think we will ever actually reach a meeting of minds on that one, Senator Murray. I accept that you did it in good faith, and you were able to articulate it.

I can point to chapter and verse on broken commitments, public agreements ratted on and written statements ratted on. But, Senator Fielding, if you are able to articulate what these new powers for the ACCC will be, please inform the chamber. Senator Joyce, I know, will be interested. Your amendments are an embarrassing fig leaf, frankly, to try to counter the fact that Senator Joyce has actually put an attempt to try and make this at least reasonably workable. Twenty days! Fair dinkum! As Senator Joyce said, can you imagine trying to deal with a merger between PBL and Fairfax, or Channel 7 and the West Australian, or News Ltd and Channel 10—any of the proposed changes—in 20 days? What a joke!

If you want to represent small business, stand up and proudly explain that to us. To give Senator Murray and the Democrats their due, they proudly defended their deal, publicly, all over the country—even to their own members, who hated it. They proudly defended it. So let’s hear you proudly defend what extra powers you have gained, Senator Fielding, but do not try to pretend that this bill contains them and do not try to pretend that there are extra powers for the ACCC here. There are not. This is a bill the sole
purpose of which is to undermine the role of the ACCC in the process.

Senator ABETZ (Tasmania—Minister for Fisheries, Forestry and Conservation) (12.45 pm)—What we have just heard was, unfortunately, what we heard from the vast majority of contributors in this debate—that is, a spray of invective and personal vilification against a particular senator whom certain senators in this chamber happen to disagree with on a policy position. All that I would say to the people of Australia is they should just imagine how the Australian Labor Party and the Australian Greens, if they were to get the majority in this place in government, would treat anybody that would oppose them. It has been, I must say from the opposite side, a rather shameful contribution. The substance of the matters was not really dealt with.

Senator Conroy suggested in his contribution just then that there would be only 20 days to deal with a merger between various media organisations. It is, as I understand it, an extension of a further 20 days. There is only one reason for the honourable senator across the chamber to so misrepresent the Family First amendment—that is, he wants the invective to flow and he wants people to misunderstand what has actually been proposed.

We have had here a debate on issues that were canvassed in this place some 12 months ago, and these issues are relatively fresh. I know the Democrats have commented about process in relation to this, but, from listening to their contributions, I am not sure that they would have said anything else or more if we had given them an extra month to consider the message from the House of Representatives. Whilst you might be able to throw mud at Family First and ask: ‘Why have they changed their mind? Has a nasty deal been done?’ if you want that to stick, you then have to ask why the National Farmers Federation is in support; why the Fair Trading Committee is in support; why the National Association of Retail Grocers is in support and why COSBOA is in support. What you then have is a conspiracy theory that is quite out of control, quite unsustainable and in fact quite stupid.

The suggestion that all those organisations are somehow part of a conspiracy is simply unsustainable. The embarrassing thing for those opposite in particular is that all these small business organisations, having considered the legislation in the past 12 months, are saying: ‘It’s time to get on with business. It’s time to move things ahead.’ They are now agreed on the positions that have been put by the government. I now commend the message from the House of Representatives. I indicate the government’s disagreement with the propositions put by Senator Joyce, and the government’s agreement with the propositions put by Senator Fielding. I move:

That the motion be now put.

Question agreed to.

Question put:

That the amendment (Senator Joyce’s) be agreed to.

The Senate divided. [12.53 pm]

(A The Chairman—Senator JJ Hogg)

Ayes………… 31

Noes………… 31

Majority…….. 0

AYES

Allison, L.F.   Bartlett, A.J.J.
Brown, C.L.   Campbell, G.
Carr, K.J.   Conroy, S.M.
Crossin, P.M.   Fielding, S.
Forshaw, M.G.   Hogg, J.J.
Hurley, A.   Hutchins, S.P.
Joyce, B.   Kirk, L. *
Ludwig, J.W.   Lundy, K.A.
Senator FIELDING (Victoria—Leader of the Family First Party) (12.56 pm)—I move:

At the end of the motion, add “and makes the following further amendment to the bill:

(1) Schedule 1, item 27, page 10 (line 23), after “agrees”, insert “or the Commission so decides”.

(2) Schedule 1, item 27, page 16 (line 22), after “is”, insert “, subject to subsection (3)”,.

(3) However, if before the end of the period referred to in subsection (1) (including any period that is taken to be substituted for that period by any other application or applications of subsection (2)), the Commission decides that the matter cannot be dealt with properly within that period, either because of its complexity or because of other special circumstances, which must be notified in writing by the Commission to the applicant, the period is extended by a further 20 business days and the longer period is taken to be substituted for the period referred to in subsection (1) (or any other period that is taken to be substituted for that period by any other application or applications of subsection (2)).

(4) Schedule 1, item 27, page 19 (line 14), after “is”, insert “, subject to subsection (8A)”,.

(5) Schedule 1, item 27, page 19 (after line 21), after subsection 95AR(8), insert:

(8A) However, if before the end of the period referred to in subsection (7) (including any period that is taken to be substituted for that period by any other application or applications of subsection (8)), the Commission decides that the matter cannot be dealt with properly within that period, either because of its complexity or because of other special circumstances, which must be notified in writing by the Commission to the applicant, the period is extended by a further 20 business days and the longer period is taken to be substituted for the period referred to in subsection (7) (or any other period that is taken to be substituted for that period by any other application or applications of subsection (8)).

(6) Schedule 1, item 27, page 22 (line 14), after “is”, insert “, subject to subsection (11A)”,.

(7) Schedule 1, item 27, page 22 (after line 22), after subsection 95AS(11), insert:

(11A) However, if before the end of the period referred to in subsection (10) (in-
cluding any period that is taken to be substituted for that period by any other application or applications of subsection (11)), the Commission decides that the matter cannot be dealt with properly within that period, either because of its complexity or because of other special circumstances, which must be notified in writing by the Commission to the applicant, the period is extended by a further 20 business days and the longer period is taken to be substituted for the period referred to in subsection (10) (or any other period that is taken to be substituted for that period by any other application or applications of subsection (11))."

This amendment is about extending the number of days by which the ACCC, under formal clearances, can extend the process to allow them extra time to review anything that comes before them as far as mergers are concerned in a formal sense. It is reasonable. I think 20 days or more makes sense. I ask that all senators consider this amendment to support an extra 20 days for the ACCC to have that discretion to examine those cases that are more complex and that would need some extra time to allow them to do their job.

Senator Fielding has explained the amendment he has moved. As people would have seen, Senator Fielding voted for the previous amendment moved by Senator Joyce. He can now say, ‘I tried my best, I voted for it; the vote was tied and the amendment went down.’ He can still ensure it goes through because his vote determines whether or not the motion before this chamber is successful.

The other point I want to emphasise has been made a number of times but, as I have been listening to the debate through the morning, certainly my position and the Democrats position more broadly has continually been misrepresented. I do not think anyone in this chamber opposes the small business changes and the Dawson changes. The Senate passed those changes over a year ago. They were already passed by the Senate. They have not come into operation because of the Treasurer. He is the person who has held up those changes that would help small business. The price he has insisted be paid is to assist in mergers happening more easily. That is the matter before the chamber and that is the concern the Democrats have.

As I said yesterday, we have a separate concern about the broader legislation where, despite the government’s rhetoric of choice and support for collective bargaining, it bans collective bargaining if it involves trade unions in any way, shape or form. This is not only discriminatory but against the government’s own so-called principles of supporting freedom of choice. It is totally offensive. The provision has nothing to do with the Dawson report and is a wider reason for our thinking that it is not only another problematic component of the legislation but also—as Senator Sterle indicated in his contribution earlier on today—an anti-small-business measure. So it is not just an anti-union measure; its consequences are anti-small business as well.
We need to ensure that statements made here are accurate. The Senate supported the Dawson changes relating to small business reform. It did that over 12 months ago. That is not the specific matter before us at the moment. The specific matter before us at the moment relates to mergers.

Senator CONROY (Victoria) (1.00 pm)—I noted that Senator Fielding had the opportunity in speaking to his own amendment to outline, as he had previously described, the extra powers of the ACCC, and he chose not to. I am disappointed about that. You still have an opportunity. They cannot gag you for another 10 minutes. If you could outline where those extra powers for the ACCC are in the bill, that would be helpful to the chamber and to the broader community.

When I have to explain to the 10,000-plus members of the union or, as Senator Sterle said, 10,000 families of those independent contractors who want to be represented by the Transport Workers Union, I would like to be able to tell them how they are better off because of Senator Fielding—I really would. Senator Fielding, you have the opportunity again to stand up and explain your statement that there are more powers in this amendment or, if you have done a deal, that there are more powers coming in another bill to be introduced some time in the future. Just stand up and tell us. Senator Brandis is claiming this. Others are claiming this. Perhaps you can tell us what the situation is. I do not necessarily believe everything I hear from the other side, but I would believe it if you told me that there was a deal—exactly what it was, the form of the amendments and how important those amendments were. I again invite you in the small amount of remaining time to explain where in this bill there are extra powers or, if you have done a deal, that a future bill will deliver extra powers. Please tell us.

Senator JOYCE (Queensland) (1.02 pm)—I am happy that this amendment has come forward. I am happy that obviously there has been an acceptance that the ACCC does need more time. Unfortunately, the acceptance that it does need more time has come at midnight. What I fail to understand is the Family First position that the ACCC has more powers and everything is going to be better under this and then, within five minutes of that, Family First moving an amendment acknowledging that the ACCC does not have enough powers. In five minutes we have had a change, from a speech which said that the ACCC had enough powers, to an amendment, which is accepted, which acknowledges that the ACCC does not.

Mind you, five minutes is a long time in politics, and it is an eternity here today. But we are heading in the right direction. We went from an unlimited time frame for the ACCC back to 40 days—which is obviously just a kick in the backside to get you to the Australian Competition Tribunal so that the merger can go through—and the position that the ACCC does not have enough powers and needs more time, which the government is agreeing to. I will certainly be voting for this amendment because it acknowledges the issue that we have been bringing up—that the ACCC is restricted and needs more time.

To be frank, I commend Senator Fielding for being able to negotiate this. You have been very successful in being able to do something that quite a few people have wanted to do—that is, to get more time. You are obviously a key player and people acknowledge that. I hope that you realise that an extra 20 days, at the end of the day, is not going to do it. If you have PBL and News Ltd merging, the ACCC will need more than 60 business days to deal with it. There are some pretty big issues there that need to be discussed. When KKR break up Coles, and Woolies comes in and buys it all up, you will
have the small business people knocking down your door. They will come and visit you then, because their life will have gone down the toilet, and they will probably suggest that, had you given them a bit more time, it would have been helpful.

We are talking about an amendment, not the Dawson provisions. We are talking about an amendment on mergers and acquisitions law—schedule 1. When you talk about anything else, you are not telling the facts. If we were talking about collective bargaining, the legislation would be here; we would be voting on it. But we are not voting on it, because it has already passed. It has gone through. So any reference to a piece of legislation that has passed is blatantly ridiculous, unless someone is holding you under duress.

There are no more chambers that collective bargaining can go through. It has been through the lower house; it has been through this house. Unless we open up Old Parliament House and chuck it through a couple more chambers, it has been through every chamber it can possibly go through in this country—that is it. What we are dealing with is an amendment on mergers and acquisitions law. Family First has acknowledged that the ACCC needs more time because of the complexity of the legislation and protecting Australian democracy. This amendment does not give us enough time—but I will be supporting it.

Senator MURRAY (Western Australia) (1.05 pm)—I think a lot of congratulations are due, firstly to the chamber for shaming the good senator into going back to the government and saying, ‘By the way, the arrangement I announced yesterday that I am supporting this legislation needs some adjustment because of the pressure that I am under.’ Congratulations, Senator Joyce, because, without your amendment and the embarrassment you have produced, it would not have happened. Congratulations to the government because it already had the vote in the hand, yet it has given an additional gift. I think that is really generous on its part. All told, the slight improvement that we have before us—the face-saver or fig leaf or however you want to describe it—is a result of Senate pressure on the senator to produce something in return for his vote, and I am pleased about it.

The one thing I want to emphasise again and again is that last year this chamber passed the legislation dealing with collective bargaining for small business. Schedule 1 has nothing to do with small business. All the support that the minister has read out from all those small business people is not wholehearted support for schedule 1. It is support for the bill; I accept that. But the main interest is in collective bargaining for small business, which this Senate unanimously—every single senator—passed over a year ago. That is all I can say on that subject.

Senator ABETZ (Tasmania—Minister for Fisheries, Forestry and Conservation) (1.07 pm)—I move:

That the question be now put.

Question agreed to.

The TEMPORARY CHAIRMAN (Senator Forshaw)—The question now is that Senator Fielding’s amendments be agreed to.

Question agreed to.

Original question, as amended, agreed to.

The TEMPORARY CHAIRMAN—The question now is that the resolution be reported.

Question agreed to.

The ACTING DEPUTY PRESIDENT (Senator Forshaw)—The committee has considered message No. 419 from the House of Representatives in relation to the Trade Practices Legislation Amendment Bill
(No. 1) 2005 and has agreed not to insist on its amendment (1), to which the House of Representatives has disagreed, and has agreed to the further amendments made by the House of Representatives and the Senate.

Senator ABETZ (Tasmania—Minister for Fisheries, Forestry and Conservation) (1.10 pm)—I move:

That the report of the committee be adopted.

Question put.

The Senate divided. [1.14 pm]

(The President—Senator the Hon. Paul Calvert)

| Ayes | 32 |
| Noes | 30 |
| Majority | 2 |

AYES

NOES

PAIRS

* denotes teller

Question agreed to.

BUSINESS

Rearrangement

Senator COLBECK (Tasmania—Parliamentary Secretary to the Minister for Finance and Administration) (1.17 pm)—I move:

That the order for the consideration of government business till not later than 2 pm today be as follows:

No. 6 Judiciary Legislation Amendment Bill 2006
No. 11 Financial Sector Legislation Amendment (Trans-Tasman Banking Supervision) Bill 2006
No. 15 Schools Assistance (Learning Together—Achievement Through Choice and Opportunity) Amendment Bill (No. 2) 2006
No. 13 Medical Indemnity Legislation Amendment Bill 2006
No. 7 Customs Amendment (2007 Harmonized System Changes) Bill 2006
No. 8 National Cattle Disease Eradication Account Amendment Bill 2006
No. 9 Export Finance and Insurance Corporation Amendment Bill 2006
No. 10 Environment and Heritage Legislation Amendment (Antarctic Seals and Other Measures) Bill 2006

CHAMBER
No. 12 Housing Loans Insurance Corporation (Transfer of Pre-transfer Contracts) Bill 2006
Housing Loans Insurance Corporation (Transfer of Assets and Abolition) Repeal Bill 2006
No. 14 Defence Force (Home Loans Assistance) Amendment Bill 2006

Question agreed to.

**JUDICIARY LEGISLATION AMENDMENT BILL 2006**

**Second Reading**

Debate resumed from 17 August, on motion by Senator Ian Campbell:
That this bill be now read a second time.
Question agreed to.
Bill read a second time.

**Third Reading**

Bill passed through its remaining stages without amendment or debate.

**FINANCIAL SECTOR LEGISLATION AMENDMENT (TRANS-TASMAN BANKING SUPERVISION) BILL 2006**

**Second Reading**

Debate resumed from 14 September, on motion by Senator Sandy Macdonald:
That this bill be now read a second time.

Senator COLBECK (Tasmania—Parliamentary Secretary to the Minister for Finance and Administration) (1.19 pm)—I commend the bill to the Senate.
Question agreed to.
Bill read a second time.

**Third Reading**

Bill passed through its remaining stages without amendment or debate.

**SCHOOLS ASSISTANCE (LEARNING TOGETHER—ACHIEVEMENT THROUGH CHOICE AND OPPORTUNITY) AMENDMENT BILL (No. 2) 2006**

**Second Reading**

Debate resumed from 9 October, on motion by Senator Santoro:
That this bill be now read a second time.

Senator BARTLETT (Queensland) (1.20 pm)—I will just speak briefly to the Schools Assistance (Learning Together—Achievement Through Choice and Opportunity) Amendment Bill (No. 2) 2006. This is order of business No. 15, which is rather lower down than No. 6 or No. 7, which is how the order was originally planned. We got a tiny bit of warning that the order would change, and I suspect our other Democrat speaker may be down here shortly. I take the opportunity to note that this is a non-controversial piece of legislation and there are no amendments that seek to modify or improve it in any way.

Often the area of schools is not given adequate attention. There is a lot of understandable focus on higher education and skills development in general and often not sufficient focus on schools in general and some of the policy issues there. In that respect, the prospect of legislation that seeks to improve that situation is something that should be welcomed.

I want to take the opportunity to emphasise that across the board we could do better at examining ways to put more focus on schools—and, indeed, as has been mentioned, preschools and early childhood areas. A related matter is the inquiries in the Senate at the moment about adequacy of government support, for example, in the disability area. There is no doubt that one of the key areas where we are not doing well enough across the board—and this is not a partisan
comment; I think it applies across the board—is in using an adequate level of resourcing for young students with what are colloquially called special needs and ensuring that they are properly assisted. If that extra assistance is provided at very early stages, there is no doubt that it can have significant benefit down the track.

Of course, the counter to that is that, where assistance is not provided, there is significant loss down the track. I use by way of example the condition of autism and autism spectrum disorders such as Asperger’s. There is now plenty of evidence that extra intervention and assistance in those very early years in schooling for children can make a very big difference down the track. It costs a little extra money and it does require more individual attention that actually addresses the specific needs and the development situation of individual children. That is always going to mean a little extra expense, but I think that benefit not just for that child but for their family and society as a whole is very much worth the extra amount. So I certainly take this opportunity to urge all of us to look at ways to give that extra support in childhood education and schooling for, for example, children that diagnose with autism spectrum related characteristics, because there is plenty of evidence that that sort of intensive intervention and assistance, while keeping children in the broader school community, bears enormous fruit for them.

Senator ALLISON (Victoria—Leader of the Australian Democrats) (1.23 pm)—The so-called Schools Assistance (Learning Together—Achievement Through Choice and Opportunity) Amendment Bill (No. 2) 2006 essentially provides funding to support capital works in Australian schools. The bill extends the funding under the general capital works program for 2009, 2010 and 2011. These advance approval arrangements have been in place for many years and allow for longer term planning and scheduling of works. The Democrats will support the bill. While the funding for capital works is inadequate and the distribution of that funding across schools is inequitable and lacking in planning, we are clearly in no position to change that with this legislation.

In our view, schools should be provided with the resources they need to deliver a quality education, and this should be a priority for all parties and levels of government. If the quality of the school environment is a measure of the value a society places on its children and its commitment to giving them the best possible start in life, then I am afraid to say that Australia is still sadly lacking. In a world that properly values education and its children, all children would be learning in modern, comfortable buildings that enhance the learning experience—and that means adequate heat in winter, adequate cooling in summer, comfortable furniture, areas to read and play, access to state-of-the-art technology, and good playing fields and sports facilities if children are to be kept physically active. Of course, that is not the current situation for a lot of Australian children.

Unfortunately, many schools are desperately in need of funding to bring the physical environment in which children are supposed to be learning up to an acceptable standard. For instance, Victoria’s public schools have accumulated $268 million in maintenance bills, with 14 schools recording repairs needing a total of more than $1 million. I visited many schools in Victoria and elsewhere and I have seen that reality for myself. I have seen portable classrooms with leaking roofs, broken windows, and floors, walls and ceilings in need of repair. There are still schools that do not have basic indoor multipurpose recreation facilities with gym equipment and the like.
Schools have been chronically under-funded, but of course we do not really know by how much. The latest formal evaluation of the capital grants program was way back in 1999. Seven years is a long time to allow this to go unassessed. But, even back in 1999, the department's own report, Capital matters, stated that there was an urgent need for a national picture of school infrastructure. We still do not have that national picture. We desperately need an audit of capital works at schools in this country—a national audit of all school buildings and facilities which will give us the information that the government needs to properly make policy.

There are huge differences in the environments of schools across the country. There are the very wealthy private schools, the very well resourced government schools and the schools that were built in the sixties that really should be demolished. There are children in so-called portable classrooms that are not going anywhere and have not gone anywhere for 25 years.

Whether a government school gets money for building works often depends on its ability to raise its own money and the quality of the grant application which is made. There is no entitlement to a standard of facilities. There is no agreed listing of priority schools so that schools might know when their work is coming. It is entirely ad hoc—certainly in Victoria, and I know this to be the case in other states as well—and it is unsatisfactory. The federal government, for all of its involvement in schooling and all of its finger pointing at the states, is unwilling to take this action to see that we know just what the capital works funding is for and whether it is adequate.

Some government schools in Victoria are getting swimming pools, and they are to be funded by the private sector and made available to the general public after hours. I do not object to that concept, but what is the policy and how does it deliver equity? Is it just an experiment for a handful of schools to see how it goes and maybe one day all Victorian schools will have a swimming pool? I do not know. There is never any talk about that kind of approach. There is no sense of universality. Are all schools entitled to pools or not? Are all schools entitled to gym facilities or not? We do not have that conversation in this country.

The money for capital works is not granted in the knowledge of an audit of which schools need it first and of what it should be spent on. The process is not grounded in standards—there are no standards for what should be in a school—and it is not grounded in fairness. As I said, there are huge differences in the resources available to schools within and between the government and non-government sectors. While the federal government might like to try and lay the blame for inadequate facilities at the feet of state governments, Commonwealth funding as a percentage of the total capital works spending has fallen since this government came to office. It has actually gone down. Can you imagine that in this day and age we would be reducing the amount of money which is available to schools?

The Commonwealth provides around 30 per cent of the total funding for capital works in government schools, but there has been no real increase since 1996, as I said. This bill only provides $249 million for capital works in 2005 prices, and that is the same amount in real terms as the government allocated for government schools in 1996. It is about $110 for each of the 2.2 million students in government schools across Australia—and we all know what $110 buys these days. Does anyone really believe that this is an adequate amount to meet the obvious needs in so many government schools?
It is not good enough, I think, to trumpet the mantra of choice, as this government is so fond of doing, and suggest that parents pay to send their children to a better re-sourced school. Many parents do not have that choice, whether for reasons of distance or finances. As a result of that, we have children learning in classrooms that are either too hot or too cold, are uncomfortable and do not have adequate lighting or air quality or computing facilities.

Of course, this capital funding is not the only money the federal government provides for capital works; I acknowledge that. There are also funding opportunities through small-scale projects—the so-called Investing in Our Schools program. While any funding is welcome, this has only been available since 2005 and there is no guarantee from the government yet that it will extend past 2007. Again, only a handful of schools are really going to benefit. And, of course, there is the maximum upper limit of $150,000 for these grants, making it suitable for very small scale projects but not much else.

This government has been very eager in recent times to make its mark on state schools. It has tied extra funding to flagpoles and insisted on meaningless testing. It tediously wages campaigns against teaching methods, against report cards, against teaching standards and against teachers. It has been quick to criticise curriculum in history and geography. Now, according to Minister Bishop, the government wants to take over all of the curriculum.

While they have been quick to talk up the inadequacy of state education at any opportunity and they managed to hold a history summit and apparently had a review of the SES funding process—not that anyone was actually able to contribute to that or find out what the results of it were—the government have not been able to coordinate any sort of response to the infrastructure needs of schools. There has been no summit; there has been no review; there has been no benchmark developed to say what a minimum standard should be for any school, whether government or private; there has been no audit; and there is no understanding of which schools are up to the mark and which are not. There certainly has not been any sort of plan developed to fund schools to meet basic infrastructure standards.

This is a slapdash, mediocre approach that will continue to condemn children to dilapidated schools and substandard resources. It will stop children from having the high-quality educational spaces that should be the right of every single child. This government has lots of money; it clearly has a lot to say about our schools. We think it is time this government put its money where its mouth is and made a serious effort to upgrade the physical quality of our schools.

Senator WONG (South Australia) (1.33 pm)—I rise to speak on the Schools Assistance (Learning Together—Achievement Through Choice and Opportunity) Amendment Bill (No. 2) 2006. Before I turn to the substance of the bill, I want to put on record the opposition’s concern about the actions of the government today. We are debating non-controversial legislation, legislation that by agreement has been placed in the non-controversial area of our timetable. One would have thought that, even if the government does not want to treat this chamber with the appropriate courtesy, it could at least do so on non-controversial bills, given that there is agreement on the passage of them. Yet what we had was the parliamentary secretary moving a rearrangement and immediately proceeding to debate the two bills that were first off in that rearrangement, despite the fact that that significantly differed from what had been previously agreed. The government is entitled to do that, but I want
to emphasise to the chamber that certainly the Manager of Opposition Business had no prior warning of that rearrangement. He was not advised. I do not know if other parties were, but certainly the opposition were not.

Senator Murray—We weren’t either.

Senator WONG—I understand from the interjection from Senator Murray that the Democrats equally were not advised.

Senator Colbeck—You were.

Senator WONG—The Manager of Opposition Business has indicated to me that he was not advised of the order of rearrangement that was moved by the Parliamentary Secretary to the Minister for Finance and Administration and then immediately proceeded on. The point I want to make is that we are talking about bills which are not being opposed by the opposition. They are in the non-controversial section of the program. A modicum of courtesy and regard for the chamber, one would have thought, would have led the government to at least advise the relevant managers of business or whips of the opposition and the minor parties. It seems extraordinary that the government cannot even bring itself to show the chamber the sort of courtesy, if it is going to rearrange the program, to at least let us know before the motion is moved.

I turn now to the substance of this bill. This bill provides funding for three years beyond the current funding quadrennium to enable approval of capital works in advance of funding for the years 2009, 2010 and 2011. These advance approval arrangements have been in place for many years and the opposition will support the bill.

I will go on to say a few things about the substance of the bill. The funding provided for by this bill is for the general capital grants program. The Commonwealth has provided funding for school buildings and capital infrastructure in schools since the 1970s. In 2006 the Commonwealth is providing around $350 million for government and non-government schools, in 2005 price levels, for the general element of the capital grants program.

In relation to government schools, this bill does seek to extend capital funding for government schools for each of the years 2009, 2010 and 2011. It provides $249 million for each of these years, again in 2005 price levels. This is the same annual amount in real terms that the Howard government has allocated for government schools since 1996. The Commonwealth’s contribution from the general capital program is around 22 per cent of total funding for capital works and infrastructure in government schools. This proportion is down from an average Commonwealth capital funding in government schools of 32 per cent over the years 1987 to 1997. So there has been an effective drop in the Commonwealth’s share of funding for capital works—this is essentially for infrastructure, classrooms and school facilities—of 10 per cent, from 32 per cent to 22 per cent, over the period that the Howard government has been in office. The source for this material is *Capital matters: an evaluation of the Commonwealth’s Capital Grants Programme for schools*, which was produced by the Department of Education, Science and Training in December 1999.

There are real concerns about the quality of capital infrastructure in government schools. Professor Brian Caldwell, a regular consultant for the government and a contributor to the Menzies Research Centre, has researched the state of capital infrastructure in Australia’s government schools. He has concluded that the overall state of facilities in government schools in this country is in decline. The stock of school buildings, in his view, is unsuited to the demands of learning in the 21st century. There has been no in-
crease in real terms in the general capital grants program for government schools since the Howard government came to office in 1996.

The government has provided some additional funding—around $700 million over four years—for government schools for minor school projects under the Investing in Our Schools program. This funding is directed at small-scale projects. We welcome that funding. However, it fails to address the fundamental need for infrastructure renewal in Australian government schools. To do that, partnership is required between the Commonwealth and the states.

The fact is that adequate capital facilities are needed if we are to achieve educational benefits. Research shows that there is a causal link between building quality and design and student outcomes. The research demonstrates that student academic achievement improves with an improved environment and with improved building conditions. Factors such as lighting, air quality, temperature and acoustics have an effect on student behaviour and learning. I am referencing a report, commissioned by the Department of Education, Training and Youth Affairs in 2002, by Kenn Fisher entitled *Building better outcomes: the impact of school infrastructure on student outcomes and behaviour*.

Studies show that students in newer buildings achieved academic results that were significantly higher than similar students in older buildings with poorer maintenance, lighting, temperature control and floor coverings. UNESCO research also advises on the effects of unsuitable furniture on student discomfort. This can cause backache, reduced concentration spans and writing difficulties and therefore reduce learning opportunities. I am referring to the UNESCO educational building and furniture program referenced in the Fisher report of 2002. One of the key messages from this research is that governments are underestimating the effects of school design on the performance of students and teachers.

The Howard government has provided an additional $1 billion for minor capital projects in schools, including around $700 million over the 2005 to 2008 period for these projects in government schools. This is very valuable funding for schools and enables communities to get funding of up to $150,000 for such projects as computers, shade structures, musical instruments, furniture, floor coverings and small-scale extensions. These projects have the potential to improve the learning environments of students. But the maximum funding, $150,000, simply cannot deliver on the need for fundamental improvements in school building quality and design in government schools.

Despite the fact that $150,000 is the maximum funding available to a school, to date the average grant appears to be closer to $50,000 than $150,000. This Investing in Our Schools funding program for government schools is due to end in 2007. The bill provides no advance approvals for opportunities for projects under this program. School communities would be greatly helped by early advice on the future of the program. Many valuable projects around the country are in jeopardy because of uncertainty about the program beyond 2008.

I want to now turn briefly to non-government schools. The bill allocates just over $86 million for capital works in non-government schools for 2009, 2010 and 2011. This is down from almost $102 million in 2006 and $90 million in 2008, in 2005 price levels. The *Bills Digest* explains that this reduction in funding for non-government schools arises from the lapsing of two program elements for those schools. First, the
government added to the base funding for non-government schools by around $10 million per year for a number of fixed term elements, such as hostels and technology infrastructure for Indigenous students. That would otherwise have ended after the 1996 election. This funding lapses in 2007.

Second, the government introduced an additional $17 million in capital funding for non-government schools in the Northern Territory in 2004. This funding was provided in recognition of the fact that none of the Catholic systemic schools in the Northern Territory received increases in general recurrent funding when the previous minister announced that Catholic systemic schools would be ‘brought into the SES funding system’ from 2005. In fact, all of the Catholic systemic schools in the Northern Territory had to be categorised as ‘maintained’ or they would have lost funding if they were funded at their assessed SES rate. It says much about the government’s piecemeal and stopgap approach to policy development that its response to the failure of the funding scheme for general recurrent grants for non-government schools in the Northern Territory was to plaster this over with some funding for capital works in those schools. The compensatory funding for capital works in the Northern Territory will in fact end in 2008 and the funding levels for non-government schools are down from $102 million in the current financial year to $86 million in 2009 and beyond.

The opposition wants to place on record some concerns regarding accountability for the capital grants program. To say the least, we consider accountability for this program to be weak. The objectives for the capital grants program are not included in the legislation. There is no legislative provision that requires the program to give priority to educational need—this is left to administrative guidelines and ministerial discretion. It seems to be a bit of a trend in the Howard government to prefer to have things in administrative guidelines and at the minister’s discretion rather than in legislation. Senators might recall that that was one of the criticisms made of the welfare changes to the Social Security Act whereby a number of both protective and rights based mechanisms which had previously been in the legislation were referred to the Australian Social Security Guide or regulation or guidelines. We believe that this matter should be rectified in the legislation for the new funding quadrennium.

Another question the opposition would pose is: where is the evidence that the capital works funded by the Commonwealth are meeting the objectives, especially the priority for educationally disadvantaged students? The latest formal evaluation of the capital grants program appears to be in the 1990 report of the department’s research and evaluation branch. That report concluded that there was an urgent need for a national picture of school infrastructure. In other words, the Howard government did not have enough information about capital needs to make a proper assessment of the program’s impact and to provide a sound basis for future funding decisions.

A further accountability issue is that information on the projects that have been funded and how these meet Commonwealth objectives is neither adequate nor timely. The latest available public report on the schools that have benefited from the Commonwealth capital funding appears to be the department’s report to the parliament on expenditures under section 116 of the States Grants (Primary and Secondary Education Assistance) Act 2000 for the 2004 calendar year. But the report on funded projects is vague about how these objectives and priorities were met. The grants provided to the individual schools listed in the report may or
may not meet the needs of educationally disadvantaged students, but this cannot be assessed from the information provided by the major accountability report to parliament—nor do we have any information about the educational outcomes that have improved as a consequence of the Commonwealth’s funding. The process is simply less than transparent.

In conclusion, I have indicated that the opposition will support the bill. We will do so to allow funding proposals for capital works in schools in the three years after the current quadrennium. But we emphasise that the bill fails to tackle the issues we have raised previously—the significant capital needs of public schools, the absence of a government commitment to continuing the Investing in Our Schools program beyond 2007, the funding disruptions to elements of the capital grants program for non-government schools, the absence of accountability criteria and arrangements that demonstrate the effectiveness of the Commonwealth’s capital funding for schools. We call on the Howard government to attend to these issues.

Senator CARR (Victoria) (1.46 pm)—As Senator Wong has just indicated, the opposition will be supporting the Schools Assistance (Learning Together—Achievement Through Choice and Opportunity) Amendment Bill (No. 2) 2006. We do so because of the traditional view that you do not stop money being spent on education, despite the fact that this piece of legislation is described in terms which are quite contrary to what is contained in the bill. We note that, interestingly, the use of Orwellian expressions in titles to try to disguise the intentions of government is becoming all too apparent.

This legislation seeks to provide additional moneys to the government and non-government education sectors. Senator Wong has outlined our concerns about the accountability provisions, the uncertainty of the funding formulas and the manner in which funding is allocated, and the impact that the failure of the government to fulfil its responsibilities to the people of Australia has on the learning environment. These concerns about the government’s educational programs have been expressed in this chamber on many occasions.

I am particularly concerned about the effect of the capital program on the learning environment. If my memory serves me correctly, from my reading of the statistics—insofar as they are available—for all the targeted equity groups, which we used to hear something of in education circles, there has in fact been a decline in educational outcomes. I understand that there is very little in this bill to ensure that there is an improvement in the capital programs that are available to students in this country who suffer acute disadvantage—and that troubles me. It troubles me particularly in the context where this morning we heard on the news a further report from the Hanover Group in Victoria concerning the state of homelessness in this country. Today and every other day in this country, some 100,000 people are homeless—100,000 people in this country are homeless every night. Of those 100,000 people, 10,000 are children under the age of 12.

We have heard a lot this week about poverty, and ACOSS is trying to draw to the attention of the parliament the impact of poverty in this country. We have heard a lot from conservative politicians about the reasons for poverty. We have heard from the conservative benches a rehash of an argument that probably goes back 200 years about the deserving and the undeserving poor. We have heard a great deal about poverty in this country being inevitable; that it cannot be eradicated. It would appear that, in the minds of some on the conservative side of this cham-
ber, it is almost a good thing—that a little bit of poverty keeps people in line. I think that sort of attitude is quite reprehensible.

In this legislation we see the failure of the government to acknowledge its responsibility and to actually do something about ensuring social justice in this country and taking steps to ensure that the money that is spent in this country is able to be used to facilitate better outcomes. When I look at the statistics relating to the equity groups that the government seeks to measure, I see a continuing decline. I see no measures in the provisions of legislation like this where the government is taking deliberate action to address the fundamental problems in our society: the fact that there are so many people living in poverty in this country; and that, when it comes to education, one of the most serious causes of inequality being transmitted between generations is the failure to ensure equality of outcomes in the education system.

When we talk about homelessness, we understand that these sorts of situations are not brought about by people choosing to be paupers or choosing to be without a house. There are 10,000 children in this country who are homeless every night. In that sort of environment you would have thought the government would be more interested in ensuring that its educational programs were aimed at overcoming the inherent, institutionalised, embedded poverty that is occurring in this country. I would have thought that legislation such as this would have provided the opportunity for more action to be taken.

I have just been given a note informing me that this bill has to be carried by two o’clock today. I note that the government has not sought to involve the opposition in the management of its non-controversial business.

Senator Murray—Or the minors.

Senator CARR—That is true—or the other end of the chamber, for that matter. The government has sought to unilaterally re-order business and behave in an arrogant manner after it has moved a gag on a previous piece of legislation. Now I get a note that says, ‘You’d better sit down because we’ve got to make sure this legislation is carried by two o’clock.’

It strikes me that one of the consequences of the government’s arrogance is that the legislative program may well be disrupted and they may not be able to achieve the ends that they seek. I say, however, that there is one more important factor than that: there should be an opportunity to raise with the government issues that go to fundamental questions of social justice. Your gags and your manipulations of the legislative program in this chamber ought not to prevent the work of this chamber being undertaken in a proper manner. So, recognising that you do need the bill through by two o’clock, I will continue my remarks on another occasion.

Senator WEBBER (Western Australia) (1.53 pm)—I rise to make some extremely brief remarks. It is true as my colleague Senator Carr said: we have been advised that the government needs the Schools Assistance (Learning Together—Achievement Through Choice and Opportunity) Amendment Bill (No. 2) 2006 to go through here by two o’clock in order for schools to be presented with the letters allocating them their money. The Labor Party would never in any way want schools to not get the assistance that they so desperately require from this government. However, it needs to be put on the record that this legislation would have gone through a lot more smoothly if the government had spoken to us. We were not expecting this bill at this time. I am sure my colleague Senator Wong would have been more than happy to incorporate her remarks if
there had been some common courtesy and consultation.

Senator COLBECK (Tasmania—Parliamentary Secretary to the Minister for Finance and Administration) (1.54 pm)—I thank the senators for their remarks. I say, though, in response to their claims that they were not advised, the whips offices of the minor parties and the Labor Party were advised by the Parliamentary Liaison Office.

Senator Webber—We didn’t know the order it was going to be in!

Senator COLBECK—I am not responsible, Senator Webber, for the communication issues within the Labor Party, but the offices were advised. We accept that the notice was short, but, given the time taken to pass the previous legislation and the fact that we wanted to get some of these bills passed today, we made the decision.

Senator Carr—You’ve had months to get this legislation in!

The ACTING DEPUTY PRESIDENT (Senator Brandis)—Order, Senator Carr! Senator Colbeck has the call.

Senator COLBECK—We are accepting the fact that the notice was short, Senator Carr, but it is disappointing that, in response to the fact that notice was short, a decision has been made by the Labor Party to essentially filibuster this piece of legislation.

Senator Webber—You can’t tell us during a division—

Senator Wong interjecting—

The ACTING DEPUTY PRESIDENT—Order! Those on my left, you have made the point you wanted to make. Let the parliamentary secretary wind up the debate.

Senator COLBECK—I accept the comment that Senator Carr made that it could potentially disrupt our legislative program, which it effectively has, so Labor’s ends have been achieved. I thank the senators for their comments. I appreciate that they may have been prepared to incorporate their speeches in other circumstances. I commend the bill to the Senate.

Question agreed to.

Bill read a second time.

Third Reading

Bill passed through its remaining stages without amendment or debate.

MEDICAL INDEMNITY LEGISLATION AMENDMENT BILL 2006

Second Reading

Debate resumed from 12 October, on motion by Senator Ellison:

That this bill be now read a second time.

Senator COLBECK (Tasmania—Parliamentary Secretary to the Minister for Finance and Administration) (1.56 pm)—I commend the bill to the Senate.

Question agreed to.

Bill read a second time.

Third Reading

Bill passed through its remaining stages without amendment or debate.

CUSTOMS AMENDMENT (2007 HARMONIZED SYSTEM CHANGES) BILL 2006

Second Reading

Debate resumed from 9 October, on motion by Senator Santoro:

That these bills be now read a second time.

Senator HUTCHINS (New South Wales) (1.57 pm)—Due to the need to expedite matters, I will speak briefly on these bills. In light of the stuff-ups that occurred last year...
with the introduction of computer technology on the waterfront, yet another new system is being foisted on industry with very little notice. I advise the Senate that I will certainly be keeping an eye on this system that is being introduced. Labor will make sure that, if any customs brokers or forwarders are unfairly or harshly criticised or victimised by the Customs Service, that will be taken up in the Senate. I seek leave to incorporate the rest of my speech.

Leave granted.

The speech read as follows—

I rise today to speak on the Customs Amendment (2007 Harmonised System Changes) Bill 2006.

I speak in support of this bill, but in doing so I want to point out a number of issues of concern.

This bill will allow the introduction of new or changed Tariff Concession Orders in line with changes to the international Harmonised Commodity Description and Coding System.

These HS Codes, are they are known, were developed by the World Customs Organisation and govern the classification of 5,000 different commodity groups. HS codes are used in 190 countries and over 98 per cent of international trade is classified using the system.

The changes to TCOs will occur on 1 January 2007. The old codes will be revoked, and at the same time new codes will be instated.

These are very significant changes. They will have the effect of replacing 700 TCOs with 1200 new codes, including changes to, and the introduction of some completely new, subheadings in the Customs Tariff.

The significance of the amendments to customs brokers and importers is that their databases of TCOs, precedents and advices will all be affected and some made completely redundant. The industry will need to review these databases and make the appropriate changes to them prior to 1 January 2007.

In the course of the Foreign Affairs, Defence and Trade Committee’s inquiry into this piece of legislation, there was a certain degree of concern expressed on behalf of industry by the Customs Committee of the Law Council of Australia. This concern spoke to the timing of the bill, the industry consultation process undertaken by Customs, and the liability for errors made by brokers and importers after the changes are made.

There are people in the industry asking why this bill took so long to come to Parliament. Customs, in cooperation with a number of other departments, has been drafting the tariff amendments since February and finalised them in mid-September. By the time this bill passes, the industry will have only two months to prepare before these changes take effect. These two months take in the busiest time for customs brokers and importers as they handle the Christmas rush in merchandise trade, and now they will be saddled with an extra administrative burden.

The further concern for industry, of course, then lies in the degree to which it will be held liable for mistakes made after 1 January. Customs has already notified industry that tariff advice will not be made available until after 1 January, meaning that brokers and forwarders will be flying blind until advice comes through. Customs has foreshadowed that there is scope for discretion in the issuing of infringement notices, and I hope that is extended appropriately to afford industry the necessary lee-way.

Given the pressures and possible financial burden on industry over these next two months, questions are also being asked about how far Customs has gone to make this transition as smooth as possible.

It would appear that Customs has consulted quite regularly and closely with relevant departments in the Government- DFAT; Industry, Tourism and Resources; Agriculture; the ABS; and Treasury. However there have been concerns about the depth of consultation with industry, which will ultimately bear the brunt of the changes on the frontline.

The Law Council’s submission states:

Accordingly, the Customs Committee is concerned that the current level of dissemination of information regarding the amendments may not be adequate. In addition to the information made available on Customs website and through vari-
ous other Customs resources, the Customs Committee is of the view that Customs should undertake an exhaustive series of information sessions with industry (on a face-to-face and online basis) to discuss the impact of the bills.

It is not an unreasonable expectation that frontline industry is involved in the consultation process. Up until now, this has predominantly taken the form of notices and drafts on Customs' website. I understand that Customs proposes to hold information sessions in capital cities around the country following the passage of this bill, and I applaud that move. However, I hope that it is not too little, too late. One of the criticisms levelled at Customs by industry is that consultation on a range of issues in the past has been insufficient. I quote again from the Law Council's submission to the Senate inquiry:

The Customs Committee has regularly observed that Customs may not have consulted in as timely or broad a fashion as would be ideal in relation to significant proposed legislative changes.

The style de rigueur of Customs' consultation has been very much a one-way process: Customs makes the decisions and subsequently notifies the stakeholders on the ground.

I noted that new Customs CEO Michael Carmody has also recognised the failings in the consultation processes undertaken by Customs in an Australian Financial Review profile of 10 October. He said:

I prefer engagement over consultation. It's not hard to produce a long list of meetings to prove there was consultation but it's how objectives are achieved that make the difference. Rather than going in with a prescription, engagement is about sharing development of how you are going to get there.

I welcome these sentiments, just as I am sure they are welcomed by many in the industry who have experienced Customs' prescriptive methods of decision making.

However, I do not see that this was the case in the development of amendments to the Customs Tariff, and in fact it would appear that the paucity of genuine industry 'engagement', as Mr Carmody puts it, demonstrates that the consultation ethic the new CEO is seeking to instil has yet to filter through in any meaningful way to the organisation.

This pessimism is, I think, well-founded in the aftermath of last year's ICS debacle.

If ever there was a case of a complete lack of Ministerial accountability for an out-and-out disaster, it would Minister Ellison's botched handling of the introduction of the ICS.

We've just passed the one-year birthday for the ICS, introduced on 12 October 2005, and still there is no end in sight to the problems harassing brokers and forwarders trying to use this system.

We have a Government that has plunged $205 million into a system that, even a year after its go-live date, has yet to catch up with the rickety, 20-year old legacy system it replaced.

Customs is still manually pumping out workarounds and patches for the system, some of which are costing many freight forwarders time and money to implement.

The ICS was two years overdue at the time of its introduction, still managing to fail spectacularly and still being plagued by problems.

If we have a look at the damage to industry that was wreaked by the botched handling of the ICS, we already have a dollar value: $9 million. That is the figure that about 2000 freight forwarders and customs brokers are seeking to recoup just from the loss in productivity incurred in the subsequent months following the go-live date. Of this compensation, Customs has already paid out half a million dollars to 268 companies. There is speculation the larger losses being claimed will be sought in a class-action suit. Even the ABS, before it was persuaded to retract its comments, pinned a proportion of the November 2005 trade deficit on the bungled ICS implementation.

Most of the trouble was experienced in the lead-up to Christmas, and saw cargo piling up on the docks as the ICS failed. Industry was forced to pay extra staffing costs as people worked around the clock to get cargo moving, and faced additional costs for the extended storage time.

There should be a plate-load of humble pie being quaffed by Customs, and probably a resignation letter adorned with the signature of Minister...
Ellison after this affair. Instead we have had a very defiant Customs Service and equally defiant Minister refusing to acknowledge the damage done to the industry.

The Minister’s stewardship of this project fostered only delays and a lack of consultation with an industry that was wary of the complexities of the system and warned of the consequences of its implementation. Instead of engaging industry, the Minister bore down on the system developers and pressured them into going live despite having insufficient testing and training.

One of the freight-forwarding software developers, Richard White, said in the Australian newspaper on October 10 that although Customs and industry were working together now, many had characterised the go-live date as “the Twin Towers collapsing”.

Bob Wallace, chairman of the Customs Brokers and Forwarders Council of Australia, said in the same newspaper article:

“We’re 12 months down the track and we’re still using work-arounds. We’re still 20 per cent down on productivity, but we’re making the cargo move by dealing with the process in place at the moment. Work-arounds will probably be in place for at least another two years. Customs is telling us that, because of fundamental design problems, it’s not going to be easy to change them all.”

So in another words, Customs has told industry to suck it up, because the ICS is a dog. It is not good enough that our brokers and forwarders have to put up with everything they do taking 20 per cent longer. It is not good enough that this Government could not develop a world-class system on time that functions the way it should.

The Booz Allen Hamilton report into the ICS implementation shows how badly it was handled by the Minister and his department. It found that there was inadequate testing of the system before its go-live date; there was no identifiable budget for the entire process; there were quality problems with the software industry would be using; there was a lack of staged implementation; Customs’ help desk could not even handle the volume of inquiries; and importantly, there was inadequate training in the new system.

The report also found the ICS has not improved trade facilitation or border protection, and we all know that in fact, freight-forwarding productivity has gone backwards. The report notes, quite succinctly, that, “The events to date have left industry angry and disappointed”.

That anger and disappointment will not disappear quickly, particularly if industry is still being forced to use a system that doesn’t work the way it should.

From my perspective, industry is looking at another major change to their operations and they are wondering, quite reasonably, whether Minister Ellison and the Australian Customs Service he heads up are able to deliver the ‘seamless transition’ they promise.

Australian industry has placed Minister Ellison and Customs on notice. It will not tolerate another ICS-scale disaster.

Senator COLBECK (Tasmania—Parliamentary Secretary to the Minister for Finance and Administration) (1.58 pm)—I thank Senator Hutchins and commend the bills to the Senate.

Question agreed to.

Bills read a second time.

Third Reading

Bills passed through their remaining stages without amendment or debate.

QUESTIONS WITHOUT NOTICE

Media Ownership

Senator CONROY (2.00 pm)—My question is to Senator Coonan, Minister for Communications, Information Technology and the Arts. I refer the minister to her comments on Lateline last night claiming again that the new media laws will not result in a wave of takeovers. Has the minister seen reports than an unknown investor has gobbled up between five and six per cent of Fairfax? Given the activity by James Packer and Kerry Stokes, does the minister now accept that the media moguls are about to snatch and grab a host of the most influential media
assets as soon as her new laws are proclaimed? Isn’t this the outcome that the government’s new laws were designed to achieve? When will the minister stop trying to deny what is clear to every observer in the market? Isn’t it the case that far from being a ‘friend of the consumer’, as she has claimed, the minister is the best friend that the moguls have ever had?

Senator COONAN—Thank you to Senator Conroy for the question. To commence my answer, I might ask rhetorically: when will Senator Conroy get through his head that any movement that is currently going on and has concluded is obviously taking place under the Keating regime and certainly not under the proposed new media laws? In fact, the important point about this, which of course Labor refuses to understand, is that people can now restructure their assets. They can restructure their assets now, and they can do what has been mooted over the past few days, under the old Keating regime.

I have said very clearly that what this government is about is not pandering to any particular proprietor, quite contrary to the Labor Party, which in a vindictive way tried to punish certain proprietors. We will not necessarily go into the history of that. What is so important about this is that we do need to move media on from these 20-year-old laws that marooned media proprietors and media assets on the old regulated platforms of print, radio and television and do not have any regard to the impact of the internet and new media on very old assets. It is important that this point be clearly understood. Also under the old Keating laws we have seen the reduction of local content on local radio such that it took people on this side of the chamber to realise that local content was being lost out of certain rural communities, and that has happened under the existing Keating laws.

We can go on about the history of this thing and Labor’s botched attempt to manage communications when they were in government, but the contemporary challenge to the Labor Party is this: will you cave in to Mr Keating’s demand that the media reforms be scrapped and all transactions unwound, taking Australia back to the 1980s? Because, until Mr Beazley stops flip-flopping and Senator Conroy stops squealing, gets off the fence and says what Labor would do, no-one can take anything that Labor say about this seriously. Senator Conroy has been very careful not to stick his neck out. He is too scared to do that. He has been timid and weak in his approach to this matter. Opposition for opposition’s sake gets Labor absolutely no further, and so I repeat the challenge to Senator Conroy: stand up in your supplementary and say what the Labor Party will do.

Senator CONROY—Mr President, I ask a supplementary question. Has the minister seen comments by the Prime Minister today that ‘a certain concentration is needed in a nation of 20 million people’ for ‘economic reasons’? Can the minister confirm that profits in the media industry are at record levels and that the average profit margin is 24 per cent? In the light of these figures, can the minister explain why the government believes that giving more power to the media moguls is essential to the viability of the industry?

Senator COONAN—The Prime Minister is perfectly correct when he says that people ought to be able to behave in a capitalist society in a way where they can deal with their assets—they can restructure their assets—and such has happened over the last couple of days under the laws that were developed under Mr Keating’s watch, and certainly not under the watch of this government. But it is time for the Labor Party to come clean and say how it intends to deal with the media.
laws. Is it going to pay compensation to unwind transactions? How is Labor going to protect local content? Labor’s silence on these matters shows the kind of policy paralysis that has afflicted all of its deliberations—workplace reform, border protection, welfare to work. It does not matter what it is; Labor has no position, no policy imperative whatsoever and no idea what to do about media.

Workplace Relations

Senator MASON (2.06 pm)—My question is to Senator Abetz, the Minister representing the Minister for Employment and Workplace Relations. Will the minister outline to the Senate how the Howard government’s job-creating Work Choices industrial relations policy is facilitating real choice in the workplace for Australian workers? Is the minister aware of any alternative policies?

Senator ABETZ—I thank Senator Mason for his question—a question in which he correctly noted that Work Choices is creating jobs, to the tune of 205,000 jobs and counting, which represents a record period of job creation. More specifically, Senator Mason asked how Work Choices is facilitating choice. Just as the empirical evidence proves that Work Choices is creating jobs, so too it proves that Work Choices is facilitating choice. It is as good as its name.

Since Work Choices came into being on 27 March, some 129,000-plus employees have availed themselves of the choice provided by Work Choices to enter into an Australian workplace agreement. More interestingly, more than double that number, over 308,000 employees, have chosen to sign up to collective agreements. I remind those opposite what the Leader of the Opposition said about the implication of Work Choices. This is what he said:

What all this amounts to is collapsing the right of ordinary Australians to collectively bargain ...

The figures, like all the figures, have shown that prophecy to be wrong. Once again, just as their Chicken Little claims of mass sackings have been proven wrong, so too have Labor been proven wrong when it comes to their claims about choice. There is only one threat to choice in the workplace, and that is the Labor Party and their outdated ‘no ticket, no start’ policy. We had no better evidence of that than what happened earlier this week when Labor prevented non-union journalists from entering their conference venue.

Opposition senators interjecting—

Senator ABETZ—The roosters on the other side should listen to this because we now have a new answer to the perennial question: why did the chicken cross the road? The answer is not to get to the other side; it was to hold a press conference! That is why the chicken crossed the road. We now hear Mr Beazley, after three days of denying that he had anything to do with it, saying that he might in fact do a U-turn and come back across the road and change the policy on this. All I say to that particular chicken is this: if you’re going to cross the road so often because you can’t make up your mind, do you know what is going to happen? You’re going to get run over. And the Australian people at the next election will run over Mr Beazley and the Australian Labor Party for their lack of commitment to giving workers in this country real choice.

We are the party of choice. We are giving people employment; we are giving people real wage increases; and we are giving them the choice as to whether or not they want to be represented by a union. Once we gave them that choice, we have seen over 75 per cent of our fellow Australians in employment saying, ‘Thanks but no thanks,’ to the trade union movement. Those opposite are locked into their trade unionism of about five decades ago. We are now in a new era where we
give workers choice, and that is what they want, because it is delivering real improvements for them in the number of jobs, in real wage increases and also, most tellingly, in the lowest rate of industrial disputation since records were first kept in this country.

Citizenship Ceremonies

Senator HURLEY (2.10 pm)—My question is to the Minister for Immigration and Multicultural Affairs. Is the minister aware of a story in today’s Daily Telegraph newspaper about the role of the United States Consul-General, Mr Steve Smith, at an Australian citizenship ceremony in Sydney? Can the minister confirm that the Australian Citizenship Ceremonies Code says:

Where the Minister is not able to attend, the Minister will nominate a representative. The Minister’s representative may be a Government member of the House of Representatives, a Government Senator, a senior DIMA officer or another person deemed appropriate by the Minister.

Can the minister confirm that, in the absence of the minister and the local MP, Mr Malcolm Turnbull, the formal speaking role was given to Mr Smith, who is not an Australian citizen? Can the minister clarify that she deemed Mr Smith to be an ‘appropriate’ representative, in accordance with the code?

Senator VANSTONE—I did see a story about one of our friends from the United States participating in and making a speech at a citizenship ceremony. Frankly, I thought how nice it was that someone from another country recognised the importance we put on Australian citizenship. With respect to Senator Hurley’s question, I have had a number of other things on my plate this morning, but one of the issues that comes to mind is not so much the role of making a speech—we are entitled to ask people to make a speech; that is neither here nor there—but whether any formal role at that function, as required by the act, was undertaken by that person. I have not had the opportunity to ascertain yet whether a formal role under the act was undertaken by that person, as opposed to that person simply making a speech. But you can be sure that I will be making inquiries about that.

Senator HURLEY—Mr President, I ask a supplementary question. Is it the case that the US Consul-General gave a speech at the ceremony titled ‘What it’s like to be an Australian citizen or become an Australian citizen’? Is it appropriate for noncitizens to give formal addresses about what it means to be an Australian citizen at citizenship ceremonies? Does the minister have any plans to change the Australian Citizenship Ceremonies Code to reflect this?

Senator VANSTONE—I will be frank with you, Senator, and say that I had assumed, without having read every word of the article, that the mayor or someone appropriately qualified in that sense had undertaken the formal role—and I refer you back to my earlier answer in that context. But if you want to put the proposition that at citizenship ceremonies no-one else is entitled to speak and give their views on an issue, and in particular that we should not include anyone from another country, an ambassador, to give such a speech, I think that is not an appropriate policy and it is not one that I would adopt. As you know, with citizenship ceremonies, the formal part—

Senator Hurley interjecting—

Senator VANSTONE—Senator, you have had your opportunity to put your question; you have asked for an answer. The mayor is normally the person who undertakes the formal part of the ceremony and there may be guest speakers. I don’t see a problem with that.
Skilled Migration

Senator LIGHTFOOT (2.14 pm)—My question is also addressed to the Minister for Immigration and Multicultural Affairs, Senator the Hon. Amanda Vanstone. I ask: will the minister advise the Senate on the extent of state and territory use of skilled migration, is the minister aware of any efforts to have particular occupations placed on the list of migration occupations in demand and, further, is the minister aware of any policy alternatives?

Senator VANSTONE—I thank the senator for his very astute question. The states and territories, of course, are big users of skilled migration. They recognise their need for more people. They recognise they need people in the factories doing engineering work, in hospitals and in almost every facet of life. They have taken the opportunity to work with the Australian government to try and shape the population that goes to their state. Different states have a different emphasis on different industries and different needs at any one time, which is why the Australian government has been determined over the last few years to work very closely with the state governments and help them get the people they need. I am pleased to say that they have recognised that and they recognise that immigration can build state and territory economies and it can create jobs. In other words, the people on this side of the chamber, to use an expression that the other side might understand, are on the tools. We are doing the job. We are out there creating jobs for Australians. Skilled immigration is a part of it.

Opposition senators interjecting—

Senator VANSTONE—I am tempted to say something about the other side, but I will leave that. The number of skilled migrants under state and territory sponsored categories has been dramatically increasing. In my own state of South Australia it has gone from 750 in 2001 to almost 8,200 in 2005-06; and in Victoria, from 1,827 in 2001 to 10,500 in 2005-06. These states are star performers at recognising an opportunity to work with the Australian government, taking that opportunity, putting their political differences aside and getting on with it. The states and territories are also big users of 457 visas. Almost 10 per cent of all temporary skilled migrants in 2006 were for state and territory governments or instrumentalities. They are helping business and industry sustain and increase productivity growth.

The flexible system allows changing demands for skills to be met. The MODL, the migration occupations in demand list, is something that is updated every six months, and senators will understand that you get extra points for having particular skills, but if you have the migration occupation in demand skills you get extra points again. Last month we added childcare coordinators, which we thought was a good idea. It allows priority processing of applications for people with that skill—more points and priority processing—to help that industry meet the need.

Mr Beazley called it an absolute disgrace and a short-sighted move that this is what we had done. My office recalled a letter from the shadow minister for work, family and community and shadow minister for youth and early education, Tanya Plibersek. It was written in June last year and it was asking how long day care centres could access childcare coordinators and workers through skilled migration. I thought, ‘That is a bit unusual,’ because what Ms Plibersek wanted was long day centres to access these skills through migration. She recognised more than a year ago that skilled migration could help that industry. She specifically asked whether childcare workers and coordinators were on
the list and went further and said, ‘And, if not, why not?’

I advised her that childcare workers were not on the skills lists but that coordinators were on the skilled occupation list but not yet on the MODL. So we have a situation where we now put them on the MODL. Tanya Plibersek, the shadow minister, should be very happy. Mr Beazley is unhappy. He says it is a disgrace. We have not heard from Tanya Plibersek. Senator Wong has been out there trying to use this opportunity to talk about child care. Ms Plibersek has been told to be quiet—say nothing. The childcare union—

The PRESIDENT—Order! Minister, time has expired.

Senator VANSTONE—There is more I could say. *(Time expired)*

DISTINGUISHED VISITORS

The PRESIDENT—Order! I draw the attention of honourable senators to the presence in the President’s gallery of His Excellency Mr Cemil Cicek, Justice Minister and Government Spokesman from the Republic of Turkey, who I was pleased to join this morning at the opening of the magnificent new Turkish Embassy. On behalf of all senators, we welcome you to Australia and in particular to the Senate.

Honourable senators—Hear, hear!

QUESTIONS WITHOUT NOTICE

Senator Lightfoot—Mr President, I would like to ask a supplementary question.

Senator Chris Evans—Mr President, I raise a point of order. There has to be a time limit, surely. Senator Lightfoot did not jump up; you rose and acknowledged visitors in the gallery. I think it is a bit late to be asking for a—

Senator Vanstone—He politely sat down because the President was speaking.

Senator Chris Evans—I know, Senator Vanstone, you turned around and asked him to ask you a sup, but that is not the point. It just seems to me it is well beyond the time.

The PRESIDENT—Order! I hear your point of order. I had moved on, so I call the next senator.

Skilled Migration

Senator McEWEN (2.20 pm)—My question is to Senator Vanstone, Minister for Immigration and Multicultural Affairs. Can the minister confirm that in the year she became minister for immigration all 457 visas sponsors were monitored for compliance with visa conditions? Is it also the case that in that year more than a quarter of all work sites employing 457 visa holders were visited by the department? Is it true that last year less than two-thirds of all 457 visa sponsors were monitored for compliance and a mere 18 per cent of sites where 457 visa holders worked were inspected? Can the minister explain why, at a time of increasingly disturbing publicity about 457 visa rorts, her department is visiting less than one in five work sites?

Senator VANSTONE—I am glad that senators opposite do in fact look at the DIMA annual report, which was tabled yesterday if not the day before. It is true that we have for a long time had a very high level of visits, around 100 per cent—for monitoring, at least—and that the visits would tend to be in the 25 per cent mark. The number of sponsors monitored in 2005-06 did fall from 7,963 to 6,471, while the number of site visits fell from 1,845 to 1,790. The annual report does show that the percentage of sponsors monitored fell from 96 per cent to 65 per cent—the target that we work on is 100 per cent—while the number of site visits fell from 22 per cent to 18 per cent. Our target there is 25 per cent. They are the percentages
from the overall figures that I have given you.

Resources were diverted to investigate an increase in allegations—not all, of course, of which have been found to be warranted. In doing this we have targeted resources to higher risk industries, for example restaurants and construction. It used to be the case many years ago in Customs, for example, that every package of goods would be looked at. But people recognise in compliance that targeted work generally produces better results than a blanket ‘visit everybody’ approach.

Senator Ellison—Yes, it does.

Senator VANSTONE—I hear Senator Ellison saying it does. Compliance does that. Tax target where they are going to work—they actually publish: ‘We’re going to focus on this group next year,’ because focusing your work on the higher risk areas will give you a more effective result. And that is what we have done.

Our work, of course, would be aided if we did not have false allegations; if we did not have people saying, for example, that Indonesian workers were working at Halliburton in the north of South Australia getting paid $20 to $30 a day—only to find out, after investigation and effort by a whole range of agencies, that they were getting $20 to $30 a day in bonuses, that their salaries were up around $60,000 a year and they were only there for three weeks to do some specialist work. I have raised before my interest in the person who is digitised out in the Advertiser photograph covering that story; it says something about the source of it. But the general point I am making to you, Senator, is: if people insist on making false allegations we will still have to investigate them.

But I do not offer that as an excuse, and what I give you as an explanation is we are more closely focusing our work. In any event, I have been working within government to get more resources, and I believe I have been successful in that. We may be able to put even more resources in, but I can assure you they will not be just cast around across the board; they will be very well focused.

Senator McEWEN—Mr President, I ask a supplementary question. Hasn’t 457 visa compliance fallen every year since Senator Vanstone became the minister for immigration? How could the minister have allowed this to happen at a time when evidence of abuse of the 457 visa is growing? Will the minister now commit to a full review of the integrity of the 457 visa system?

Senator VANSTONE—Senator, it is clear that I did not speak in plain enough English. What I said to you was that I confirmed that the number of monitoring letters—which is what happens in terms of the monitoring and site visits—had gone down, but that does not mean that you have actually done less in compliance. As I have indicated to you, there is a focus on targeting particular industries, and we think that gives a better result. I mean, if the police knock on 100 doors and do not get a result, you will not say they have done less if they knock on 50 doors that are more targeted and find the perpetrator. So I am interested in shifting the immigration work to have a more targeted focus. I do not accept that the proposition that I think you put, by simply not having had the opportunity for a briefing which I am happy to give you on 457 visas, means that less work is being done. I make that point again: it would be a lot easier if the Labor Party and the union movement, in a desire to attack IR laws, did not make false allegations—about which I will have more to say later. (Time expired)
Future Fund

Senator FIFIELD (2.26 pm)—My question is to the Minister for Finance and Administration, Senator Minchin. Will the minister inform the Senate of the Australian government’s budget outcome for 2005-06? Will the minister outline to the Senate how this budget result, combined with the further sale of Telstra, will increase the size of the Future Fund and thereby help prepare for Australia’s future? And is the minister aware of any alternative proposals?

Senator MINCHIN—I thank Senator Fifield for that question. As Senator Fifield would be aware, we recently released the final budget outcome for the last financial year, 2005-06, which showed that the federal government ran a surplus of $15.8 billion in underlying cash, equal to 1.6 per cent of gross domestic product. That was the eighth budget surplus achieved by our government in the last 10 years and the fourth consecutive surplus of at least one per cent of GDP. Of course, the last financial year was also the year in which we finally eliminated the last of the $96 billion in debt we inherited from the previous, Labor, administration. Also, in that financial year just completed we transferred the first $18 billion into our new Future Fund, which as Senator Fifield noted will ultimately help us fully offset the government’s remaining unfunded superannuation liability, which of course has been racked up over the course of the last century and never been provided for up until the creation of the Future Fund.

That fund is now up and running: we have a very good board in place, a broad investment mandate from the government, a new office in Melbourne and the appointment of Mr Paul Costello as the general manager, someone who brings all the experience of having run the New Zealand equivalent fund to Australia.

The strong surplus we just recorded now allows us to make a further $13.6 billion deposit into the Future Fund, which will be done in January and in April of next year. That will take the fund balance to over $30 billion. Then, assuming the successful sale of T3, the Future Fund will receive in due course about $8 billion in sale proceeds and around $15 billion in Telstra shares, subject to the two-year escrow. Thus, the fund will soon have more than $50 billion available to it, which puts us well on the way to achieving our goal of matching the unfunded superannuation liability, estimated to be around $140 billion, by 2020.

Senator Fifield asked me about alternative policies, and regrettably the alternative government—the Labor Party—is all over the place on the question of the Future Fund. On the one hand it has claimed that the fund and its board are not sufficiently independent from the government, but on the other it has a stated policy of using the fund’s earnings to fund its own election promises. Our decision to place Telstra shares in the fund has further compounded the confusion on the part of the Labor Party. It does say it is opposed to the sale—it is certainly extravagant in its opposition—and it does advocate continued public direct government ownership of those Telstra shares.

Mr Tanner, the shadow finance minister, is now committed to leaving all those Telstra shares in the Future Fund rather than bringing them back under direct government ownership. But a Labor government would put on the condition that they must never be sold. In other words, under a future Labor government the fund would be forced to own around 30 per cent of Telstra in perpetuity. So having lectured us about the independence of the fund, they now want to leave the fund with a mandatory overweight position in our company, a company which Mr Beazley, Senator Conroy and others are run-
ning around saying would be a very bad investment. They still claim they would use the remaining Telstra shareholding to influence the company’s activities, which we know of course is code for forcing this company into all sorts of non-commercial decisions. So the Labor Party’s position on the fund and on Telstra is utterly hypocritical and is a consequence of them being all over the place on every policy issue they bring to this chamber.

Stem Cell Research

Senator FIELDING (2.30 pm)—My question is to the Minister for Ageing, Senator Santoro. Minister, the Commonwealth and states have agreed that before any state amends legislation regarding research involving human embryos and cloning it will be referred to the Council of Australian Governments or the Australian Health Ministers Council. Minister, are you aware the Tasmanian government recently reviewed its legislation and found no case for change? Have the state and territory governments been consulted about the government’s decision to allow the promotion of cloning bills? What has been the outcome of that consultation, and if there has been no consultation, why not?

Senator SANTORO—I thank Senator Fielding for his question and acknowledge his strong interest in this area of vital public policy. On 5 April 2002 the Commonwealth and the states and territories agreed that they would introduce nationally consistent legislation to:

A. ban human cloning and other practices regarded as unacceptable by COAG; and

B. establish a national regulatory regime in relation to the use of excess Assisted Reproductive Technology (ART) embryos to be administered by the National Health and Medical Research Council (NHMRC) as the national regulatory and licensing body.

the Commonwealth and the States and Territories agree that the purpose of this Agreement is to facilitate:

C. the implementation of the nationally-consistent legislative scheme for the regulation of the use of excess ART embryos (including a review of the scheme within three years) and the prohibition of human cloning and other practices regarded as unacceptable by COAG; and

D. the maintenance over time of a nationally-consistent approach.

Section 12 of the intergovernmental agreement states:

Any Party that proposes to amend its Legislation or introduce new Legislation so as to affect the operation of the Scheme will submit the proposed amendments or new Legislation to the Australian Health Ministers Conference (AHMC) or COAG for consideration. The AHMC may resolve to refer the matter to COAG for consideration. Each Party agrees that it will not table in Parliament such an amendment or such new Legislation unless the AHMC or COAG, as the case may be, has considered the proposed amendment or new Legislation.

I am not aware that any formal consultation with the states and territories on this matter has yet taken place.

The key question here is whether a private member’s bill represents an intention by the Australian government to amend its legislation. Quite clearly, this is not the case. In any case, the intergovernmental agreement is just that—an agreement. It is not justiciable; that is, if one party to an agreement feels aggrieved that another party to the agreement has not abided by the agreement then there is no means of enforcing compliance. I am aware that the Tasmanian health minister has indicated that they do not see a need to amend their legislation. I also note that the Victorian government has recently received a report that recommends legislative change. I am advised that whether differences in the legislative approaches of states and Commonwealth stand at the end of the day de-
pends on the operation of section 109 of the Constitution. I am happy to take further advice on this issue and get back to Senator Fielding if he wishes that I do so.

Senator FIELDING—Mr President, I ask a supplementary question. Minister, is it true the government has in fact provided Senator Patterson with help to draft her private member’s bill? Can the minister tell the Senate what help was given? In relation to the government’s consultation with the states and territories about its decision, when will that occur?

Senator SANTORO—I can advise Senator Fielding and the Senate that the government has in fact provided some assistance to Senator Patterson at her specific request. We recognise that the senator is personally passionate about these matters and concurred with her view that it would be better for the Senate to consider a technically informed and properly constructed bill than the alternative. The Department of Health and Ageing arranged technical advice from MP Consulting at Senator Patterson’s request on the construction of the bill. This was limited to technical drafting advice and not on matters of policy, which I believe are being provided by interested members of the Lockhart review committee, amongst others.

Illicit Drugs

Senator PAYNE (2.35 pm)—My question is to the Minister for Justice and Customs, Senator Ellison. Will the minister update the Senate on the work of the Australian government to combat the diversion of precursor chemicals into the manufacture of illicit drugs, both domestically and regionally?

Senator ELLISON—I thank Senator Payne for what is a very important question and acknowledge the great interest she has in relation to the issue of illicit drugs, and particularly precursors, because not many people in the Australian community understand that precursors are an extremely important part of the fight against illicit drugs, especially amphetamine type stimulants. Precursors are the ingredients which go to make amphetamine type stimulants and in particular I refer to pseudoephedrine, which is found in many cold and flu medications.

Senator Payne has asked about the strategy that we have in place nationally and internationally. Last night I addressed the 10th National Chemicals Diversion Congress dinner and acknowledged the outstanding work that is being done nationally by state and territory police working with the Australian Federal Police, the various departments of health and the private sector.

It is important that we put in place a regional strategy in relation to the fight against precursor chemicals, and the reason is that we are finding increasingly in the Pacific region and the South-East Asian regions clandestine amphetamine laboratories which are capable of manufacturing very large quantities of amphetamine type stimulants. I have now set up a Pacific precursor working group which will deal with strategies in the Pacific area to deal with those island states which are now encountering organised crime and the manufacture of amphetamine type stimulants. I point to a recent seizure we had in Fiji of a very large clandestine laboratory.

As well as that, we have set up the Asian collaborative group on local precursor control. I was very pleased to see that at last night’s congress we had attendances from countries such as Burma, Vietnam, Thailand, Indonesia, the Philippines, Japan, Singapore, Cambodia, Bangladesh and others. This demonstrated, I believe, a commitment in the region to deal with this in a strategic manner.

It is important that we deal with this issue in a collaborative way. As recognised by the United Nations recently, we have a very high
rate of manufacture of amphetamine type stimulants in our region—if not the greatest amount in the world. Through the collaborative group, it is our intention to engage our regional neighbours in the fight against precursor chemicals.

Nationally, we have a plan in place through our chemical precursor working group, which has now been in existence for four years. We have rescheduled pseudoephedrine products to restrict their availability. Across Australia now, pharmacists have 60 per cent less pseudoephedrine products than they did last year. That is great progress in this matter. I acknowledge the work that the pharmaceutical industry has done as well as that of pharmacists.

Another thing that the pharmaceutical industry has done is develop a decongestant which has phenylephrine in it. That is not an ingredient that can be used for amphetamine type stimulants. It does the job, but it does not have that ingredient in it. This lessens the opportunity for pseudo runners to be used by organised criminals to obtain this medication and then divert the precursors into the manufacture of amphetamine type stimulants.

This is an important strategy. It is important that we fight both regionally and nationally. I want to acknowledge the great cooperation we get from law enforcement in the region and from the states and territories in this regard.

Carer Payments

Senator MOORE (2.39 pm)—My question is to Senator Kemp, Minister representing the Minister for Human Services. Is the minister aware of reports in the Sydney Morning Herald that last weekend the parents of a four-year-old boy with cancer and a congenital heart malformation were denied eligibility for carer payment because the child did not meet the government’s medical criteria? Isn’t the boy so ill that he is undergoing chemotherapy? Hasn’t a senior Centrelink official noted that the case highlights a need to change the assessment criteria for carer payment? What action has been taken to assist the family? And can the minister give a commitment that the criteria will be changed to provide support for parents who have no choice but to stay at home to care for seriously ill children?

Senator KEMP—I thank the senator for her question. I have had a quick look at the briefing notes which have been provided to me by Minister Hockey. There is not a briefing note in my folder on this particular issue. I will get back to you as soon as possible so that you will have a fully comprehensive answer to that question.

Senator MOORE—Thank you, Minister, and I ask a supplementary question. Can I get some further information on similar situations? Doesn’t this case follow that of a further case of a leukaemia sufferer being forced to look for work by the Commonwealth? Wasn’t that decision overturned only after the family went to the media? Will the government now commit to a full review, given that the system is failing families who are caring for seriously ill children?

Senator KEMP—I would not wish to prejudge the answer that I will get. As I said, I will provide a comprehensive answer to the question you raised.

Iraq

Senator ALLISON (2.41 pm)—My question is to the Minister representing the Prime Minister. Is the minister aware that this week Britain’s new Army chief said that UK forces should leave Iraq soon because they are making the security problem there worse? Our own General Cosgrove now says that it is pretty obvious that the jihadist movement has been energised through the protracted war in Iraq. Is the minister aware that 500 Iraqi civilians are being killed every week,
that attacks on US troops have increased by 43 per cent and that the Johns Hopkins University says that around 655,000 civilians have died since the invasion? This morning, Mr Howard said that Australian troops will leave Iraq only when he is satisfied that Iraq is stable. If our presence in Iraq is currently creating violent chaos, what is the coalition of the willing going to do differently to make Iraq stable? What exactly is the plan?

Senator MINCHIN—There has been much debate on this matter in the other chamber during this week—quite significant debate, and the matter is quite important because there is a difference of opinion between the government and the opposition on this matter. At the time of the Iraq invasion, there was a general understanding about the possibility of possession of weapons of mass destruction that led to the coalition of the willing removing Saddam Hussein and what was thought at that time to be that threat. It is widely acknowledged and accepted that there has been a very difficult period since then in seeking to bring peace, order and good government to the people of Iraq.

Our position on this matter is well known. We believe that the coalition partners have a clear responsibility to the people of Iraq to assist in bringing to them the democratic and peaceful livelihood and society that we believe it is our responsibility to put in place, and that we believe is their right. As Senator Allison would know, we are making a relatively tiny contribution compared to the enormous contribution which the American people are making to that endeavour. They have some 140,000 troops still there. Britain has made a substantial contribution and many other countries are making a contribution to bringing peace, order and good government to the people of Iraq. It is not easy. Only this month we have seen four American soldiers per day killed in the violence that continues, so sadly, in that country.

Our position has been made clear by the Prime Minister. Senator Allison probably heard the Prime Minister on AM this morning making clear what our position is. We do believe that progressively the Iraqi security forces can and will take responsibility for security within Iraq. That has occurred already in two provinces where the Iraqi security forces have taken that responsibility. That will continue to occur progressively. There will be a point at which it will be possible for coalition forces to exit on the basis of Iraqi security forces being able to satisfactorily manage the security situation in that country.

Everybody, obviously, is distressed by the ongoing violence that is occurring in that country. It is our clear view, as enunciated by the Prime Minister and the foreign minister, that absolutely the worst thing we could do at the moment is simply depart from Iraq. It would be a tragic thing to do for the people of Iraq to leave them in that situation. They need us there, and we are prepared to be there to help them at their time of need. I do not think there would be anyone who would say that it was not the correct thing to do to remove one of the great tyrants of the twentieth century from the leadership of that country. There is much more progress being made in terms of returning Iraq to civility, to peace, order and good government, than is ever reported, but good progress is being made. They are gradually restoring all the civil services that go in a normally functioning democracy. So we will continue to participate, albeit in a relatively small fashion, with the coalition of the willing to help the Iraqi people to assist in training the Iraqi security forces to undertake the responsibilities of securing peace, order and good government in their country.
Senator ALLISON (2.45 pm)—Mr President, I have a supplementary question. I thank the minister for his answer. It seems the government is relying more on its belief that progress is being made. Will the minister at last acknowledge that a democratic and a peaceful society will not be brought about by violent means? I ask the minister whether he is aware that the Canadian Committee on National Security and Defence has argued that Canada should increase its foreign aid budget by 100 per cent to provide aid to countries like Afghanistan, saying that the lack of aid to Afghanistan means that Afghans do not know who Canadian troops are—whether they are occupiers or liberators. Couldn’t the same be said for Australian troops in Iraq, Minister? Wouldn’t it be better to spend on aid the millions that our troops’ presence in Iraq is costing? Wouldn’t we fund hospitals and infrastructure rather than risk the lives of our troops and those of more Iraqi civilians?

Senator MINCHIN—The first part of the question, I think, was in relation to the question of violence and peace, order and good government. Obviously, we believe that violence is not the way to achieve peace, order and good government. We are there to protect the Iraqi people from the violence being inflicted upon them. That is the point of our being there—to protect the Iraqi people from the violence being inflicted upon them. We are there, and we are in Afghanistan, at the direct request of the democratically elected governments of those countries. If that invitation were ever withdrawn, obviously we would leave, but we are there at their request. What they need, most importantly and foremost, is security to assist in protecting the people of those countries from the violence being inflicted upon them.

Aged Care

Senator McLUCAS (2.47 pm)—My question is directed to Senator Santoro, the Minister for Ageing. Does the minister recall being asked on 21 June about a couple who were jailed for defrauding the Commonwealth as nursing home operators in 1999? Didn’t this couple continue to remain owners of those homes, despite being jailed, and receive over $90 million in public subsidies after their convictions? Didn’t the minister undertake to provide additional information on how the government monitors the ownership and control of approved aged care providers? Why has the minister taken four months—and counting—to report back to the Senate like he promised to do in June? Can the minister also explain how it is possible for convicted fraudsters to continue to own nursing homes and receive over $90 million of public money in subsidies?

Senator SANTORO—As I mentioned to the Senate in reply to the earlier question referred to by Senator McLucas, the best advice that I had at the time—and it is still my advice—is that the issue referred to by Senator McLucas is being considered by the authorities. As such, I think it would be inappropriate for me to make any further comment. However, I can advise the Senate in relation to key personnel for the benefit of those senators who are interested. The Aged Care Act 1997 sets out requirements for approved providers and their key personnel. Key personnel are those persons responsible for the management of the approved provider’s business and aged care services. Approved providers are required to notify the department of changes to their key personnel. A person convicted of an indictable offence is disqualified from being a key personnel of an approved provider.

Approved providers are required to notify the department of any changes to their key personnel.
personnel. Under the Aged Care Act 1997 it is an offence for a disqualified individual to be a key personnel of an approved provider. If the department receives information that a person who was known to be a disqualified individual appears to be participating in the management of aged care services, the department investigates the matter thoroughly. Where necessary, the department refers the matter to the Director of Public Prosecutions, who decides whether the evidence is sufficient to support a prosecution of the matter.

To the best of my advice, I can inform Senator McLucas and the Senate that those processes have taken place in relation to the case referred to by Senator McLucas. I will again seek clarification and further information on that, given that Senator McLucas has raised it again today, and, if the situation is different to what I have just advised the Senate, I will inform the Senate at the earliest opportunity.

Senator McLucas (2.50 pm)—Mr President, I ask a supplementary question. Didn’t the minister tell the Senate on 21 June that the government investigates and acts on allegations of disqualified individuals operating nursing homes? Given this compliance activity, can the minister indicate how many investigations have occurred since 2001 and how many disqualified individuals were found to be operating nursing homes?

Senator Santoro—The question that Senator McLucas has asked me is of a technical nature. It would require gathering information. Obviously, that information is not immediately available to me; otherwise I would provide it to the Senate. However, given that Senator McLucas has raised it, I will take it as a question on notice and make sure that an answer is available at the earliest possible opportunity, which will be at the estimates hearings in a week and a half’s time.

Sport

Senator Bernardi (2.51 pm)—My question is directed to the Minister for the Arts and Sport, Senator Kemp. Will the minister update the Senate on recent advances in preparations of the Australian team in the lead-up to the Beijing Olympic Games? Is the minister aware of any alternative sports policies?

Senator Kemp—I thank Senator Bernardi for the question. As we all know, Senator Bernardi was an AIS student and competed for Australia with the Australian team in the rowing World Cup. In fact I think Senator Bernardi can rightly claim that he was part of an ‘oarsome foursome’ before it was ‘awesome’. Let me go to the second part of the question: am I aware of any other policies on sport, apart from the policies this government has put forward. The truth is, Senator Bernardi, that I am not aware of any other policies, apart from the policies this government has put forward. I take it as a measure of endorsement by the Labor Party of the very effective policies we have put in place for both high-performance sport and grassroots sport.

Senator Bernardi, Australia has a long and proud record at Olympic and Commonwealth games, world championships and other elite competitions. Our successes, as you know, are well noted by many other countries, and many of them have looked closely at the achievements Australia has been able to make. On the international scene we now see countries such as China, Great Britain, Russia and Germany significantly upgrading their high-performance effort, obviously to see whether they can knock Australia out of the top five on the medal table at the Olympic Games. Some senators will be aware that the United Kingdom recently announced very substantial amounts of extra funding for high-performance sport, as they move to-
wards the Olympic Games to be held in London in 2012.

I recently visited the AIS to open a new swimming and recovery centre. This new facility is state of the art and will help us to maintain our very proud record in the area of swimming. The government has also announced, in order to meet the challenges we are seeing on the international stage, further funding for our high-performance sport. In the last budget was total funding of about $55 million over four years to help Australia to meet these international challenges. The funding package addressed four key areas—high-performance athlete development, coaching, sports science and sports excellence—to be undertaken at the Australian Institute of Sport. As I said, earlier this week I officially opened the new swimming and recovery centre at the AIS.

The Beijing Olympics are just under two years away. This may seem a little way in the distance, but for our Olympic hopefuls it is very important that we start our preparations. All of us were invited to the function held yesterday to welcome back to Australia our World Cup winning basketball team, the Opals, who are now the No. 1 women’s basketball team in the world after recently winning the world title in Brazil. I extend to the Opals the congratulations of all in this chamber. It is interesting to note that 12 of the 13 members of the Opals squad were trained at some stage at the Australian Institute of Sport. I think that is a great compliment to the institute and I extend to the staff at the institute our congratulations. (Time expired)

Stem Cell Research

Senator Ludwig (2.55 pm)—My question is to Senator Santoro, the Minister for Ageing and Minister representing the Minister for Health and Ageing. Can the minister confirm his earlier answer that MP Consulting was engaged to provide technical advice in the drafting of the Kay Patterson private member’s bill on cloning? If so, what was the cost of the consultancy and the duration of the consultancy? Did the department pay MP Consulting and was there any other paid consultancy for the private member’s bill? Was any other senator, such as Senator Stott Despoja, offered the same consultancy, or the ability to access any other consultancy? Is MP Consultancy connected with Michael Photios?

Senator Santoro—The advice I have is that MP Consulting did provide the consultancy services. The advice that I can provide the Senate is that arrangements for those consultancy services will finish today. There were a lot of questions there, Senator Ludwig. I will undertake to try to find out what the cost of the consultancy was; I do not have those figures available. To the best of my knowledge, no other consultants were used, requested or made available. No request was received from Senator Stott Despoja. Had it been received I think it would possibly have been considered.

Senator Ludwig—Mr President, I ask a supplementary question. Minister, would you also confirm whether Michael Photios represents or is associated with MP Consulting? Will you also confirm whether an offer was made to Senator Stott Despoja, given the provision of consultancy services to Senator Kay Patterson for her private member’s bill? Can the minister confirm whether his conduct in doing so was consistent with the ministerial code of conduct guidelines?

Senator Santoro—To the very best of my knowledge—I am almost prepared to say that I am absolutely certain—Michael Photios has no association with MP Consulting. What was the other question?

Senator Ludwig—Was your conduct consistent with the ministerial code of conduct guidelines.
Senator SANTORO—I sought advice on that, and to the best of my knowledge no ministerial code of conduct has been breached.

Telstra

Senator RONALDSON (2.59 pm)—My question is to the Minister for Communications, Information Technology and the Arts, Senator Coonan. Will the minister advise the Senate on Australia’s take-up of broadband? Is the minister aware of any alternative policies?

Senator COONAN—I thank Senator Ronaldson for the question. Indeed, I am very confident about Australia’s take-up of broadband. Figures released by the OECD this week show that Australia has continued its strong growth in terms of broadband take-up. I advised the Senate on Monday that the report singled out Australia as a country that is connecting to broadband at a very high rate. However, what was not entirely clear until now was just how well Australia actually did go over the past year in connecting to broadband compared to the rest of the world.

Of the 30 OECD countries, guess where Australia was ranked over the past 12 months for the growth in broadband take-up. We came second. Only Denmark is connecting to broadband at a rate greater than Australia’s. The OECD figures confirmed what we suspected, that Australia now has the second-highest growth rate for broadband in the OECD. It is an extraordinary achievement for Australia. It is further evidence that Australians are now embracing broadband faster than most other countries. Australia was previously ranked fifth in the OECD for broadband growth but, with a record number of broadband connections over the past year, we have been elevated to second.

The figures show Australia is also on the verge of moving up the OECD league table on the overall number of broadband subscriptions, which was above 3½ million at the end of June. The number of broadband subscribers in Australia is well above the OECD average, climbing faster than all other OECD countries except Denmark. This extraordinary performance seems to have been somehow or other overlooked by those who diminish and disparage Australia’s performance.

Perhaps we could put it in context if we liken it to the football results. It might be something that people can understand. Last year Australia made the quarterfinals in broadband take-up but not the semifinals. This year we made it all the way to the grand final and were runner-up. With the historic investment in broadband being made by this government, Australia does look set to be the premiers in the near future. It is this government’s broadband policy which is producing these results. The government’s policies are delivering strong investment in broadband. The OECD figures, which rank Australia second for broadband growth, are proof that this government’s policies are on track and working.

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

PARLIAMENT HOUSE: SECURITY

Senator STEPHENS (New South Wales) (3.02 pm)—Mr President, I seek leave to make a short statement and to seek your advice.

Leave granted.

Senator STEPHENS—This week 130 mostly young people from all over Australia gathered in Canberra for a three-day Voices for Justice event organised by Micah Challenge, a movement of Christians advocating on global poverty and justice issues. For most of them it was the first time that they
had been in Parliament House and their first engagement with the political process. The group took part in the Stand Up Against Poverty Guinness world record event on the front lawns of Parliament House on Monday, which saw 93,000 Australians and 20 million people worldwide stand against poverty, the largest number of people ever to stand up for a cause.

About 25 young people from that group then entered the building through the front entrance of Parliament House for appointments with 70 MPs and senators over two days. Mr President, are you aware that the security officers immediately confiscated all their materials, informing them that what they were bringing into the building was ‘protest material’ and therefore prohibited? Mr President, I would like to show you what the protest material was. It hardly passes as prohibited material. Included were the posters, the Make Poverty History response to the aid white paper, manila folders containing maps of Parliament House, contact details of members or senators they were to meet, posters of the UN millennium goals, constituent letters to be personally handed to members of parliament and postcards about an art exhibition in Parliament House that day.

I was one of the 19 federal parliamentarians, including the Leader of the Opposition, Mr Beazley, and members and senators who are here today, to proudly take part in that Stand Up event and to welcome the Micah Challenge group to parliament. I was therefore deeply disturbed to learn of their treatment. When informed that it was not a protest and that they had meetings with 70 MPs, the security official’s response was to inform them that if the MPs wanted the materials they could come down individually and collect them. It took at least half an hour of questioning before the security officer called for a higher level supervisor to meet the group.

Eventually the organisers of the event were able to persuade the supervisor that the event had already been approved by security weeks in advance and that there was no threat in allowing the young people to proceed with the materials. By this time, much inconvenience had been caused as some meetings had had to continue without the materials and others had been delayed. So eventually the young people did get their materials back. I should say that other young people in the Micah Challenge group who had entered the building before the Stand Up event went through without having their material confiscated.

Mr President, who defines what constitutes protest materials? Is it assumed that events that take place on the front lawns automatically constitute a protest? Why were these young people intimidated in this way? How is it determined that some groups can bring material into this building and not others? Mr President, can you please ensure that these young people receive an official apology for what was appalling treatment?

The PRESIDENT (3.05 pm)—Thank you for that. I will endeavour to find out the truth. I am not saying that you are not correct, but I will find out what did happen and why. When you gave me some notice about a security matter I went to the trouble of finding out what the process is. Basically the answer I have here is regarding the six incidents we have had this year where articles have been confiscated and not returned because they have been prohibited under the Prohibited Weapons Act 1996. I think one of them was a nunchaku. We do have screening processes here. Sometimes particularly young people coming in have articles like balls, whistles and noisemakers that are routinely confiscated and returned as they leave.
the building, as you would be aware. But, on this particular matter you have raised, I will investigate further. If as you have said these people were treated unfairly I will arrange for an apology.

UNPARLIAMENTARY LANGUAGE

The PRESIDENT (3.06 pm)—While I am on my feet, I would like to answer the matter yesterday regarding unparliamentary language. I have reviewed yesterday’s Hansard. The Minister for Ageing made an accusation against Senator McLucas which I regard as imputing an improper motive. I asked him to withdraw it, which he did unreservedly. The accusation that a senator was abusing elderly people in our aged-care facilities is open to two interpretations. The first impression is that Senator McLucas was scaremongering in relation to aged care. The other interpretation is that Senator McLucas is literally abusing aged people, presumably psychologically. On the first interpretation, the remarks definitely impute improper motives. On the second interpretation, the remarks are certainly highly offensive and unparliamentary. There is no further action necessary from the chair, since Senator Santoro has already withdrawn the imputation. However, I would like to remind senators that everything they say in the chamber is recorded and broadcast. Strong political points can always be made without resorting to intemperate language.

Senator Faulkner—Mr President, I rise on a point of order. In relation to the ruling you have made, I know that you were asked on that occasion to review the Hansard record and you have done so—I am not critical of that. I say to you, Mr President, that there might be occasions—yesterday may have been one—where it is also appropriate to review the tape. Sometimes these records are different.

Senator Vanstone—On that point of order, Mr President: I support what Senator Faulkner says because I have had an occasion when the record was different. It was the occasion when Senator Faulkner was rude to one of the senators here—

Opposition senators interjecting—

Senator Vanstone—He has left. Senator Faulkner was rude to one of our senators and then laughed and told him not to be embarrassed. I responded, and I was the speaker at the time: ‘He’s got no need to be embarrassed. He’s not the King of Comb-over.’ I notice that that was removed from the Senate Hansard record.

QUESTIONS WITHOUT NOTICE: ADDITIONAL ANSWERS

Centrelink

Senator ABETZ (Tasmania—Minister for Fisheries, Forestry and Conservation) (3.09 pm)—I seek leave to incorporate extra information in relation to a question asked by Senator Siewert during question time on 17 October.

Leave granted.

The answer read as follows—

• A job seeker would not be ‘breached’ as a consequence of being paid less than the minimum wage.
• Unemployment payment recipients who are principal carer parents, who are 55 years or over or who have a partial capacity to work are taken to have met their activity test requirements when undertaking employment of 30 hours or more per fortnight at a sufficient level of remuneration. The amount required to be earned is the lesser of the wage rate that is applicable to the person, given their age and the type of work they are undertaking, and the Federal Minimum Wage.
• The remuneration test is intended to ensure that people cannot avoid the activ-
ity test simply by declaring that they are working (for example in self-employment) but earning little or no money.

- If a person was working 30 or more hours but did not meet the remuneration test, their work would not count towards them meeting their requirements and they would be required to undertake job search. They would be referred to a Provider of Australian Government Employment Services to assist them in their efforts to find better paid work. They would not be ‘breached’ for failing to satisfy the remuneration test.

- Nor would a person who gave up work that paid below the minimum wage or other applicable statutory conditions for that work be penalised. This is because such work could not be considered suitable work under Social Security Law.

In response to the supplementary question, Centrelink advises that:

- Centrelink staff do not review the adequacy of a customer’s pay unless it relates to the suitability of that job. Centrelink will review customers whose declared income is of a low level in comparison to the number of hours that they work to ensure payment correctness.

QUESTIONS WITHOUT NOTICE: TAKE NOTE OF ANSWERS

Answers to Questions

Senator CONROY (Victoria) (3.09 pm)—I move:

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

Yet again, we have a minister who has lost touch with reality—Senator Coonan. I know it is hard to tell, Senator McGauran, listening to the drivel that we have to listen to in answers to questions, but we have a minister continuing to deny the undeniable. Everybody in the media industry understands what is going on in the marketplace today as we speak. A merger frenzy is building. PBL has generated a war chest. Kerry Stokes has launched a raid on the West Australian and today there is news that a mystery buyer has snapped up a strategic stake in Fairfax. The investment bankers and lawyers have been called in and the plans to carve up Australia’s media sector are being drawn up. The minister claims that everything that is happening now is happening under the existing laws. This is just treating the public with contempt.

Is the minister seriously claiming that it was just a coincidence that James Packer and Kerry Stokes made their moves when it became clear that the legislation would get through parliament? Does she think that Kerry Stokes would have moved on the West Australian if he did not know that it would be up for grabs next year when the new laws are proclaimed? For the past few days the minister and the Prime Minister have been wandering around feigning surprise, pretending that the speculation about a wave of takeovers comes as a shock to them. The very purpose of the media ownership legislation was to facilitate a massive consolidation in the industry. The minister said that the industry had to be free to realise economies of scale. That was the minister’s statement. The floor of five voices per market in the city and four in regional Australia was set deliberately so low as to allow these takeovers to occur. The explanatory memorandum stated that the cross-media ownership changes would allow companies to generate reductions in expenditure. This was always just code for media takeovers that would allow newsrooms to be merged, journalists to be sacked and local content to be reduced. Today we had the Prime Minister on radio claiming that we have to accept concentration because we are just 20 million Australians. The truth is that the Australian media sector, with the existing number of players,
is tremendously profitable. Cross-media mergers are not needed for the viability of this sector.

The other great furphy being peddled by the government is that the new media laws are friendly to the consumer. What nonsense! How could a dramatic reduction in media diversity be in the interests of consumers? The minister has talked up the modest improvements in digital television in the package as a great win for consumers, but the claim that Australians need to sacrifice media diversity in order to enjoy the benefits of digital television is a complete red herring. No other government in the developed world has asked its citizens to make such an absurd trade-off. In truth, the digital package is not focused on consumers at all. It is a carefully crafted set of compromises designed to placate the interests of the big media players. Let us look at the rules for multichannelling, for example. Under the new laws commercial broadcasters will be allowed to run only one extra digital channel in high definition until 2009. HD equipment is available in only five per cent of households and is at least three times more expensive. But the best summation is in the editorial of today’s *Australian*. It says:

Whatever the outcome, Senator Coonan should be ashamed of herself. By protecting the free-to-air television owners from real competition, Senator Coonan has delivered them a free run at the nation’s print assets and in the process managed to reduce overall diversity and, most probably, the quality of Australia’s print media landscape.

*(Time expired)*

**Senator Patterson** (Victoria) (3.14 pm)—I rise to speak in response to a question put to Senator Kemp by Senator Claire Moore regarding carers payment for parents for children who have a profound disability and who are under 16 years of age. When we first came into government in 1996, there was a carers payment to people caring for someone who required care. The carers payment is in lieu of someone who would otherwise be paid to go to work. It is usually for people under 65 years of age, although some people who receive a carers payment are over 65. However, those people usually move to the aged care pension because of its portability and other issues that mean that they are better off on it or because they prefer to be on it.

Senator Newman came into this chamber when we were facing $96 billion worth of debt that Labor had left us. We were paying about $8½ billion or more in interest. People who have mortgages know that when you have a debt you pay interest on it. We were $96 billion in debt and paying about $8½ billion in interest—mostly overseas, I presume—for that debt. Despite that and despite the fact that we were tightening our belts, Senator Newman fought long and hard to get a measure through cabinet for parents who were caring for a profoundly disabled child under 16 years of age—and of course it was limited earlier on because we were trying to rein in the debt. Senator Newman also brought in a measure that, if there were two children in a family with a degenerative disease—and often with a degenerative disease a person is slowly deteriorating—and those two children made demands on the carer equivalent to those of a child with a profound disability, the carer would get the carers payment.

For the first time in the history of Australia, carers with a child under 16 who had a profound disability or who had two children with a degenerative disease and who qualified because their care was the equivalent of looking after a child with a profound disability received a carers payment. Never, ever had it crossed Labor’s mind or lips to assist those people. Mind you, Labor were spending like there was no tomorrow—$10 billion in the last year they were in government, but
not on carers of children with a profound disability. As we paid back some of the debt, Senator Vanstone was able to extend that. When I was minister, we had a review of some of the issues within the carers payment.

So for Labor to come in here and give examples of children whose parents might not qualify—I know that Mr Brough is looking at that again—is to have such gall and front, when we go back and look at the history. Prior to 1996 there was not one single parent of a profoundly disabled child under 16 whose parents received any assistance in the form of a carers payment—not one. It pays to have been here for a while to remember exactly what Labor’s record is. They come in here under the cover of ‘I care about these people. Look at us, we’ve got the heart. We’re people who care,’ but they never remind people that, when they were in government, they did not give one single cent in carers payment to a family with a child with a profound disability. So it is crocodile tears.

While on my feet, I may as well remind honourable senators what we have done for carers since we have been in government. We extended the time that carers can be away from the person for whom they care and not lose their pension. We increased the amount of time that a person on a carers payment could work and not lose it. Labor never remind people about that. Because we paid back the debt and reduced taxes, we have been able to ensure that people on carers payments and other benefits receive some assistance. As a result of the fact that we paid back the debt, we have been able to give people who are in the workforce or people who are retired and who have investments some tax relief. We have also been able to give people on a carers payment $1,000 extra at the end of the budget year for the last three years. This is because we have managed the economy well. Never did anyone on a carers payment see any money when Labor were in government.

We have put in $25 million to acknowledge young carers—some as young as five, six, seven, 11 and 13—who are assisting in the care of a disabled sibling. There are also some children who at 13 years of age and on their own are caring for parents with multiple sclerosis. We have given $25 million to those young people to provide them with respite, assistance, counselling and a hotline so that they can find out how to get a wheelchair. Labor is all talk and no action. (Time expired)

Senator CROSSIN (Northern Territory) (3.20 pm)—I rise this afternoon to take note of answers given by Senator Coonan, the Minister for Communications, Information Technology and the Arts, to questions which were predominantly asked by Senator Conroy. It was interesting to watch Lateline last night. We saw the juxtaposition of the minister’s claims some weeks ago that there would be no media frenzy following the debate and passage of the cross-media laws—she gave a categorical guarantee of that—and her attempts on Lateline last night to justify the activity that we have seen in the last 24 hours. She may well say that the activity is occurring under the existing regime, but it seems odd, don’t you think, that the activity of people such as Mr Packer has occurred within the last 24 hours? It could have occurred within the last 10 years—but, no, the activity and the frenzy has been occurring within the last 24 hours in preparation for the imminent changes once that legislation is signed into law.

We now know that the government’s changes will in fact lead to a massive concentration of media ownership not only in the metropolitan areas but also in regional Australia. The government’s five-four voices test is an absolute fraud. It does not protect
diversity. In places like Bathurst the number of current media owners is five, and under the plan it will go to four. In places like Coffs Harbour there will be a reduction from five to four. In Sydney the number could go from 12 to six, and in Melbourne the number could go from 11 to six. In places like LISMORE we could go from five to four. So everywhere we look around this country there will be a reduction in diversity and a concentration of media ownership.

As I have said, the number of owners will halve in Sydney and Melbourne, and fall by one-third in many parts of regional Australia. The upshot of that is that we will have one person owning a newspaper, two radio stations and a TV network, and that company would be given the same weight in the diversity test as a small radio station. The end result is that these changes are not in the public interest—that media diversity is in fact essential for the proper operation of a democracy. We have seen a media frenzy whereby this concentration will start to happen and will continue to happen because the floodgates have now been opened to allow that to happen. The changes will ensure that a wide range of views that are heard on key issues are minimised. The changes that we are experiencing are extreme.

We heard Senator Conroy say in his taking note of questions asked of the Minister for Communications, Information Technology and the Arts that because we are a nation of only 20 million people a certain concentration is needed. She tries to justify that for economic reasons. Let us look at the economic reasons. We know that media industry profits are at a record level. The average profit margin is 24 per cent—you cannot get much higher than that—so economic reasons do not seem to be valid in this argument. If we believe that it is needed because we are such a small nation of 20 million people then why is it that other democracies like the US, the UK, France, Germany, South Korea and the Netherlands have very comprehensive cross-media laws?

We already have a concentrated media market by world standards, but of course under these laws and these proposals that concentration will be further increased. The Prime Minister needs to explain to people why he wants to give even more power to some of the most powerful people in this country, a concentration that will be held by only two or three people. The diversity of views that you read, hear and listen to will become even more concentrated. This government can deny as much as it likes that that is going to be the fact, but all we have seen across the tabloids today—and let us face it: tabloids usually drive our radio shows through the day and probably television—is a frenzy of people buying and selling and secret buyers trying to get their hands on this grab for greater media ownership. (Time expired)

Senator ADAMS (Western Australia) (3.25 pm)—I rise to take note of questions asked of the Minister for Immigration and Multicultural Affairs, Senator Vanstone. The issue of the 457 visas arises every question time, and I think it is important to say how the government is investigating the so-called misuse of 457 visas.

The Department of Immigration and Multicultural Affairs, DIMA, is currently investigating around 160 allegations of the misuse of 457 visas. Generally the DIMA investigators have found that many of the allegations were baseless and resulted in the reputation of employers being wrongly tarnished and that a minority of employers have underpaid workers and, unfortunately, have not kept proper records or have used workers in less skilled positions. It is important to note that state and territory governments are the biggest users of this visa class.
It has also been said that the 457 visa arrangements are driving down Australians’ wages. I do not agree with this. The average salary of 457 visa holders is $66,200. The 457 visa is not a cheap option for employers, given the costs of recruiting from overseas. In order to bargain for higher salaries, 457 visa holders regularly move from one employer to another.

We have also had criticism that the training of Australians is at risk because of the people who have 457 visas. This is not correct. Employers seeking to sponsor workers on the 457 visa must demonstrate a commitment to training Australians or that their operations will result in the introduction of new or improved technology or business skills. This is something that is very close to me because the town next door to where I live has a large meatworks and the question has been asked: why suspend the processing of meatworker visas? DIMA is undertaking integrity checking to ensure that sponsored workers have the correct skills.

I would like to tell those opposite about the progress that has been made on the meat industry labour agreement. There is a draft labour agreement for the meat industry, and it is ready for signature. The agreement addresses industry-specific needs whilst safeguarding employment opportunities for Australians, including protecting conditions, wages and training. It is very difficult to get anyone to come and work in the meatworks in my area, even though it is a very high-class establishment, because there is so much other work. The nickel mine just recently opened at Ravensthorpe is taking away an enormous number of our labour sources. As farmers, we have found it very hard to get anyone to come and work on the properties. As far as the meatworkers go, the town of Katanning has meatworkers from very many different countries. Christmas Islanders are the basis of the workforce, and we have a number of Afghan, Chinese and Filipino meatworkers, and now we also have some African meatworkers. We have a very multicultural community in Katanning.

To continue on this industry labour agreement: the state governments, the Australian Meat Industry Council and the Australian Meat Industry Employees Union have all been consulted regarding the new labour agreement that is waiting to be signed. We are also told that the possible introduction of minimum English language requirements is being discussed currently with state and territory governments and industry groups. Also, traditional labour market testing for 457 visas was progressively abolished in 1994. Labour market testing was found to create lengthy delays and costs for employers without adding any value, as employers rarely failed labour market testing. (Time expired)

Senator WORTLEY (South Australia) (3.30 pm)—I rise to take note of answers provided by the Minister for Communications, Information Technology and the Arts, Senator Coonan. Here we are only a week after standing in this chamber debating the Broadcasting Services Amendment (Media Ownership) Bill 2006 and already we see the cracks appearing. What a week it has been for the minister, who has seen her government’s ideological obsession with having the cross-media ownership rules pass through the parliament at any cost—all that to now be upstaged by the media giants who have been salivating at the mouth in anticipation. I would suggest that the events of the past week have finally brought a few realities to the minister. I would guess the minister is now beginning to see that consumer-benefiting competition is not something that media moguls have a strong interest in. I would also think the minister is beginning to see that she can no longer hide behind digital
technology and hope that nobody sees what the intentions really are.

The Prime Minister and Senator Coonan are trying to hose everything down. They are telling us all to take a cold shower. This morning we heard the puzzling assertion by the Prime Minister that the impending frenzy of media takeovers is unrelated to the new legislation. For the Prime Minister to say that the activity occurring in media organisations’ boardrooms is unrelated to the passing of the new legislation is a bad joke. That is not what we are reading in our newspapers, and I draw your attention to the following headlines: ‘Media makeover already underway’; ‘Cashed-up PBL starts deal frenzy’; ‘Feeding frenzy looms’; ‘Magnates open wallets as opening blows struck’; ‘Media moguls lead way as stocks keep soaring’; ‘Media moguls on the prowl as new laws change rules’; ‘Packer’s $4.5b first shot in media war’; ‘Trading frenzy catches Fairfax’; ‘Cashed up and hunting bigger game’; ‘Investors tip media frenzy, Coonan tries to calm fears’; and, from the Northern Territory News, ‘Media knives out as carve-up begins’.

The Prime Minister was trying to create even more smoke and mirrors by saying, ‘A certain concentration is needed in a nation of 20 million’ for ‘economic reasons’. It would be interesting for him to expand on this statement a little, when profits to the media industry are at record levels. And so with criticism all around them what do the government do? They continually revert back to the internet as a great saviour for their bungling of media diversity in this country.

Given that this government is so keen to cite the internet as a cornerstone of diversity and given that YouTube has been given so much press of late, I think we need a section on YouTube dedicated to the Howard government. But what name could we give such a section? One that springs to mind is ‘denial’. The government is in denial mode, so that is the key word that we could use—www howardindenial.com is my suggestion for the YouTube link. Here people could view all sorts of footage of the Howard government’s out-of-touch rhetoric, and I feel confident in saying that such a website would receive a significant number of hits. Maybe the link could be a spin-off from that infamous line ‘the truth is out there’, made popular by a certain television series, because the truth is now out there for all of the country to see. The truth behind the government’s motivation for this legislation is out there. The reality is that this legislation was not designed with the Australian public media consumers in mind, it was not drafted to improve the value and superiority of Australia’s media and it was never going to enhance diversity.

On Lateline, when Tony Jones asked the minister: ‘Alan Bond aside, are you the best friend the Packer family ever had?’ the minister ducked answering the question. The minister seems to be doing a lot of ducking in answering questions over the media changes. It is clear that the minister is no friend of the Australian public when it comes to ensuring a diversity of media voices of influence. This latest round of legislation highlights that this government has completely left the building when it comes to being in touch with Australia. The government’s bill was rammed through the place with the support of Senator Joyce and Senator Fielding. (Time expired)

Question agreed to.

DOCUMENTS

Department of the Senate Annual Report 2005-06

The DEPUTY PRESIDENT—I present the annual report of the Department of the Senate for 2005-06.

Ordered that the report be printed.
Correction to the Annual Report of the Commissioner of Taxation for 2005-06

Senator MINCHIN (South Australia—Minister for Finance and Administration) (3.36 pm)—I present a correction to the annual report of the Commissioner of Taxation for 2005-06.

COMMITTEES
Employment, Workplace Relations and Education Committee
Report

Senator TROETH (Victoria) (3.36 pm)—I present the report of the Employment, Workplace Relations and Education Committee, Perspectives on the future of the harvest labour force, together with the Hansard record of proceedings and documents presented to the committee.

Ordered that the report be printed.

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

Leave granted.

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

This report, Perspectives on the future of the harvest labour force, has been an extremely interesting report to make. I would like to thank my fellow senators, particularly Senator Barnett, Senator Marshall, who is not here in the parliament today, and Senator McEwen and Senator Campbell, who were interested participants in the inquiry.

The question of using contract labour from the Pacific Islands is not a new one in the sense that there have been many answers posed as to what the growing industry of horticulture could use to take the crop off on a seasonal basis when such labour can be quite difficult to find. Horticulture is a growing industry. Based on my agricultural experience, I think it is something like the third-largest agricultural industry in this country. Its production and harvest are characterised usually by short, intense growing periods at the end of which, there can be no doubt, the fruit has to be harvested straightaway so as to get the product in premium condition. Australia has made a great name for itself in export markets by producing first-class citrus, mangoes, olives, avocados and other stone fruit, which usually occur in the November to March period when temperatures are hotter. Therefore, this sort of work is usually done under very hot working conditions, which some people may consider to be unpleasant.

There have been intermittent labour shortages in horticulture. At present, the picking force, if I can term it that, is usually made up of backpackers, many of whom undertake this sort of work as a way of boosting their income during their working holiday maker trips to Australia. Many of them are on a 12-month visa and can work for only a particular amount of time—although I was pleased to see that the department of immigration have extended their possible stay by making it possible for them to have a second term, provided that they work in regional and rural areas on their first job. So backpackers are a part of the labour market.

The section of the population often termed ‘grey nomads’—that is, usually semiretired or retired people over the age of 40 or 50 who have decided to travel around Australia as a way of spending their retirement—often take up this sort of work to provide themselves with extra funds. It was pointed out to us that that supply of labour is less reliable now that the conditions for Centrelink payments revolve around fortnightly reporting of income rather than annual averaging reporting of income, and that people are not so willing to do it because of the fluctuating nature of their income.
As well as that, there is still what I might call a permanent part-time local and itinerant labour force of people that have made a career out of picking fruit. They often used to move from Queensland down through New South Wales to the Riverina area of Victoria and thus get perhaps six months of picking. But because of unreliability of transport, possibly the cost of petrol and the level and standard of accommodation that is often provided, this is seen as less reliable. Pickers, and particularly some of the farming and horticultural organisations, say to us that they cannot get workers.

The report talks about the conditions that they sometimes have. For instance, in paragraph 2.18, the report discusses the evidence of a picker with over 20 years experience and the wages that he got. The farming organisations told us that even if they offered higher wages, given that this is a fairly low-wage form of income, they would not be able to get local labour and that that was why they were looking for alternative sources of labour. The very experienced picker with 20 years experience that spoke to the committee told us that because pickers are paid on piece rates—that is, per piece of fruit picked—it does not necessarily result in higher wages. Often the picking was slowed down because of the fact that pickers would have to grade the fruit at the same time, which often resulted in lower wages. It also depended on the quality of the crop. He also said to us that some farms were managed worse than others, which could mean a great reduction in the quality of the fruit. Also, as I said, there are the travel costs.

The farming organisations were very strong about the fact that they needed labour but, apart from anecdotal accounts, the committee was unable to discern that there was a permanent shortage of labour in this field. It is certainly intermittent, but we had varying descriptions of the shortages that farmers have. Balanced against that, of course, we have to look at the arguments against importing contract labour from the Pacific Islands. There has certainly been heightened sensitivity about entry arrangements for foreign workers amongst political parties during the last 12 months. Certainly, the 457 visa arrangements, which bring in skilled workers, would preclude harvest workers. The ACTU and some other organisations put to us that local employment would be affected. Some community action groups who would like to see more labour come into their area advocated Chinese workers rather than Pacific islands workers, but the committee, I think it is fair to say, did not treat this as a serious component of the argument.

There has been a Canadian experiment along those lines—importing Mexican workers—but, although it had some advantages, the fact that Mexican workers were tied to one farm for the total duration of their visa would, we thought, sometimes mean that, if conditions on that farm proved to be unsatisfactory, the worker would have no recourse and would have to keep on working in sub-standard conditions, and it would not be a success. There was also the problem of people who may overstay their visa at the end of their contract and perhaps disappear into the community.

Certainly as a government member on this committee I felt that domestic concerns were a priority and we had to look at the question of importing foreign labour as against using our own. There is no doubt that heavy investment in agriculture is to come in the future. We looked at thousands of acres that have been put in, in almonds, avocados and olives. All of those may well be mechanically harvested, but the high premium that Australian growers can get for unblemished, perfect fruit often means that the fruit has to be picked and graded by hand. The prospect
of having a labour force imported from the Pacific islands may be more likely in the future.

I think it is fair to say that some members of the committee perhaps changed their minds during the course of this. This started off as a references committee inquiry. We were looking at what we might decide, and I anticipated that we would perhaps bring down a majority report and a minority report. The committee, almost at the end of this inquiry, became the substantive committee under the Senate committee changes, but I think it is fair to say that the committee had decided on the sort of report that it was going to make before the committee changed. I mention that change in committee for the information of the Senate.

I am pleased that it is virtually a consensus report. I would like to thank very much the deputy chair, Senator Gavin Marshall, who is not here, the other Labor members, the other committee members and the staff, particularly Mr John Carter, the committee secretary. Every effort was made to see that we had a varied range of opinion from pickers—as I said, one of whom we saw—community representatives who undoubtedly had the benefits for their region at heart and the residents of Robinvale, where a pilot program with workers from Tonga is almost in place. Certainly everyone contributed. I would like to thank those members who travelled to the Far North, which I did not. We did get as wide a view as possible and I am satisfied that the committee has brought down a comprehensive report which states the facts in a plain but interesting manner.

Senator McEWEN (South Australia) (3.47 pm)—I also would like to make a few comments on the report, Perspectives on the future of the harvest labour force. I will also commence by thanking the other members of the Senate Employment, Workplace Relations and Education Committee for their exemplary work on this, including Senator George Campbell, Senator Gavin Marshall, Senator Troeth and Senator Barnett. I note that Senator Gavin Marshall was the chair of this committee when it started life as a references committee and I am sure he would have wished to speak about this report had he been here today. I would also like to apologise to Senator Marshall that I was unable to convince the other members of the committee to call this report ‘The Marshall Plan’. I would also like to thank the committee secretariat, who assisted the committee with the inquiry, especially Mr John Carter and Mr David Sullivan, who accompanied us on several flights in very small planes to far-flung regions and who stoically stood with us in many packing sheds and orchards.

As our committee chair, Senator Troeth, has indicated, this was an inquiry that resulted in a unanimous report with some additional comments by Senator Barnett. The committee’s inquiry was prompted by calls from some grower organisations for the contracting of unskilled labour from abroad, at least on a trial basis. That would probably have involved the establishment of a new visa category for unskilled workers separate from the now controversial 457 visa category.

Committee members listened carefully to growers and grower organisations from around the country as they described the circumstances in which they found themselves at harvest time. We agreed that the shortage of labour in the horticultural industry was evident in some places at particular times. Nevertheless, the committee concluded overall that in current circumstances there was no need to implement any radical solution to the seasonal labour scarcity. The government’s strong opposition to the type of unskilled contract labour scheme proposed by some in the horticultural industry has been made
clear, and I have to say our side of politics is no more enthusiastic. That said, I believe the committee did look objectively at the evidence, as Senator Troeth said, particularly in relation to labour needs at a time of considerable expansion in the industry.

The committee is also far less inclined to the dogmatism expressed by some other government members and the dogmatism that the government appears to have about foreign contract unskilled labour. As this report indicates, circumstances may require a policy change in that regard. There may in future be a strong case for implementing a foreign contract labour scheme for horticulture. The declining numbers in the current harvest labour force, the precariousness of the backpacker labour supply, which is very vulnerable to external factors, and the rising levels of agribusiness investment all point to the likelihood of increased labour pressures in future years.

The period when the committee was conducting visits and taking evidence coincided with increasing evidence that some employers are abusing the 457 visa scheme and that the government’s lack of oversight of the scheme is allowing that abuse to occur. The problems encountered with 457 visas in the meat industry, the building and construction industry and other areas of skill shortages certainly sharpened the sensitivities of the committee with regard to what contractual arrangements must apply in the event that there is any kind of harvest labour scheme as envisaged in the committee report. The committee has dealt with those issues substantially in chapter 4 of its report, and I urge senators to have a look at that chapter in particular.

Growners were clear about the current difficulties they faced. The committee accepts the validity of some claims that labour was not always available at times which were most advantageous in achieving the highest possible return on produce. On the other hand, the committee was unconvinced of claims that crops were lost because there was no-one to harvest them. Such isolated occasions when this might have occurred are suspected by the committee to have been more the result of mismanagement than anything else.

Mismanagement in this industry occurs at two levels: first, with horticultural practices which result in substandard crops—which are, incidentally, often hard to pick and bring low returns to fruit pickers, who are paid on a piecework basis—and, second, with regard to mismanagement of labour that was indicated by the very poor pay and conditions and the scant regard for the welfare of employees by many employers in this industry.

In a free labour market, as we have, where pickers have an effective grapevine of their own and can avoid working for bad employers because of the shortage of labour, it is not surprising that some growers would be attracted to the use of what they perceive to be docile foreign labour, which they imagine would be much cheaper as well. As the report states, committee members held a number of informal meetings with growers which in some cases indicated that labour costs, as much as timely availability, were factors in their support for foreign labour. Some growers unashamedly extolled the virtues of using labour hire firms to bring in workers from China and Korea. Some growers made outrageous claims about what kind of incomes people could make from fruit picking, but all the concrete evidence was that for most Australians this is a very low-income industry to work in.

The committee did not see too many wealthy fruit-pickers, I have to say. The award rate, including a casual loading, for this work is currently in the order of $15.38
per hour, and we found that, to keep their expenses low, pickers sometimes sleep in their cars or in very rough campgrounds near to orchards and occasionally in onsite accommodation that, in the committee’s view, might just be okay for a holidaying backpacker for a couple of weeks but was nowhere near the standard acceptable for either Australian or imported contract labour. To give the industry its due, however, many grower organisations were conscious of the need to maintain proper employment standards in the industry and realised that this was a factor in the lack of people willing to come and work in the horticultural industry.

Some other observations arising from the evidence to the committee may be of interest. First, the committee was rather surprised—dismayed, even—to find that even large agribusinesses have apparently failed to factor into their business plans the increasing labour scarcity. This is all the more remarkable given that this is such a labour intensive industry, particularly in the premium produce end of the market. But from many management people in the newly planted and planned large orchards, which are often funded by managed investment schemes, we got a shrug of the shoulders when we asked: ‘Where are you actually going to source the labour to work this orchard?’ It was a somewhat disturbing response.

Second, the issue of using welfare recipients in orchards and vineyards was again kicked about by the committee. Growers were, to say the least, unenthusiastic about relying on people currently in receipt of welfare benefits to fill labour shortages. Some growers were totally unsympathetic to the unemployed; others acknowledged that people who had been unemployed for a long period of time often had physical impediments, disabilities or other responsibilities that would anyway prevent them from doing the long days and the very hard and very physical work that is the lot of most fruit-pickers.

Third, the committee was concerned with the overdependence on backpacker labour. Not only is this a precarious and unreliable source of labour, it is also discouraging improved working conditions for traditional seasonal labourers. Young backpackers are highly prized workers who stay only until they hear that the surf is up at Byron Bay or Bells Beach, and then they are off. While they are staying in the orchard they do not complain about the pay or living conditions in remote areas, and that sets the tone for ongoing fairly poor employment conditions.

Finally, the committee agreed that any future imported labour should be sourced from Pacific Islands Forum nations and be based on agreements with each of those countries. It must be properly regulated with regard to wages and working conditions, so as to eliminate any likelihood of exploitation. The committee received a number of submissions regarding the importance of Pacific nation participation in regional economic growth and we accepted the thrust of those arguments, particularly with regard to the value of overseas remittances to the economies of our near neighbours. While Pacific Islands Forum nations will undoubtedly be disappointed in the findings of this report, I note that the committee’s brief was substantially to address employment issues in Australian horticulture and not Australia’s foreign policy.

It may appear unusual to table a report without formal recommendations, but I think the position of the committee on a number of key issues is clear and unambiguous. The government should note the committee’s advice in any future policy development relating to the matter of contracting harvest labour from the South Pacific.
Senator BARTLETT (Queensland) (3.56 pm)—I appreciate the opportunity to speak to the report, Perspectives on the future of the harvest labour force, because I think it is an important one in one of many different areas in the extremely multifaceted immigration environment. I should state from the outset that I was not as involved in the inquiry as the previous two speakers; I was not able to get to any of the public hearings, but I did read many of the submissions and some of the Hansard transcripts. For a variety of reasons I will not go into here, I was not as fully involved in a few other stages along the way as I would have liked but, having said that, I think it is a valuable report.

A word I would probably use to describe it is ‘tentative’. Even though it does not have recommendations, it does have components that set forward conclusions and certainly make some very strong suggestions. They are not strong enough to be recommendations, but they are suggestions. I find myself in the not overly common position of agreeing with Senator Barnett, who put in some supplementary comments to this report. His view—if I could speak for him, based on the supplementary comments in the report—is basically that he does propose a targeted and tightly controlled pilot scheme of Pacific island workers to meet a demonstrated labour force need in a certain area over a given period. This idea of taking that extra, still tentative, but concrete step forward—not so much dipping the toe in the water to test the temperature but actually taking a more concrete step than that—of a pilot program is one that I support. My general feeling is less tentative than the body of the committee report about it being worth exploring this proposed measure more specifically.

We have an interesting dynamic operating in the immigration arena, not just in Australia but elsewhere. We have people who are basically running a protectionist line, saying, ‘We don’t want people coming in here and impacting on wages and conditions.’ And we have people from the other side, from what would normally be seen as more of the free market side, and for different, broader immigration policy and so-called border control reasons—a big misnomer—who are also being reticent about letting people in.

It is a curious alliance where you have protectionist sentiments and free market but nationalist sentiments aligning. I think that is undesirable. There is a real problem with the aversion of both the government and the union movement, for different reasons, to considering the approach of allowing people from the Pacific island region, New Guinea, East Timor and countries like that to do short-term work—whether you call them guest workers or short-term seasonal labour—whilst very consciously and deliberately bringing in over 100,000 people a year through the working holiday visa program, predominantly from Europe, North America, Japan and so on. I do not think it is any great surprise that people in the Pacific island region see a double standard there—that we are willing to allow over 100,000 people a year from Western Europe and North America through on working holiday visa programs to fill these sorts of seasonal jobs.

That working holiday visa program is very much promoted. When the numbers were expanded by Minister Vanstone just recently it was very strongly promoted. The reason for doing that was to meet demand for seasonal work. I do not have a problem with that, I might emphasise, but we have a program that brings in 100,000 people a year specifically to address shortfalls in the seasonal labour market and yet we are saying to people from our own region, the Pacific islands and nearby, ‘No, you cannot come in and do that short-term work.’ There is a double standard there that I have a lot of prob-
lems with, frankly. That is why I am supportive of the flavour of Senator Barnett’s additional comment of having a trial pilot program.

There were recommendations along similar lines, particularly in the submission from Oxfam. The two submissions I found of most benefit—although, certainly, others were good—were the Oxfam one and that from Peter Mares from the Institute for Social Research at Swinburne University of Technology in Victoria. I think there is a valid argument for enabling labourers from our region to fill gaps. It is true it is hard to determine precisely how big, how extensive and how permanent those gaps in the unskilled seasonal labour market are. It is one of those perplexities of the debate that it is hard to pin down. There is a valid concern about people who can be easily exploited getting stuck in poor conditions and exploited.

The sort of program that is used in Canada is one that was recommended as being worth particular attention. It seems to be working quite well. I particularly notice that Senator Barnett says in his comments that this is not just about being nice and neighbourly and helping people from less well off neighbouring countries to come in and earn a bit of income; there are benefits for the Australian economy. As mentioned in Senator Barnett’s additional comments, the evidence from Mr Mares and Nic Maclellan was that such a scheme would create jobs and investment in the local area concerned rather than take jobs from locals. In fact, the Canadian experience has been that temporary labour schemes create 2.6 jobs in the supply and processing sectors for every one in horticulture.

There are economic benefits for Australia, and that is logical. If there is a genuine gap in the labour market that has not been adequately met, and if we can get it met that would ensure that the full wealth-generating opportunities that are there are maximised. It is worth emphasising, though, that this certainly should not be seen as the panacea, that we should just open this up and let any number of people in as the single solution to gaps in the lesser skilled labour market. It is best addressed on one front.

One issue that I think we need to look at again is some of the restrictions in our social security laws. We actually have a very strong disincentive built into our social security laws for people on income support payments to go to regional areas because they get penalised for moving to areas of higher unemployment. If they are going to get enough work to not qualify for income support then that is not a problem, obviously. But that is not always guaranteed; as has been mentioned, this is an unreliable labour opportunity area. It just adds that bit of extra disincentive to people who think, ‘If I am going to go to try my luck somewhere else, I will end up being penalised in my income support payments.’ It really means that they have to be absolutely certain that they are going to earn enough reliable income for them to take that leap. Given the current wider employment market circumstances, that is an issue we need to consider as well.

Whilst the committee report does not have specific recommendations, I do concur with its findings and conclusions, particularly at the end of chapter 2. It suggests that an immediate seasonal contract labour scheme is not justified, and I agree with that. We do not need to put in place a fully fledged scheme straightaway. But it does also emphasise that this does not mean government policy inaction. Pronouncements by the government which categorically reject the use of unskilled workers from the Pacific region are neither forward looking nor conducive to policy development. Similarly, claims by sections of the union movement that bringing in unskilled seasonal workers from overseas
would steal local jobs, drive down wages and inevitably create a new class of working poor, is not an automatic argument against doing anything. As it says there, the answer lies in adequate regulation, and adequate enforcement of that regulation.

The report is fairly honest about why it is tentative. It has the interesting sentence:

It is difficult for committee members to disregard the influences which affect them as party members at this moment in the electoral cycle.

I think that is a coded way of saying, ‘This is too big a political hot potato for all of us to go too far at the moment.’ I think it is best to be upfront about those things, and I am not seeking to attack that. It is a perfectly understandable position. It is a difficult issue from a range of perspectives. As the committee recognises, that is no excuse for inaction, and it does not suggest action; it suggests movement. My view is that the movement suggested is a bit more tentative than is necessary. I think we can go further; I think we can go to a pilot program, as Senator Barnett suggests. Personally, I will keep pushing that, as my individual view. I think it is a view that would also be much more comfortable for our Pacific island neighbours. I seek leave to continue my remarks. (Time expired)

Leave granted; debate adjourned.

BUDGET
Consideration by Estimates Committees
Additional Information

Senator SCULLION (Northern Territory) (4.07 pm)—On behalf of the Chair of the Finance and Public Administration Committee, Senator Mason, I present additional information received by the committee relating to hearings on the 2006-07 budget estimates.

CRIMES AMENDMENT (VICTIM IMPACT STATEMENTS) BILL 2006
Second Reading

Debate resumed from 18 October, on motion by Senator Ludwig:

That this bill be now read a second time.

Senator LUDWIG (Queensland) (4.07 pm)—It gives me great pleasure to speak to 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 part of the sentencing process.

At some point in the development of our criminal justice system, the victim fell out of the process and became somewhat marginalised in the proceedings. This 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, or VIS, 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 that it is time for a federal scheme of victim impact statements so that victims can be heard.

The genesis of the bill was the Senate’s work on the Criminal Code Amendment (Trafficking in Persons Offences) Bill 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 Ellis-son, indicated that they did not support the amendments as they stood, and Labor withdrew them, promising to revisit the matter at a later date. This is exactly what Labor has...
done. 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.

While the Commonwealth has no general head of power over crime or criminal law, there are a number of specific areas of federal law that cover crimes against the person, and the coverage of these areas has 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 IB of the Crimes Act 1914— I will use the term 'the act' from here on—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 IB 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 truly 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, including 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 really not good enough. To ensure consistency in the 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.

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 of 1985 endorses this approach. The Parliamentary Joint Commission on the Australian Crime Commission also provided encouragement. In June 2004 it brought out a report titled Response to trafficking in women for sexual servitude. At page 52 it said:

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

Further, at 4.36 the committee said:

The Committee recommends that the following matters be examined in the legislative review announced as part of the government package: …

• adopting the use of victim impact statements in sentencing.

Further, the Senate Legal and Constitutional Legislation Committee’s report into the Criminal Code Amendment (Trafficking in Persons Offences) Bill 2004 included, at 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 Australian Law Reform Commission report *Same crime, same time: sentencing of federal offenders*, which is report No. 103 and which was released in April this year, considered the issue of implementing a federal VIS scheme and recommended a model in which the federal scheme would apply to all federal sentencing irrespective of whether the offence is summary or indictable and irrespective of whether the victim is an individual or a corporation.

The ALRC favoured an approach whereby federal sentencing legislation makes comprehensive provisions for the use of victim impact statements in sentencing federal offenders and, if states and territories have laws about the use of victim impact statements that comply with specific federal minimum standards, those would be applied to the exclusion of the federal provisions. Labor, having had a look at those provisions, does not entirely 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—just a little—to run contrary to this premise. However, the ALRC report did find the need for a victim impact statement within the federal criminal justice system.

To summarise the present position, at the moment use of victim impact statements for federal criminal offences depends upon which state or territory court the case is heard in. This is inadequate because the different states have different models and different provisions as a consequence. 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. That is underpinned by the ALRC report *Same crime, same time: sentencing of federal offenders*. They are driving the same point. Therefore, Labor has proceeded to advance the victims’ rights agenda with this bill, which I shall now deal with in detail.

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. Turning 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: physical injury; psychological or emotional suffering, including grief; contraction or fear of contraction of a sexually transmissible medical condition; pregnancy suffered as a result of criminal activity—for example, rape or sexual servitude; or 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 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 subsection 14.
‘Victim’ is defined to include: a natural person who suffers harm arising from an offence; or, 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. In this way, the bill will confine itself to personal harm suffered by a person, not a corporation, and will also allow, should the person die as a result of the commission of the offence, the relative who was financially or psychologically dependent on the person to provide a victim impact statement if they wish.

‘Relative’ includes a relative according to Aboriginal tradition or contemporary social practice, a spouse or a de facto partner. Access to the victim impact statement regime set out in the bill is therefore restricted to natural persons. 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 subsection 3 provides for the creation of information guides for this purpose. It is important that the public have a right to know how their voice can be heard within the criminal justice system. Subsections 4 and 5 provide for conditional contingencies where the victim may not be able to make a victim impact statement, while subsection 6 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 subsection 2.

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 and 13. This is of course complementary to the amendment in item 1. Subsection 8 allows the statement or report to refer to harm 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 or 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 subsection 13 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.

Labor is proud of its work in strengthening Commonwealth legislation against criminals and terrorists, but that 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 victims’ 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 part of a year to deliver a voice for the victims.

Labor cares about the victims of crime and commends this bill to all senators, but particularly to the Minister for Justice and Customs and those government senators who served on either the Senate Legal and Constitutional Affairs Committee inquiry into the trafficking in persons or the Parliamentary Joint Committee on the Australian Crime Commission inquiry on trafficking in women for sexual servitude. The recommendations made in those reports and the senators who endorsed the reports provided the impetus for this bill, so I urge senators to support its adoption in the government party room and I look forward to the Howard government’s agreement to assist its passage.

I am serious about this. I do not object to the government taking over the bill. It is a worthwhile bill and it will provide a positive benefit. I would be happy to facilitate that outcome by referring the bill to the Senate Standing Committee on Legal and Constitutional Affairs. With those words, I commend the bill once again to the Senate.

Senator IAN MACDONALD (Queensland) (4.24 pm)—I am pleased to enter this debate on the Crimes Amendment (Victim Impact Statements) Bill 2006. I must say with all genuineness that I congratulate Senator Ludwig on bringing this bill forward. I am pleased to be involved in the debate, because it is a rare initiative by the opposition to bring forward for debate in this chamber a sensible piece of legislation that deserves consideration. Indeed, there are a number of government speakers: Senator Bernardi, Senator Trood, Senator Fifield and Senator Nash—all of whom would like to make a contribution to this very serious and sensibly brought forward debate.

Senator Ludwig has obviously given a lot of thought to this. I know Senator Ludwig has been personally involved in looking at this matter through a number of committees on which he serves. As I say, it is good to see this chamber debating a serious attempt to influence public policy and legislation in this chamber.

I want to at length deal with some of the issues that Senator Ludwig raised but, as a preliminary summary, whilst the government is not necessarily directly opposed to the theory and principles of this bill, it has come forward a little too soon. It is an area where a lot more serious consideration needs to go into drafting, which perhaps may address some of the issues that were highlighted in the two reports to which Senator Ludwig referred and to which I will refer later.

There are a lot of things to be done in bringing forward legislation. Legislation such as this, the prosecution of which takes place in state courts under state procedures, will need some interaction with the state jurisdictions. Senator Ludwig, as I do, comes from Queensland, and Queensland is one of the states that does not have legislative provisions or court rules expressly governing the use of victim impact statements. Queensland legislation provides that prosecutors should inform the sentencing court of the details of any harm caused to a victim by the crime. I have always wondered why Queensland has not made that a bit more regulated, rather than just providing that ‘prosecutors should inform the court’.

Let us look at the disgraceful episode in recent history in Queensland, where Dr Patel...
really should have been subjected to criminal prosecution. According to the newspapers, Dr Patel made an offer to return to Queensland to face his accusers. Had that happened, and had he been convicted, the victims of crime would certainly have been very welcome contributors to any sentence that might have been passed. I do not want to prejudge the case of Dr Patel, but I do say Queensland has a strange approach to some of these areas. Perhaps Senator Ludwig in his position as an influential member of the Labor Party in Queensland—and the Labor Party controls the state government in Queensland—might have been able to do something about that disgraceful episode.

As you would have read, Mr Acting Deputy President, Dr Patel’s representatives offered for him to come back to face his accusers. Unfortunately, the offer was made in the pre-election period in Queensland. So Mr Beattie, who denies it of course, but knowing how governments work one cannot take that denial at all seriously, and his former Attorney-General, Ms Lavarch, refused to have Dr Patel come back. Why? Because it is the last thing the state Labor Party would have wanted to highlight in the lead-up to the state election. So for reasons which in themselves are almost criminal, the bringing of this person to face his accusers was denied. In fact it was refused by the Queensland Premier and the then Queensland Attorney-General.

Lest people say that I am making some of this up, you only have to look at recent events in Queensland, where the Attorney-General was forced to resign over her handling of this particular issue. It is a disgrace that, in this day and age, matters of criminal justice take second place to the interests of the Labor Party in power in Queensland or elsewhere. So, whilst I in no way impugn Senator Ludwig’s motives for bringing this forward, I just wish he would use the same passion and expertise to get the state Labor government—over which he has some influence in Queensland—to get real, to do the honest thing, when it comes to the administration of justice in Queensland.

The case of Dr Patel will go down in history as one of the worst abuses by any government of the criminal justice system in this country. It is a disgrace which unfortunately, because of the numbers in the Queensland parliament, will go unchallenged and unpenalised. If that sort of thing were to happen in a parliament like this, one could imagine that it would almost bring the government to its knees. Of course, in Queensland, where there is an arrogant state government with a huge majority, they ignore these sorts of criminal justice principles. It has a huge majority, I might say, because things like this were allowed to happen in the run-up to the state election.

Had this issue been raised, had Dr Patel come back to Queensland before 9 September and had the attention of the Queensland voting public been directed to this disgraceful episode in the administration of health in our state, then perhaps Mr Beattie would not have the very substantial majority he now has. He knew that better than I know that. He knew that better than anyone in this chamber knew that. That is why Dr Patel was not allowed back into the country to face these accusations brought against him.

So I do join in the debate. As I said, I think Senator Ludwig needs to be congratulated for bringing this forward. It does raise a very serious issue. As Senator Ludwig has said, a victim impact statement is a statement made by a victim to the court about the harm, loss or injury that they have suffered as a result of the offence that is the subject of the sentencing proceedings. A victim impact statement is, however, only one way of informing the court of the impact an offence has on that victim.
Whilst federal legislation currently does not make specific provision for victim impact statements, the impact that a federal offence has on victims can be taken into account under federal sentencing law or state and territory legislation. The Commonwealth Crimes Act, to which Senator Ludwig has referred, already provides that the personal circumstances of the victim, and any injury, loss or damage resulting from the offence, must be taken into account when determining the sentence to be imposed on a federal offender. As I think Senator Ludwig pointed out, that is provided for in sections 16A(2)(d) and 16A(2)(e) of the Crimes Act.

Federal criminal law also picks up state and territory provisions about victim impact statements. As I have mentioned, all of the states and territories—with the exception of my home state of Queensland—have the legislative provisions, or court rules, expressly governing the use of victim impact statements. The Senate should be aware, however, as I mentioned, that the victim impact statements are only one part of sentencing. The role of sentencing in the criminal justice system is quite complex. Under the rule of law that we live by in this country, the public has an expectation that the laws that make up our criminal justice system will be enforced in accordance with established procedures. Sentencing obviously is a very necessary part of this system. Consistency in sentencing is fundamental to the rule of law and public confidence in the criminal justice system.

As we all know, Australia has a federal system of government where legislative powers are divided between the Commonwealth parliament and the state and territory parliaments. Generally speaking, the administration of criminal justice falls predominantly to the states and territories. All of the criminal courts in Australia are established and operated by the states and territories.

Those state and territory courts hear all cases prosecuted under criminal law. This does at times have problems.

In my former role as the federal Minister for Fisheries, Forestry and Conservation, I found that the differences in procedures in state courts led to an unfortunate divergence in sentencing, depending on whether the offence was prosecuted in Queensland courts, Northern Territory courts or Western Australian courts. If an illegal Indonesian fisherman was going to get caught and brought to justice, he would want to get caught and brought to justice in the Northern Territory in preference to Western Australia.

In the Northern Territory, the Northern Territory government has a scheme—although I am not sure that this has not been changed in very recent months—where it imposes a fine, but if you do not pay the fine there is no default imprisonment for the non-payment. So the whole process was fairly curious. Indonesian fishermen would be fined but they would have no ability to pay the fine. In most other courts in Australia, they would go to jail for nonpayment of the fine, but that does not—or did not—apply in the Northern Territory. So they would walk out of the court and then call upon the Australian government to send them back home. The whole thing was a bit illusory.

Unfortunately, under the fishing legislation you cannot jail fishermen for fishing offences, although in other states jail sentences did result, not from breach of fishing laws but through contempt of court for non-payment of fines. I digress slightly here, Mr Acting Deputy President, but that is an area of the international law, the United Nations Convention on the Law of the Sea, which I firmly believe needs addressing. In my term as fisheries minister, it was one thing I desperately tried to get the international community to move on. While someone once
said to me that it will take 50 years to change United Nations conventions, we did at least start to have some movement along that line which may have addressed that issue. I misdirect myself in getting slightly off the subject, but it does highlight the need for uniformity in sentences around the states and territories.

Some of the areas that the Commonwealth can legislate on include the major offences that can only sensibly be dealt with by national legislation and national law enforcement, such as money-laundering, illicit drug trafficking, people trafficking, sexual servitude, transnational crime, cyber crime and major fraud. The Crimes Act deals with the sentencing of federal offenders, the administration of sentences and the release of federal offenders, and this includes most federal sentencing provisions. However, state and territory procedural laws are applied and local sentencing options can as well be ‘picked up’ and applied to federal prosecutions in state and territory courts. This means that a court sentencing an offender for a federal crime in one state or territory may have a different sentencing option than a court in another state or territory trying the same offender for the same crime.

Time is running out. There were some other matters I wanted to go into. I hope some of my colleagues might raise those, but I want to comment briefly on the Australian Law Reform Commission report, which I understand was tabled only a month ago—perhaps a couple of months ago—to which Senator Ludwig referred, and also the report from the Joint Standing Committee on the Australian Crime Commission in their inquiry into trafficking of women for sexual servitude. Both of those reports contained recommendations along the lines of the subject of this bill. The recommendations by those two inquiries are taken very seriously by this government. The government does not always agree with every recommendation made by a committee of the parliament but by and large recommendations by committees are seriously considered by the government. Because both of those reports do make reference to a victim impact statement, it is clearly something the government will take very seriously.

The Parliamentary Joint Committee on the Australian Crime Commission’s inquiry into the trafficking of women for sexual servitude was a committee on which Senator Ludwig served. While I was not on the committee at that time, I can imagine from my more recent involvement with that committee that Senator Ludwig would have had a view on this matter. I have no doubt that he and other senators and members of parliament would have played a role in ensuring that that recommendation did go forward to the government. Many of these committees do serious work: they hear from a lot of witnesses, they have a lot of discussion and try to think things through. The Australian government looks seriously at the recommendations coming from them. I know Senator Ellison has in this case. The minister confirms to me that the Australian government is currently considering the recommendations of both the Australian Law Reform Committee and the parliamentary joint committee about victim impact statements in the context of the wide-ranging recommendations that the ALRC made about sentencing of federal offenders. I understand that the Australian government’s response to both reports will be made public. Work is currently being done in preparing a response to both those reports.

With respect to Senator Ludwig, I suggest that it would be premature to consider the use of victim impact statements in isolation. It is my submission that it would be much better to develop legislation in response to these considered reports rather than to this bill. I suggest that the idea is a good one and
is one the government has had in mind for some time. Following those reports and recommendations, the government is looking at this very seriously. If a bill is to be brought forward, it is, with respect to Senator Ludwig and his resources, really something which should be done by a government with the full resources of the Attorney-General’s Department and the Minister for Justice and Customs and all the expertise which he and the departments can bring to this area.

This bill is a fraction premature. It is a good idea and the principle is right. It is not one the government would be supporting but is one we will be looking at very closely. I hope if a bill does come forward from the government in the future that Senator Ludwig will be involved and will play a part in it. (Time expired)

Senator KIRK (South Australia) (4.44 pm)—I rise this afternoon to speak on the Crimes Amendment (Victim Impact Statements) Bill 2006, which was initiated by my colleague Senator Ludwig. I would like to congratulate him on putting together this bill, because it is most timely and very much needed at the federal level. It is becoming more the case that a range of information is being taken into account and considered relevant to a court when determining the sentence of an offender. One of the sentencing factors that is becoming increasingly important in the sentencing of offenders throughout Australia is the impact of the offence on the victim.

Under federal law, the subject matter of a federal offence has traditionally been considered victimless. The reason for this view is that the so-called ‘injury’ is seen to be to the Commonwealth, which of course cannot sustain an injury in the same way that an individual can. However, increasingly, we are seeing new federal offences being created, such as terrorist offences, people-smuggling offences, sex-trafficking offences, sexual servitude offences, child sex tourism offences and war crimes. These federal offences often involve individuals as victims. It is for this reason that we should consider introducing victim impact statements at the federal level. The reason is that these offences clearly affect individuals.

We have heard about victim impact statements from other speakers. Just to clarify: they are an oral or a written statement presented to a court in a criminal trial after conviction of the defendant and before sentencing. The statement usually contains particulars of any personal harm that may have been suffered by a victim as a result of an offence. It is simply one way of informing a court about the harm, loss or injury that has been suffered by a victim of an offence which is the subject of the sentencing proceedings. As we have heard here today, there is no regime in place at the federal level that allows for the use of these formal victim impact statements. Part 1B of the Crimes Act 1914, Commonwealth legislation, does not make provision for victim impact statements. Earlier we heard from Senator Ian Macdonald that, even though the injury to a victim is something that may be taken into account in the sentencing of a federal offender, there is no express provision made for it within the Crimes Act. As I understand the effect of the legislation before us, it is to introduce an express provision which would allow a victim impact statement to be taken into account when a federal offender is sentenced.

We have also heard today that, throughout Australia, the states and territories, except Queensland—which I will refer to in a moment—already have in place legislative provisions or, in some cases, court rules that govern the use of victim impact statements. In some instances, a victim of a federal crime may be able to access these state and territory laws. In other words, it is sometimes the
case that, when a person is being tried in a state or territory court, the victim impact statement provisions can have application when the actual offence involved is a federal or Commonwealth offence. But the difficulty, as we have heard today, is the wide variation across the various jurisdictions in the states and territories as to the legislation that underpins the use of these victim impact statements.

In the time I have available, I will run through very quickly the differences that exist between the states and territories in relation to victim impact statements. I am proud to say that, in 1988, my home state of South Australia was the first Australian jurisdiction to enact legislation to provide for the admissibility of victim impact statements. I am able to say today, again quite proudly, that South Australia has—almost as we speak—appointed an interim Victims Rights Commissioner. I understand that the position of Victims Rights Commissioner is one that will be unique throughout Australia and that South Australia is one of the very few jurisdictions in the world that will have a Victims Rights Commissioner. I understand that the position of Victims Rights Commissioner is one that will be unique throughout Australia and that South Australia is one of the very few jurisdictions in the world that will have a Victims Rights Commissioner. I think the UK has a similar type of position. Authority will be given to the Victims Rights Commissioner to intervene in criminal trials when the rights of a victim are being overlooked or ignored. This is a very important development that is occurring in my home state of South Australia.

We have heard about Queensland from Senator Ian Macdonald this afternoon. As he said, Queensland has no explicit statutory provision for the use of victim impact statements, except that it is the case that the court is authorised to receive any information that it considers appropriate in imposing a proper sentence on an offender. The way that that provision is worded certainly would permit the use of a victim impact statement if it were considered to be relevant information. However, there is no explicit statutory authority underpinning the use of these statements in Queensland.

In Western Australia, the sentencing legislation expressly prohibits a victim impact statement from addressing the way in which or the extent to which an offender ought to be sentenced. So in Western Australia victim impact statements can be used, but they can be used only for a limited purpose. The legislation prohibits them addressing in any way the extent or nature of the punishment that should be imposed on the offender.

In contrast, the Northern Territory has an express provision that a victim impact statement may contain a statement as to the victim’s wishes in respect of the sentencing order to be made by the court. The Northern Territory has quite a different approach; it actually permits the victim to express their wish as to how they think the defendant ought to be sentenced by the court.

In New South Wales, legislation does not prevent a court from considering a victim impact statement given by a family victim ‘in connection with the determination of punishment for the offence’ if it considers it appropriate to do so. Again, in New South Wales it is the case that there can be reference to the victim impact statement in determining the punishment for the offence that has been committed.

Generally speaking, these victim impact statements that I have been speaking of must be in writing. This is the case in New South Wales, South Australia and Tasmania, but in other jurisdictions they may be presented orally. This is the case in Western Australia, the ACT and the Northern Territory. Again in my own home state of South Australia, a child or a young person who is the victim of an offence may present the particulars of the impact of that offence on them by way of writing, drawing, telling a story or even writ-
ing a poem. So in South Australia we are very creative as to the ways in which these victim impact statements can be presented.

New sentencing legislation in the ACT significantly expands the scope of persons who can make a victim impact statement. This includes not only the victim but also parents, carers, close family members of victims and persons who are in an intimate personal relationship with the victim. So you can see that there is a great deal of variation throughout the various jurisdictions in Australia as to the use and the scope of these victim impact statements.

There is also wide variation across jurisdictions in relation to the following matters: firstly, the types of offences in respect to which a statement may be made; secondly, whether the court has the power to rule as inadmissible the whole or any part of the victim impact statement; and, thirdly, whether there is a provision to be cross-examined in relation to the content of the statement.

In summary, you can see that there are a number of significant differences between state and territory laws concerning the availability, content, form and use of victim impact statements. In fact it is the case at the moment that legal practitioners concede that the use of victim impact statements for federal crime often has to be tested on a case-by-case basis and will often depend, of course, on which state or territory the offender is being tried in. It is for this reason that Senator Ludwig has come up with this initiative, following recommendations of various reports which I will refer to in a moment, by pushing for a uniform approach in the federal context.

In setting up a federal scheme, the bill that we have before us today has sought to incorporate best practice by examining the practices in the states and territories that I have referred to and extracting best practice from those approaches. The bill will ensure consistency in access to victim impact statements by federal victims regardless of where the trial is being held. That is the very important development that this bill seeks to bring about.

The importance of victim impact statements for victims is in terms of vindication, the healing process, restoration and, lastly but still importantly, giving them a voice in the sentencing process. The arguments in favour of the use of victim impact statements include reducing the perception of the victim’s alienation in the criminal justice process; assisting in making sentencing more transparent and, importantly, more reflective of the community’s response to crime; and promoting the rehabilitation of defendants by confronting them with the actual impact of their offending behaviour.

A couple of speakers have referred to the Australian Law Reform Commission’s recent report entitled Same crime same time: sentencing of federal offenders, and Senator Ian Macdonald has informed us that the government is preparing a response to this report. It makes interesting reading, and I just want to share with the Senate a few of the passages from the report that really focus attention on the issues that are at stake here. For example, the Australian Securities and Investments Commission made the following submission to the ALRC when talking about corporate crimes:

Corporate crimes often have a large number of victims, some of whom may have suffered a little and others who have suffered a substantial loss. ASIC often prosecutes matters where a vulnerable group is the specific target of offenders, such as retirees, the elderly, those who are socially disadvantaged, or a particular ethnic community. It would be desirable for some mechanism to be in place to allow information to be presented to a
ASIC goes on to say:

Some ways in which this information could be presented are by way of submissions, a general statement or expert evidence, such as from a psychiatrist or social worker who can attest to the impact of the offence on the affected group.

So you can see from that that even bodies such as ASIC that have jurisdiction over a wide range of matters at the federal level in relation to securities and corporate matters can also see the value in having what we are referring to today as victim impact statements, but which might also be statements provided by other professionals to give testimony as to the effect of particular crimes on individuals or on groups of individuals.

In addition, the Senate Legal and Constitutional Legislation Committee’s report into the Criminal Code Amendment (Trafficking in Persons Offences) Bill 2004 also highlighted just how important it is to have these victim impact statements. The report stated:

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.

So it was a couple of years ago that one of our own committees identified how useful these victim impact statements can be.

Victim impact statements also assist the sentencing process by providing judicial officers—that is, the judiciary—with details of the impact of offences. If this were not the case, quite often those trying to determine the sentence might be completely unaware of the impact of a particular offence on a victim. The statements clearly benefit victims of crime but may also promote the rehabilitation of offenders, as I have said before, by confronting the offenders with the details of the harm they have inflicted. Once again, it may well be the case that an offender is oblivious to the harm that has been caused to the victim and to his or her family and close ones.

The proposal that we have before us here today on Senator Ludwig’s initiative is to enact comprehensive provisions for the use of victim impact statements at the federal level. These would replace existing state and territory provisions in relation to federal offences. Of course, state and territory laws would stay in place in relation to state and territory crimes, but the matter would be clarified in relation to federal offences because there would be specific Commonwealth legislation that would provide for victim impact statements.

This was one of the suggested options for reform in the Australian Law Reform Commission’s report that I referred to before. The commission has suggested in its report:

... for federal law to introduce a comprehensive and self-contained scheme for victim impact statements, which would replace existing state and territory provisions in relation to federal offences.

This would:

... promote a uniform approach in the federal context, given existing disparities in state and territory provisions; and ... it would be useful in relation to offences where the victim was outside the jurisdiction.

Under Labor’s federal victim impact statement model, a statement would be given to the court after a person is convicted and before they are sentenced. Labor’s approach would therefore extend the rights of victims to give them the opportunity to speak and be acknowledged as stakeholders in the sentencing of the offender.

Labor’s reforms on the initiative of Senator Ludwig will finally achieve some consistency in the treatment of victim impact statements at the federal level. It is an important step forward in enhancing the clarity and
integrity of federal criminal justice. I commend the bill to the Senate.

Senator BERNARDI (South Australia) (5.01 pm)—Firstly, I would like to thank Senator Kirk for her contribution to this debate; it was certainly well reasoned and informed. From my experience in this chamber, there are times when in certain instances both major parties sing from the same song sheet and I think this is one of them. There is a difference in process, I believe, but certainly we recognise the impact there is on victims.

I would also like to commend Senator Ludwig for remaining in the chamber during this debate, because he has introduced the Crimes Amendment (Victim Impact Statements) Bill 2006 and it is a very important issue. I broadly agree with the sentiments and the principles that it is very important for victims to have a strong voice in the legal process. Victim impact statements are a very important part of restorative justice. As Senator Kirk said, they help victims to heal, they help victims to gain a sense of vindication and they help families to believe or gain a sense that justice has been done.

At the risk of repeating what my fellow senators have said, a victim impact statement is a statement, quite simply, made by a victim to the court detailing the harm, loss or injury they have suffered as a result of the offence that is subject to the sentencing proceedings. However, a victim impact statement is only one way of informing a court of the impact an offence has had on a victim. It has been acknowledged that, while federal legislation does not make specific provision for victim impact statements, the impact that a federal offence has on victims can be taken into account under federal sentencing law or under state and territory legislation.

Senator Kirk identified South Australia as being the first state to introduce victim impact statements. As I have mentioned, such statements do help victims to heal. A number of important precedents have been taken in the South Australian parliament where some victim impact statements have assisted in sentencing. It is important that victims have this chance and we have to remind ourselves exactly why victims of crime need to have this opportunity.

My question is: can a third party ever do justice to the trauma, the suffering and the pain of a victim? We have many eloquent, well-trained legal counsel and prosecutors in this country, and we are very fortunate in that regard. But how can they truly share the pain and suffering of someone who has suffered as a victim of crime?

I would like to incorporate into Hansard a couple of victim impact statement examples from my home state of South Australia. One particularly heinous crime involved the sexual abuse of young children by former Magistrate Peter Liddy. A victim of crime said in his statement:

Yes, I hope that Peter Liddy is found to be guilty of these crimes—he deserves it. He is a sick man who has used his position in society to gain access and opportunity to molest little boys. How could he work in the court as a magistrate and ‘pass judgement’ on other people’s crimes when he is committing one of the most shameful and disgusting crimes? I hope that he is put in jail for life. He may be able to justify his actions in his own mind or simply deny they ever took place. However, those whose lives he has affected will be left with this for life. Hopefully his peers will recognise his ill effect on society and do what is right and just.

That was from a victim of Peter Liddy. Of course, the victim also has parents and the parents are victims as well, because gruesome situations like this tear a family apart. The parents of this unfortunate young man were also entitled to incorporate into the
court a victim impact statement. Once again, I will quote:

All I can say is that Mr Liddy is a very sick man who has manipulated my son in a very, very cunning way. Unfortunately, it seems my son is not the only one and I can only hope that he— that is, Mr Liddy—
is put away for a very long time and can no longer impose his will on any other children. This monster named Liddy ... guilt for not seeing Liddy for the kind of man that he is, yet I also do understand that monsters like Liddy have made a life out of deceiving parents with all the right words and motions. For the beautiful son you so violently took all those years ago, I pray, Mr Liddy, that your God deserts you and that you rot in hell.

I incorporate those statements, because I do not believe that any counsel or anyone not intimately involved with the family of victims of this crime could do justice to the pain that has been done.

So broadly I support victim impact statements, especially when it is a crime that robs someone of their life—and not simply in the case of a murder but when it robs them of their ability to live a fulsome life, such as in the case of Mrs O. This is another South Australian case. Mrs O is a 77-year-old woman who lived alone in a South Australian suburb. She was widowed eight years ago. She answered her door unwittingly. A man gave her a brochure and returned some 10 minutes later claiming he had forgotten something. He broke in and demanded money, ostensibly for drugs. When she could only produce $50, this 77-year-old widow was brutally bound and raped—not once but twice. The guilty party took valuables, including money, jewellery and a video cassette recorder.

Mrs O was traumatised by this—but how traumatised? Essentially, the last 10, 15 or perhaps 20 years of her life had been taken from her. The victim impact statement from her family graphically described the effect that these crimes had upon this lady. She had previously enjoyed her home and her garden. She enjoyed having her children, her grandchildren and great-grandchildren visit her. She was a happy and free spirit. That was taken from her. She found cause to be angry, embarrassed and ashamed, fearful and disbelieving of the situation in which she found herself. She felt helpless. She has completely lost interest in herself and she now has to live with her daughter and son-in-law. She requires assistance with bathing and with eating. She has effectively reverted to a childlike state. Members of her family quite rightly consider that her life will never be the same again. She now lives in a single room. She has lost her confidence and sense of self worth and she lives in constant fear.

So victim impact statements do have an important role to play in sentencing and sharing with our judiciary the heinous nature of the crimes that have been committed. But of course they are only one part of sentencing. Under the rule of law, the public has an expectation that the laws that make up our criminal justice system will be enforced with established procedure—not only legislative procedure but also common law rulings. Sentencing is a necessary part of this system, and consistency in sentencing is fundamental to the rule of law and to public confidence in our criminal justice system.

Australia, a great federation, has a federal system of government where legislative powers are divided between the Commonwealth parliament and the state and territory parliaments and where the administration of criminal justice falls predominantly to the states and territories. All criminal courts in Australia are established and operated by these same states and territories, and these state and territory courts hear all cases prosecuted under Commonwealth criminal laws. Some of the areas—as we have heard, but I
shall repeat—which the Commonwealth can legislate on include money laundering, illicit drug trafficking, people-trafficking, sexual servitude, transnational crime, cybercrime and, of course, major fraud.

Part IB of the federal Crimes Act deals with the sentencing of these federal offenders, the administration of these sentences and, of course, the release of federal offenders. This includes most sentencing provisions. However, state and territory procedural laws are applied and local sentencing options can be effectively picked up and applied to federal prosecutions in state and territory courts. This means that a court sentencing an offender for a federal crime in a particular state or territory may have different sentencing options to a court in another state or territory trying the same offender for the same crime. So not only do the states and territories need to strive for consistency within their jurisdictions but also the Commonwealth needs to ensure that courts in different states and territories are taking a consistent approach to sentencing federal offenders for the same crime.

It is important to note that there are differences in individual sentences and that this does not equate to inconsistency or disparity in the way that two offenders have been treated. This is what our judiciary are trained for. They operate within the rule of law to establish the most appropriate penalty. In my humble opinion, it is not desirable to expect that every offender across Australia will receive an identical sentence for the same offence. Judges have a discretion—and it is an important discretion—in sentencing that allows them to take into account an individual’s particular circumstances, including their level of culpability. So two co-offenders may indeed receive different sentences due to particular characteristics of their role in committing a particular crime, and a distinction in this regard is usually made between the consistency of approach to sentencing and the actual sentencing outcome. We also have to remember that judicial discretion is also an essential part of the sentencing process and properly allows for all the circumstances of the case to be considered. Sentencing cannot and should not be reduced to a formulaic approach. What we need to do is to ensure that an appropriate framework is in place so that different judges in different jurisdictions operating with the overarching framework make consistent decisions.

While the victim impact statement is worthy of our support at a federal level, I am unable to recommend to my colleagues that they support this particular bill, because the Australian government has already received a couple of reports, which Senator Kirk mentioned earlier, as did Senator Ian Macdonald. One of these reports is an Australian Law Reform Commission report. This was commissioned by the government, which asked the Australian Law Reform Commission to review sentencing at the federal level. The commission’s report, called *Same crime, same time: sentencing of federal offenders*, was tabled in parliament earlier this year and is now publicly available. The report deals with a wide range of issues relevant to the sentencing of federal prisoners. The report is the product of a 23-month inquiry into whether part 1B of the Crimes Act 1914 is an appropriate, effective and efficient mechanism for the sentencing, imprisonment, administration and release of federal offenders and what, if any, changes should be made. It identified a number of new crimes under the federal legislative umbrella, including sexual servitude, child sexual tourism and of course terrorism offences.

The report made over 100 individual recommendations—140 in total, I think—on a broad range of issues relating to the sentencing of federal offenders. As I mentioned, the recommendations are wide ranging. They
include the introduction of a new dedicated federal sentencing act, the creation of an office of the management of federal offenders and the establishment of a federal parole board. The commission also called for the expansion of the role of the Federal Court to provide for original trial jurisdiction for specified federal crimes and to enable it to act as a national court of criminal appeal in federal matters. Some of the proposed reforms represent a significant shift in federal policy and practice, and they obviously will require some extensive further consideration.

The report recommends that federal sentencing legislation should provide minimum standards for the use of victim impact statements in the sentencing of federal offenders. The report suggests that, once all states and territories meet the minimum standards, the federal legislation could then be rolled back so that only the state and territory legislation is used.

There was also another report, a parliamentary joint committee report, which Senator Ian Macdonald also touched upon. This is a supplementary report of the Parliamentary Joint Committee on the Australian Crime Commission’s inquiry into the trafficking of women for sexual servitude. It also recommended the use of victim impact statements in the specific context of people-trafficking and sexual servitude offences. The report had three essential recommendations. The first is:

The Committee recommends that the ACC continue its involvement in law enforcement strategies against sexual servitude and trafficking in women.

The second is:

The Committee recommends that a review of the new legislation take place a year after its implementation, and as part of that review, consideration be given to amendments to include the provision to the court of victim impact statements specific to these offences, similar to those contained in the NSW Crimes (Sentencing Procedure) Amendment (Victim Impact Statements) Act 2004.

The committee further recommended:

... that the ANAO consider undertaking an evaluation of the results of the National Action Plan, after three years of operation.

These are commendable and they will be considered by this government because this government takes crime and the impact of crime not only on the community but also on individual victims very seriously. I commend Senator Ludwig, who has introduced this bill, for his interest in it. I say that it is something that requires a bipartisan and very strong approach. But I also say to him that I am unable to recommend to my colleagues that we support this bill, because I feel that it is premature. I feel it does not fully involve the government agencies. Senator Macdonald said earlier that he believes this type of legislation needs to be enacted by government after full consultation with the Attorney-General’s Department and with the full support of every agency. So, whilst we can commend the sentiments, the thoughts and the interest that Senator Ludwig has in this, we need to take it in a broader context.

This government is currently considering the Australian Law Reform Commission report and the report of the Parliamentary Joint Committee on the Australian Crime Commission on the recommendations about victim impact statements in the context of the wide-ranging recommendations that the ALRC made about the sentencing of federal offenders. The Australian government’s response will be made public. Work is now being done preparing a response to both of these important reports.

I would like to say again that it would be premature to consider the use of victim impact statements in isolation. Yes, they have a key role in sentencing, but we should not consider them in isolation. We need to work
to develop better legislation in response to these considered reports rather than simply adopt this bill. This government is not silent when it comes to the pain experienced by victims of crime, but there needs to be a comprehensive approach that can only be done by working across many government agencies and with the full support of the federal Attorney-General’s office.

Senator Nettle (New South Wales) (5.21 pm)—The Greens support the principles of restorative justice that underpin the Crimes Amendment (Victim Impact Statements) Bill 2006. Restorative justice is about focusing on repairing the harm caused by criminal actions, and that relies on a cooperative process that includes all involved—the community, the offender and also, importantly, the victims. The Greens believe that the safety and the security of the community require an impartial justice system that takes into account the experiences of victims that have been harmed but also ensures that the rights of offenders are there for them to present mitigating factors. I will talk a little later about ways to achieve that.

This is a view that is reflected in the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, which says:

The responsiveness of judicial and administrative processes to the needs of victims should be facilitated by:

... ... ...

Allowing the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system...

The experience in many state and territory jurisdictions has shown that victim impact statements, when properly included within the justice processes, have a role to play in ensuring that harm to individuals and the community is considered. In many cases, victim impact statements can be a way of ensuring some closure or healing for victims of crimes, but this is not always the case, and I will go on to talk about that later.

Victim impact statements can reduce the alienation that many victims have from the criminal justice process by providing them with a direct role in proceedings. They can increase the transparency of the justice system and ensure that it is more responsive to the needs of the community. They can also play an important role in rehabilitation, with offenders offered the opportunity to reflect on the harm that they have caused. Done properly, this process can also be an important antidote to the law and order politics that sometimes exploits victims by claiming that their needs have been ignored.

But there can also be problems with victim impact statements. As the Australian Law Reform Commission, in its review of part 1B of the Crimes Act that it completed this year which examined this issue and produced a discussion paper for the inquiry, said:

Problems with victim impact statements include that they can raise a victim’s expectations about sentence, which are not subsequently fulfilled; that they can expose offenders to unfounded allegations by victims; and that they can lead sentencers to give disproportionate weight to the impact of a crime on a victim, to the detriment of other relevant considerations; and they can skew an otherwise objective and dispassionate process by the introduction of emotional and possibly vengeful content.

They went on to say:

The Victorian Sentencing Committee noted that if victim impact statements were introduced and were not made compulsory, disparity could arise in the sentencing process: more severe sentences might be imposed in cases in which victim impact statements were available than in cases in which they were not, even if the culpability of the offender were the same. Victim impact statements
may also result in inconsistent sentences where one victim asserts greater psychological harm than another more robust victim.

There are perils for the community and for victims in creating expectations that mere punishment of an offender will restore the harm caused. I will go on to talk about that issue later.

The prisoner advocacy group Justice Action, with whom I worked before entering parliament, argues that ideally the acknowledgment of the harm caused to the victim and the process of sentencing should be separate. They are very supportive of the benefits that victim impact statements can bring to the criminal justice system, but it is about how they are incorporated in that process. They are supportive of separating those two issues of victim impact statements and sentencing, because putting them together can create a perception or a reality for all those involved in the process that it is in some way possible to equate one person’s pain with another person’s pain. We all know that that is not something that we can assess; we cannot assess whether one person’s pain equals another person’s pain. We all recognise that vengeance has no place in solving problems. If victim impact statements are incorporated, it needs to be clear that it is not for the purpose of vengeance. It needs to be very clearly articulated that that is not a part of the process.

The other issue, which is one I touched on earlier, is that victim impact statements can provide an opportunity for people to have real closure in dealing with an issue. That is not always the case. Indeed, there are a number of cases going on at the moment where relatives or victims are involved in the sentencing process, which means that every time parole or bail or other legal proceedings take place they are reminded of and have to relive the horrific experience that they had or that their family members experienced. Just this weekend in a newspaper, one woman in that circumstance talked about how it had damaged her life because she was continually reliving this horrific experience that she had had.

There can be a role for victim impact statements. Indeed, they are part of the concept of restorative justice that the Greens and I are very supportive of. But the way in which they are done becomes very important. Some people argue, and this is an argument that I would make, that victim impact statements are at one end of the restorative justice spectrum and that it is important that we do not just assume a one-dimensional relationship between punishment and victim satisfaction. Engaging the offender in restoring the harm that they have caused and seeking to help them to address the reasons why they caused that harm are really important parts of restorative justice. Victim impact statements have a very important role to play in restorative justice, and there are other components that are also important in the process of restorative justice. The needs of the victim should be central to a process of restorative justice, but they are not the only components of that.

The process for and the guidance about using victim impact statements are crucial in ensuring that victim impact statements have a proper role to play in the justice system. This bill adopts a formula that has been used in many states and territories throughout Australia. It ensures that the victim—or, if the victim is deceased or unable to appear because of age or impairment, a relative or a dependent of the victim—is able to file a statement to the court. This bill makes that link with sentencing so that it can be considered during the sentencing process. A victim is restricted to being a natural person and the harm is defined reasonably narrowly, relating to physical injury, psychological harm or economic loss. The particular experience and
nature of the harm caused to the many victims of sex offences is acknowledged, which is an important and commendable feature of this bill. A victim is not required to make a statement, and the content of the statement must be made available to the offender. In this bill, the weight to give to the statement is left to the discretion of the court, which is of paramount importance. The court must be free to balance the various considerations that must be weighed in arriving at an appropriate sentence.

As people will know, the Greens have been very critical of a number of pieces of legislation which have come before this Senate that relate to areas of the criminal justice system. A number of pieces of legislation that we have dealt with, such as the antiterrorism legislation, have been a horrendous attack on human rights. The right to a fair trial in an open court, the right to remain silent, the right to a lawyer of your choice, and the freedom from detention without charge or trial have all been eroded as a result of legislation that has gone through this parliament with the support of both of the major parties.

There are many problems in our criminal justice system—for example, too many people in our prisons, particularly Aboriginal and Torres Strait Islanders. Unfortunately, we see the law and order drum being beaten at every election, particularly at a state government level, and it would be something that we would be very supportive of. So, in the sense that this bill contributes to the fundamentally important principle of restorative justice, it is a bill that we are able to support.

Senator TROOD (Queensland) (5.32 pm)—I welcome the opportunity to participate in this debate this afternoon on the Crimes Amendment (Victim Impact Statements) Bill 2006, because this is a matter of considerable importance. It is certainly of great importance to those people who might find themselves victims of criminal activity. In many ways, no group of people in the community deserves our attention more closely than those who may suffer from those circumstances.

I thought I might begin my contribution this afternoon by drawing the Senate’s attention to the nature of victim impact statements. I think some of the other contributors to this debate have alluded to this, but it is useful to point out that the bill that is before
us defines victim impact statements as follows:

*victim impact statement* means an oral or written statement ... containing details of the harm suffered by a victim of an offence arising from the offence.

The bill goes further and seeks to explain the nature of the harm that is contemplated. It refers to:

(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; and
(e) economic loss.

It is a comprehensive list of the kinds of consequences from which people suffer as a result of criminal offences. Other provisions of the bill set in place the mechanics as to how this information could be drawn before a court in the circumstances in which it might be necessary.

I think it is useful to make the point that VISs, or victim impact statements, were once largely unknown in criminal law. They are a relatively recent innovation in the sentencing process. Perhaps that reflects the fact that, for a long time, the criminal law was conservative on these issues, anxious that the sense of justice—the purity of justice—might be infringed upon. I suspect many legislators and perhaps even the legal profession thought that it might be at risk by introducing elements potentially of retribution into the justice system.

But we have moved on from there. We have now reached a position where, increasingly around the criminal law world, if not almost exclusively around the criminal law world, victim impact statements are an integral part of the criminal justice system. That is certainly true in Australia. Some of the other speakers in this debate have alluded to the fact that all of the states and, I think, territories in Australia have introduced this process into their criminal legislation—New South Wales in 1987, South Australia in 1988, Tasmania and the Northern Territory in 1991, Victoria in 1994 and Western Australia in 1995. In my own state of Queensland, there is an opportunity for a victim impact statement to be presented to the court, although it is not formally included in the legislation quite as is the case in other states.

There are differences between the states, and Senator Kirk alluded to these differences. In her remarks she made the point that the states have approached these questions in different kinds of ways and they have different mechanisms by which victim impact statements can be introduced to the court. Indeed, there are differences in relation to the kinds of crimes for which VISs are deemed relevant. Some states limit VISs to violent crime; others to indictable offences. There are permutations of these arrangements across the states, but I think the underlying point is that they are now a critical part of justice system throughout the states and territories. This bill that Senator Ludwig has introduced presses the Commonwealth to now take a similar attitude.

Before I explore this in a little more detail, I think it is useful to point out to the Senate that, in fact, the Commonwealth Crimes Act already acknowledges the importance of VISs in its provisions. Subparagraphs (d) and (e) of section 16A(2) provide for the opportunity for personal circumstances of the victim and any injury, loss or damage resulting from an offence to be taken into account. In fact, the legislation is prescriptive and requires that these things be taken into account in determining the sentence that is to be imposed on a federal offender. So it is not as though we have neglected this matter at a
Commonwealth level over the years; in fact, there is already provision in the legislation.

I suppose Senator Ludwig’s proposal is that we go further and more comprehensively introduce and seed these ideas within the criminal legislation. This bill seeks to take things further. It does so in the light of several reports, which I think other participants in the debate have alluded to. Two have been mentioned frequently during the course of the debate this afternoon, one of which is the Australian Law Reform Commission’s report Same crime, same time: sentencing of federal offenders, which was tabled in the parliament in June 2006. That report, as has been noted, proposed the introduction of victim impact statements and, as I think I heard Senator Bernardi mention, proposed the establishment of minimum standards for those statements. The other report, introduced into the parliament in August 2005, is the report of the Parliamentary Joint Committee on the Australian Crime Commission inquiry into the trafficking of women for sexual servitude. It made a similar point: that it was desirable for impact statements to be introduced in relation to trafficking and sexual servitude offences. That report suggested that the model that might be appropriate was the model that was used in New South Wales under the 2004 act.

So there are federal reports and recommendations which press this matter. I think it is clear that the issues that Senator Ludwig has raised reflect a growing trend not only at the wider state and territory level but in the Commonwealth to pay closer attention to these issues. But I take the view that other senators on this side of the chamber have taken during the course of this debate and suggest that, rather than passing this bill, the better course would be to ensure that there is widespread consultation with other agencies with regard to this proposal, to discuss the matter widely amongst members of the profession in jurisprudential circles and, in light of those considerations, to introduce a more comprehensive reform of the Crimes Act. I think that would be a preferable course to follow than passing this bill.

The point that I think perhaps deserves closer inspection, though, is that, although there is now widespread legislation throughout the states and territories, and indeed throughout the common law world, with regard to victim impact statements, the matter is not uncontroversial in jurisprudential circles, amongst criminologists and, indeed, amongst members of the legal profession. Were we thinking of going down this course—and there is certainly a strong view that this is desirable—it is useful to understand the debate with regard to the issue.

I thought I might take the opportunity to inform the Senate of some of the issues that have been raised with regard to victim impact statements. In doing so, I draw the Senate’s attention to a report of the Australian Institute of Criminology by Dr Edna Erez. The report was written some years ago, in September 1991, but I recommend it to senators because it very helpfully lays out the arguments in favour of VISs and, indeed, puts the counterarguments with regard to them in a very constructive way. I thought I might draw the attention of Senate to some of these arguments both for and against victim impact statements. Dr Erez discusses the arguments in favour—and there are at least nine or 10:

The effectiveness of sentencing will increase if victims convey their feelings ... victim participation will provide recognition to victim’s wishes for party status and individual dignity ... It will result in increased victim cooperation with the criminal justice system ... And, in the context of traumatised victims of crime, this is not unimportant, of course. Further:
The provision of information on the harm suffered by the victim will increase proportionality and accuracy in sentencing, and remind judges, juries and prosecutors that behind the ‘state’ is a real person with an interest in how the case is resolved.

Also, fairness ought to be a consideration:
... the person who has borne the brunt of the offender’s crime should be allowed to speak.

From a psychological point of view:
... a criminal justice system that provides no opportunity for victims to participate in proceedings would foster greater feelings of helplessness and lack of control than one that offers victims such rights.

Victim involvement and the opportunity to voice concerns is necessary for satisfaction with justice, psychological healing and restoration.

I think I heard Senator Nettle speaking on that matter at some length. There are a number of other arguments. Some argue that retribution is enhanced. I daresay there has to be an element of retribution in most criminal justice systems. My personal view is that one would not want to take that too far. Dr Erez goes on to say:
Victim participation enhances deterrence ... [and] might also promote rehabilitation ...

There are a considerable number of arguments against the VISs, and Dr Erez helpfully lays them out:
Some argue that allowing victims’ input will undermine the court’s insulation from unacceptable public pressures ... substituting the victims ‘subjective’ approach for the ‘objective’ one practised by the court.

Conceivably, similar cases could be disposed differently, dependent upon the availability of a VIS to the judge ...

Prosecutors object to victim input in sentencing because they fear that their control over cases will be eroded and the predictability of outcomes reduced.

Defence lawyers, not surprisingly I think, naturally view VISs with some scepticism. There are:
Concerns over delays and additional expenses for an already overburdened system if victims are allowed to participate ... the criminal law already takes into account the harm done to the victim in the definitions of crime and mitigating or aggravating circumstance.

Concerns have been raised in relation to the impact of VISs on victims’ health and welfare. There are other concerns that it might actually aggravate victims’ psychological wellbeing rather than precipitating or facilitating the process of healing, and there are a range of other objections. This matter is not straightforward, as might seem to be the case by the unanimous embrace of these ideas within the criminal justice system.

In her paper, Dr Erez concludes by saying:
Research has questioned many of the assumptions underlying the arguments against the use of the VIS, and has not confirmed the fears expressed by those who object to allowing victims’ input into the sentencing decisions.

She, in general, comes to the conclusion that this is a helpful process. She further says:
Reports from jurisdictions that have introduced the VIS suggest that victims’ input does not raise practical or legal problems.

It is interesting. This comes from a jurisprudential perspective, but we also have the results of other surveys. Dr Erez’s paper is a speculative piece from 1991, but we now have quite a considerable body of research which has explored the consequences of introducing victim impact statements over a period of time. I have been able to discover several pieces which deal with this kind of research. There is a paper by Andrew Ashworth which appeared in the Criminal Law Review. It is interesting, because he alludes to material from other jurisdictions in relation to VISs. In one part of his paper he says:
Canadian research suggests that completing a VIS does not, of itself, increase victims’ satisfaction with the system or their willingness to cooperate with the system in the future. Most victims found the completion of a VIS to be a positive experience, but their overall views depend on several other factors, particularly information on the progress of their case and information about the criteria for decision-making at various stages.

In the short time that is available to me I thought I would draw the Senate’s attention to a conference paper that was delivered here in Canberra in February of this year by Mr Michael O’Connell, the Victims of Crime Co-ordinator in South Australia. He was reporting the results of a quite comprehensive survey that he had undertaken in relation to this matter. His paper is particularly interesting because it focused on the reactions of judges and magistrates with regard to victim impact statements, so we have heard from the jurisprudential side. I have some more material and were I to have the time I would like to report that in relation to actual victims, but I am not sure that I will have that opportunity. Let me allude to Mr O’Connell’s remarks, because he makes interesting observations with regard to members of the judiciary and victim impact statements. He says:

Most justices, judges and magistrates felt that impact statements sometimes or often contained useful information that would not otherwise be available to them. No justice, judge or magistrate found impact statements “never useful” when sentencing offenders. Three quarters of justices said impact statements were useful in most cases, and about two thirds of judges said impact statements were useful in all cases where they are submitted. All justices and judges felt that impact statements were most useful when sentencing offenders for violent crimes, with some justices and judges specifically noting sexual assaults and domestic violence.

From across the spectrum of those involved in the criminal justice system—whether they be judges, members of the judiciary; whether they be from the practising part of the legal profession; whether they be the victims themselves; or whether they be the academic side of the profession, those who comment on these things—it seems clear that on balance, notwithstanding the arguments that were once made quite compellingly for the dangers of taking this course, there is a view that victim impact statements are a valuable part of the criminal justice system, and I think that is the view the government takes.

(Senator Fifield)

...
of people like the parents of Anita Cobby, Grace and Gary Lynch, that helped to highlight the need to consider the rights of victims of crime and the need to take a fuller account of them when sentencing.

Not surprisingly, it was these sorts of crimes against the person that initially prompted the concept of victim impact statements in the state and territory jurisdictions. South Australia, along with New South Wales, was the pioneer of victim impact statements. The South Australian Labor Attorney-General in the 1980s, Chris Sumner, introduced a pilot scheme introducing the concept of written statements being presented to the court about the injury or loss that had been suffered by the victim. That trial was seen as a great success and legislation was consequently drafted and enacted in 1988. I would like to make brief reference to a decision of the Victorian Supreme Court of Appeal in 1988 by Justice Charles, who noted:

It would be quite destructive of the purpose of these statements if their reception in evidence were surrounded and confined by the sorts of procedural rules applicable to the treatment of witness statements in commercial cases. The reception of victim impact statements must, it seems to me, be approached by sentencing judges with a degree of flexibility; subject, of course, to the overriding concern that, in justice to the offender, the judge must be alert to avoid placing reliance on inadmissible matter.

It is worth quoting Justice Charles because it is clear from his finding that sentencing judges do see great value in victim impact statements—that it is not only the victims themselves who see the worth in them but also the judges that preside over these cases. Most states have accordingly followed along the path of South Australia, Victoria and New South Wales. In fact, all states and territories, except for Queensland, now have legislative provisions or court rules which expressly govern the use of victim impact statements. Even the Queensland legislation provides that the prosecutor should inform the sentencing court of the details of any harm caused to a victim by the crime.

Clearly, victim impact statements are just one way of informing of the impact of an offence on a victim. Federal legislation at the moment does not make specific provision for victim impact statements, as has been made clear in this debate so far. However, the impact of a federal offence on a victim can be taken into account under federal sentencing laws or, indeed, under state and territory legislation. Specifically, the Commonwealth Crimes Act 1914 provides that the personal circumstances of the victim and any injury, loss or damage resulting from the offence must be taken into account when determining the sentence to be imposed on a federal offender. So it is not as though the present circumstance is one where the victim’s interests, plight or suffering is not taken into account at the federal level. It clearly does already happen.

The public have a quite reasonable expectation that under the rule of law, when it comes to the criminal justice system, there will be sentencing in accordance with established procedures and consistency in sentencing. It is fundamental to the confidence of the public in our system of justice that there is confidence in those things. Again, as has been made clear already in this debate, the administration of criminal law predominantly falls to the states and territories, which establish the courts in the states and territories. The Commonwealth can legislate in relation to a number of things, particularly things like money laundering, illicit drug trafficking, people trafficking, sexual servitude, transnational crime, cyber crime and major fraud. So there are things that clearly do fall under the Commonwealth’s jurisdiction.
I will not cover again the territory of the fact that there have been two significant reports into this area: the Australian Law Reform Commission’s review and the joint parliamentary committee’s inquiry. As has been expressed, the view of the government is that, when looking at victim impact statements, we need to take into account the overall context of sentencing and, when addressing other issues in this area, the government feels that it is better to consider these things together consistently.

While the motives of Senator Ludwig are applauded and appreciated, it is very much the view of the government that now is not the right time. We should take our time. We should make sure that we get it right. We should make sure that we take into account all relevant factors in relation to sentencing policy so that we ensure that we get this right. As I have said, it is not as though these matters are not taken into account under the current federal sentencing regime. There is provision for that to happen. It does happen. The field is not vacant in relation to this matter. We look forward to a time when we can in fact put legislation into this parliament that will address the concept of victim impact statements. (Time expired)

Debate interrupted.

COMMITTEES
Finance and Public Administration Committee
Membership

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

Senator SANDY MACDONALD (New South Wales—Parliamentary Secretary to the Minister for Defence) (6.00 pm)—by leave—I move:

That Senator Ferris replace Senator Bernardi on the Finance and Public Administration Committee for the consideration of the 2006-07 Budget estimates on 30 October 2006, until 10 pm.

Question agreed to.

DOCUMENTS
Australia-Indonesia Institute

Debate resumed from 12 October, on motion by Senator Stott Despoja:

That the Senate take note of the document.

Senator HOGG (Queensland) (6.02 pm)—I rise briefly to take note of document No. 9, the Australia-Indonesia Institute annual report for 2004-05. Whilst the report is somewhat old in that sense, I nonetheless think that it is important to take the opportunity to speak to reports such as this one because of the need to have good relations with our nearest neighbour.

As I said on another occasion, there are difficulties from time to time, even amongst the best of neighbours, and some of the difficulties are no more highlighted than by the problems that actively occupy the minds of a large number of people in Australia with respect to the Bali nine. Whilst not in any way condoning what they have done, the fate that those people face is very much at the forefront of the minds of a large number of Australians who do not like the idea of the death penalty applying. It would be quite unfortunate if that fate was suffered by those people. Having said that, I go back to a time when our relationships were not at a high. When, for example, East Timor—Timor Leste, as it now is—was obtaining its independence there was a great deal of friction and resistance on the part of Indonesia to what was taking place. Of course, the relationship between their country, Indonesia, and ours became quite difficult indeed.

One of the things recommended in a committee report—and I see here Senator
Sandy Macdonald, who was part of the committee—was a closer relationship. I mentioned this recently on another occasion in this chamber. It is so important that that relationship exists, not just at the senior levels but even at the parliamentary level, and that has been exhibited now on a number of occasions with exchange visits between our parliaments—recently a delegation of politicians from the federal parliament visited Indonesia—and that is quite healthy indeed.

From my perspective, on at least two, possibly three, occasions I have had the pleasure of meeting with parliamentarians from Indonesia and talking about the very basics of democracy, the operation of a politician in a democratic society and how the democratic processes work. On each occasion those people have been very attentive to the way in which we operate as a democracy. That does not mean that they will go back and take up everything that they have seen here. We have assisted these people through the facilities of the Senate in understanding more about how our democratic processes work and I think it has been very much to their advantage and to our advantage in our long-term relationship.

It really does one some good to read this annual report of the Australia-Indonesia Institute and see that the institute does have positive goals in developing a positive relationship between our countries. Of course, given that Indonesia is our largest neighbour, right on our doorstep, a good international relationship is important in spite of the difficulties that might arise in the relationship from time to time. It does not mean that we will not have differences, but those differences should not be allowed to get in the way. I seek leave to continue my remarks.

Leave granted.

Senator WEBBER (Western Australia) (6.07 pm)—I also rise to make some brief remarks on this report of the Australia-Indonesia Institute, and I want to reiterate the comments my good friend Senator Hogg made about the importance not only of this institute but of Australia’s relationship with Indonesia. As I am from Western Australia, parts of Indonesia are much closer to my home base of Perth than most of the rest of Australia is. I have gone on the record more than once in this place to say it is much easier for me to get to Bali than to get to Canberra—and often much more enjoyable when I get there, I must say.

But having said that, and taking the flippancy out of it, one of the significant activities of the Australia-Indonesia Institute is an annual dialogue that they sponsor and conduct between people they consider to be young leaders in business, in academia, in politics and in the media. Last year I was fortunate to be one of the four politicians who attended that. It was really brought home to me that it was an important forum to be part of. It was two days of intensive exchange of ideas and views on a number of the issues confronting both of our nations, and very free and frank exchanges of ideas and views. But it also led to the establishment of some ongoing relationships. As Senator Hogg has referred to, recently there was the delegation of Indonesian parliamentarians from Indonesian Commission I. One of those parliamentarians had taken part in that dialogue that I was part of, so already he had an understanding of and a relationship with some Australian politicians and with some other people from the various federal and state bureaucracies. I think it was a really dynamic and important way of establishing a good and open dialogue between our two nations.

Indonesia is one of the younger democracies in our region, and it certainly is a democracy these days. I think it is important that we place on record our congratulations to that nation and those people for making
that transition to democracy. It is a lively
democracy; there have been comings and
goings of governments and political parties
in the short time that it has been open and
democratic. I know this parliament has done
everything that it can to ensure that their
elections have been conducted in a free and
open way.

I note the government is now using the
Australia-Indonesia Institute as a bit of a
model for conducting dialogues with other
nations in our region. There is an Australia-
Thailand Institute, for example. I think it
really is a significant and good development
for creating closer understanding and coop-
eration. My only caveat on that would be that
that cooperation and understanding are at
good levels among what they call the elites
of our communities. The challenge for the
institute, those of us in this place and the
respective governments of our nations is to
encourage that understanding and coopera-
tion further down in our community. It is
very easy for some of us to get a bit ahead of
ourselves and not take the community with
us in an understanding of the dynamics of
our region and the importance of the issues
that we deal with when coming together.

When I took part in the annual dialogue,
obviously we discussed the issues of terror-
ism and security within our region; illegal
fishing—which I am sure Senator Ian Mac-
donald will raise, so even though I am from
Western Australia I do not feel the need to
highlight them; and the portrayal in the me-
dia of some of the cultural differences. I
think there needs to be a lot more sensitivity,
and perhaps the institute and others need to
do a bit more work with the Australian media
on how we portray people from Indonesia
and people of their faith in our media. There
were also the issues of broader understand-
ing of the ways the nations work and of con-
ducting our relationship in a harmonious,
cooperative and sensitive manner rather than
with some of the megaphone diplomacy that
has taken place either with some of our other
neighbours or in the past.

**Senator IAN MACDONALD** (Queens-
land) (6.12 pm)—I too wanted to comment
on the work of the Australia-Indonesia Insti-
tute and congratulate them on the work they
continue to do and the greater understanding
they bring between our two countries. Like
Senator Webber, I often say to people—it is
not strictly correct, but I do say it—that I live
closer to the Indonesian capital than I do to
the Australian capital. Certainly I live much
closer to Indonesia than I live to the Austra-
lian capital. That highlights that, for many
Australians, Indonesia is a very, very close
neighbour. For that reason—and of course
for other more general and appropriate rea-
sons—it is very important that Australia and
New Zealand continue to maintain the very
best and most cordial of arrangements.

Indonesia is a huge country, with over 200
million people compared to Australia’s 20
million people. I do not have the figure in
front of me but, from memory, it comprises
over 3,000 individual islands, and in that
geography there are many different ethnic
groups. To come together under one nation
that is now a democratic nation is a great
step forward and something of which the
Indonesian people should be very proud.

I was one of those who, whilst not always
applauding or even accepting some of the
methods of governing, had doubts about
whether the changes in Timor were changes
which should have been supported by the
Australian government. History shows that
the Australian government did play a very
substantial part in the independence of
Timor, but at times I wonder whether the
Timorese people are better off. There were
certainly some aspects of the Indonesian ad-
ministration which were, to put it politely,
unfortunate, but one wonders whether Timor
might not have been better being part of that new democracy going forward.

As we all know, Indonesia is principally a Muslim country, but a very tolerant one. It is a country that does accept and welcome other religions and creeds. It is a country that Australia has to continue to do everything possible to support, to help and to bring together. I think both Indonesians and Australians can learn a lot from each other. Anything that supports those closer relationships, such as the work that the Australia-Indonesia Institute does, is very important.

I mention the issue of Indonesians illegally fishing in Australian waters. This is not a new problem: people do tell me that Indonesians have been fishing in those waters for tens of thousands of years. Without going back into the genealogy and movements of peoples in times gone by, it is pretty easy to accept the general proposition that Indonesia did have some interaction with Australia long before Europeans came to this country. We do need to work very closely with the Indonesian government and the provincial governments in trying to arrest the problem of illegal fishing—not just because it is illegal and it is fishing in our waters but because it is destroying the fish stocks in those waters. Ultimately that will be of no benefit to Indonesia, as it will be of no benefit to Australia. So we have to work very cooperatively with the Indonesians.

We have started dialogues. My discussions with the Indonesian ministers prior to Christmas did indicate that at the highest level the Indonesian government understood that it was an irritation for Australia, and they were very keen to do something to stop irritating what they considered to be a good neighbour. We have to continue to look at that, and the work that the institute does certainly helps. I seek leave to continue my remarks.

Leave granted; debate adjourned.

**Australian Taxation Office**

Debate resumed from 12 October, on motion by Senator Kirk:

That the Senate take note of the document.

**Senator BARTLETT** (Queensland) (6.18 pm)—I will not take all my allocated time to speak on document No. 13, the quarterly report for 1 January to 31 March 2006, of the Australian Taxation Office on the Government Co-contribution Scheme. My comments are reflected in comments I made on document No. 5, a report already discussed. I take this opportunity to say that the super co-contribution scheme is something that the Democrats had a significant part in establishing. It is an example of how you can reach agreements or make deals with other parties and be open about them, defend them and promote their benefits. That usually means reaching compromises, and part of the arrangement here was that the Democrats support a reduction in the high-income earner superannuation tax. It was at 15 per cent; we supported it coming down in exchange for the superannuation co-contribution scheme, a scheme to assist low- and middle-income earners to have additional superannuation contributions provided by the government.

It is not a panacea to improve the superannuation savings of low-income earners, particularly women, but it is of partial assistance. I did want to draw attention to this document and document No. 5, the previous quarterly report, to show just how significant the amounts of money have turned out to be. Indeed, there were enormous underestimates, initially, about the expenditure. In the first financial year the expenditure was projected to be $115 million and it was $309 million. In the 2005-06 financial year the projected original expenditure was $235 million; that has now expanded to nearly $600 million,
and it is increasing further. It is an enormous amount of money in one year.

I draw the attention of the Senate and those interested in this issue to research notes on the Parliamentary Library website dated 4 November last year which were by Leslie Nielson into the super co-contribution scheme and its performance to date. There were some concerns about whether this was the best targeted use of money for low-income earners. I can think of better ways to spend that amount of money to assist low-income earners, but I can certainly think of a lot of far worse ways. There is no doubt that it is helping low-income earners. The conclusion of that research notes that this scheme has delivered a number of benefits, in particular to low-income employees, particularly women, who appear to have gained significant contributions to their superannuation fund balances, and these benefits will of course compound over time by increased investment earnings.

It does note that the scheme is not necessary a panacea for all the perceived problems of low superannuation balances, and it certainly is not. But I believe that it has made a significant contribution. Part of the reason why the amount of expenditure is greater than was initially anticipated is that it has been increased further since then, and that obviously means greater expenditure. Even on the original amount that was made available, the uptake has been much larger than was originally suggested.

We hear protestations from the Family First senator in this place that he does not do deals, despite palpable black-and-white evidence to the contrary, which I outlined yesterday. But doing deals is not necessarily a bad thing; the issues are what is in the deal and being open about it. This is one example of a deal that the Democrats are quite open about having done, and we are quite pleased with how it has panned out. If you are looking at the positive and negative side of the ledger as to what was agreed to be put in place and the expansion of this scheme, it has come out very much on the positive side. The fact that it has been a positive for low-income earners is something I am pleased about.

There is an issue about some of those low-income earners being in high-income households. There is the stereotype of the doctor’s wife or a person with a high-income earning spouse being able to get extra government subsidy to assist with their superannuation entitlements when they are on a low income. There is some validity in that, but I would also say that there is a lot of validity in an individual having their own superannuation entitlements and not, into the future, being totally dependent on their spouse for their superannuation. That is important. I would also say that the evidence shows that that is not as big a problem as was suggested.

It is worth drawing attention to this scheme and the way it has played out in reality. We have those reports, and again that was something we required as part of the legislation. I think they have shown that it was a good deal—a good deal for low-income earners.

Question agreed to.

Roads to Recovery Program

Debate resumed from 12 October, on motion by Senator Bartlett:

That the Senate take note of the document.

Senator IAN MACDONALD (Queensland) (6.24 pm)—I want to refer to document No. 14, relating to the Roads to Recovery program. Why wouldn’t I speak about this? Why wouldn’t every senator speak about this? If any senator has any relationship whatsoever with their local council, they will be in here applauding this program to
the heights of this significant building. The flagpole here goes pretty high, but the applause should be higher than that.

Under the Roads to Recovery program, the total funding paid to councils—this is up to 30 June 2005—was $1,198,080,871. Of this, $248,080,871 was paid in the year 2004-05, to which this report refers. The Howard government has done a lot of marvellous things, but to many people in this country, particularly those associated with local governments and those who have the responsibility for dealing with local roads, this program would be one of the initiatives of the Howard government that will go down in history. I have to give credit to the Prime Minister on this program. I am pleased to say that I was around as the minister for regional services when this program was being implemented. I know that the Prime Minister personally took a very close interest in it, and I well and happily recall the days that he and I talked about this in cabinet. Mr Anderson was then the transport minister; obviously he was very keen on it as well. But the actual program and how it eventuated were a result of the work done by the Prime Minister, assisted by Mr Phil Connole, who was then my adviser in this area.

The reason why local governments like this program so much is that it provides money for local roads, ignoring the state government. In addition to this program, under the financial assistance grants provisions, money does go from the Commonwealth to local councils. In many parts of Queensland, those FAGs, as they are called, used to provide a principal part of the money spent by local councils on local roads. But it went through the state government under the arrangements in place—and, of course, state governments, particularly Labor state governments, are very skilful at creaming and shaving some bounty off the top of grants that go from the Commonwealth supposedly through state governments.

That arrangement has been in place for 20 years or more in relation to the financial assistance grants. But a new program came out and the Commonwealth decided that the moneys would go directly from the Commonwealth to local governments. That is why they love it so much. Local governments keep coming to us and saying, ‘Can you do that in other ways?’ Under our new schools program, local schools are saying the same thing. Investing in Our Schools is another program of the Howard government. Instead of money going through the state governments, as in the past, and the state governments shaving off bits from the top and adding on costs of something like 40 to 60 per cent, the funds in the Investing in Our Schools program go directly to the school involved from the Commonwealth government—although I am told that the Queensland government, with some very great skill, has still managed to shave a bit of money off those grants going to schools by insisting that they go through their project operations. Then they charge enormous amounts for architecture for buildings that in many cases are really something you would buy out of the shop, so to speak.

Anyhow, I digress. This program, Roads to Recovery, has done a magnificent amount of work for local councils. It has helped with roads that in the past have been unable to be attended to from the revenue base of councils. State governments have left local governments in the lurch so far as assisting councils with local roads is concerned. This Roads to Recovery program has been magnificent. (Time expired)

Senator HOGG (Queensland) (6.29 pm)—I seek leave to continue my remarks on the Roads to Recovery report later.

Leave granted; debate adjourned.
Debate resumed from 12 October, on motion by Senator Kirk:

That the Senate take note of the document.

Senator HOGG (Queensland) (6.29 pm)—I think it is appropriate to take note of this report because, whilst it deals with a whole range of aspects of the operation of the Australian National University—from my reading of it, quite a number of pages contain a wide range of statistics—one thing that really does not stand out in it, which I would like to see stand out, is the Commonwealth parliamentary internships program, whose internships operate through this parliament.

This Commonwealth parliamentary internships program touches all sides of politics. It stretches across both the Senate and the House of Representatives. It is not a partisan political issue. It is an opportunity for young Australians, as part of their university course, to do a specific project through and with the cooperation of members of parliament, parliamentary officers and parliamentary committees.

I understand that the program has been running now since 1993. At that time the then Presiding Officers signed off on a program with the then Vice-Chancellor of the Australian National University to establish a cooperative program in which students enrolled in the Australian National Internships Program would undertake internships with the parliament. I understand that, since its inception, some 930 students or more have proceeded through that program.

The interesting thing is that we get a diverse range of students in a diverse range of disciplines. As young people, they are all terribly enthusiastic, which is great indeed—and sometimes some of them are more mature students. We get students from not just the local area here but across Australia and we also get international students. It has been my pleasure now to have had a number of these people pass through my office. They have always been very cooperative and the standard of the work that they do is second to none.

I always impress upon these young people, as they come to do an internship with me, that they are not only welcome but also being given an opportunity that many of us would have liked to have been afforded in our youth but, of course, missed out on for a number of reasons. Of course, they make the most of the special opportunity that is made available to them.

My experience has been that invariably it is an eye-opening experience for them. Obviously, they meet firsthand with not just the senator or the member of the House of Representatives that they are studying with but also a wide range of other students, whom they probably would normally never have come in contact with. They get to use the facilities that are associated with this place to enable them to enrich their knowledge and, at the end of the day, to gain not only a better academic appreciation of what parliament is about but also a broader social context of what parliament is about and how it operates.

A handout that I have on the program says that people have come from countries such as Canada, China, Germany, Italy, Japan, Korea, Nigeria, the Philippines, Singapore, Sweden and the United States; so they have come from everywhere. The success of the scheme is a testament to the members of the parliament, to the officers of the parliament and to the foresight of the ANU to institute such a program here. It would be wonderful indeed if, in the ANU report, they could sneak in just a little more than a hidden line about this wonderful achievement that they undertake on behalf of education in Australia for young Australians and in bridging the gap.
between young people and the parliamentary process.

Senator PARRY (Tasmania) (6.35 pm)—I wish to comment on the same Australian National University report and will be very brief. I totally endorse the comments by Deputy President Hogg. At present, I have a second intern working in my office. The value of this program is not just as stated in the outline that Senator Hogg has given us; there is also value to the Parliament of Australia. My first intern compiled an important aspect of a report for the skilled migration inquiry, which was incorporated and tabled with that committee. My current intern is working on the issue with the Australian Commission for Law Enforcement Integrity. Senator Hogg—I thought it might be how to use a tape measure.

Senator PARRY—No, definitely not, Senator Hogg. So the value to the parliament will be great. Hopefully this report will also be tabled with that committee when that committee is up and running. So I endorse the remarks of Senator Hogg. I seek leave to continue my remarks later.

Leave granted; debate adjourned.

Consideration

The following orders of the day relating to government documents were considered:

Torres Strait Regional Authority—Report for 2004-05. Motion of Senator Bartlett to take note of document called on. Debate adjourned till Thursday at general business, Senator Bartlett in continuation.


Native Title Act 1993—Native title representative bodies—Cape York Land Council Aboriginal Corporation—Report for 2004-05. Motion of Senator Stephens to take note of document called on. On the motion of Senator Bartlett debate was adjourned till Thursday at general business.

Commonwealth Grants Commission—Report—State revenue sharing relativities—2006 update. Motion of Senator Watson to take note of document called on. On the motion of Senator Bartlett debate was adjourned till Thursday at general business.


Indigenous Business Australia—Corporate plan 2006-2008. Motion of Senator Kirk to take note of document called on. On the motion of Senator Ian Macdonald debate was adjourned till Thursday at general business.

Migration Act 1958—Section 486O—Assessment of appropriateness of detention arrangements—Government response to the Commonwealth Ombudsman’s reports 017/05 to 019/05 and 020/06 to 048/06. Motion of Senator Kirk to take note of document agreed to.

Migration Act 1958—Section 486O—Assessment of appropriateness of detention arrangements—Reports by the Commonwealth Ombudsman—Personal identifiers 017/05 to 019/05 and 020/06 to 048/06. Motion of Senator Kirk to take note of document agreed to.

Migration Act 1958—Section 486O—Assessment of appropriateness of detention arrangements—Government response to the Commonwealth Ombudsman’s reports 049/06 to 055/06, 9 May 2006. Motion of Senator Bartlett to take note of document agreed to.

Migration Act 1958—Section 486O—Assessment of appropriateness of detention arrangements—Reports by the Commonwealth Ombudsman—Personal identifiers
049/06 to 055/06. Motion of Senator Bartlett to take note of document agreed to.

Australian Livestock Export Corporation Limited (LiveCorp)—Report for 2004-05. Motion of Senator Bartlett to take note of document agreed to.

Northern Territory Fisheries Joint Authority—Report for 2004-05. Motion of Senator Siewert to take note of document called on. On the motion of Senator Ian Macdonald debate was adjourned till Thursday at general business.

Migration Act 1958—Section 486O—Assessment of appropriateness of detention arrangements—Government response to the Commonwealth Ombudsman’s reports—Personal identifiers 056/06 to 066/06. Motion of Senator Kirk to take note of document agreed to.

Migration Act 1958—Section 486O—Assessment of appropriateness of detention arrangements—Reports by the Commonwealth Ombudsman—Personal identifiers 056/06 to 066/06. Motion of Senator Kirk to take note of document agreed to.

Aboriginal and Torres Strait Islander Commission—Report for the period 1 July 2004 to 23 March 2005. [Final report] Motion of Senator Bartlett to take note of document called on. On the motion of Senator Carol Brown debate was adjourned till Thursday at general business.

Migration Act 1958—Section 486O—Assessment of appropriateness of detention arrangements—Personal identifiers 067/06 to 069/06—Commonwealth Ombudsman’s reports—Government response. Motion of Senator Ludwig to take note of document agreed to.

Migration Act 1958—Section 486O—Assessment of appropriateness of detention arrangements—Personal identifiers 067/06 to 069/06—Commonwealth Ombudsman’s reports. Motion of Senator Ludwig to take note of document agreed to.

Housing Assistance Act 1996—Report for 2004-05 on the operation of the 2003 Commonwealth-State Housing Agreement. Motion to take note of document moved by Senator Bartlett. On the motion of Senator Carol Brown debate was adjourned till Thursday at general business..

Migration Act 1958—Section 440A—Conduct of Refugee Review Tribunal (RRT) reviews not completed within 90 days—Report for the period 1 March to 30 June 2006. Motion of Senator Bartlett to take note of document agreed to.

Migration Act 1958—Section 91Y—Protection visa processing taking more than 90 days—Report for the period 1 March to 30 June 2006. Motion of Senator Bartlett to take note of document called on. On the motion of Senator Carol Brown debate was adjourned till Thursday at general business.

Department of Immigration and Multicultural Affairs—Implementation of the recommendations of the Palmer report of the inquiry into the circumstances of the immigration detention of Cornelia Rau—12 month progress report, dated September 2006. Motion of Senator Moore to take note of document agreed to.


Indigenous education and training—National report to Parliament 2004. Motion of Senator Crossin to take note of document called on. On the motion of Senator Carol Brown debate was adjourned till Thursday at general business.


Inspector-General of Intelligence and Security—Report for 2005-06. Motion of Senator Bartlett to take note of document called on. On the motion of Senator Carol Brown debate was adjourned till Thursday at general business.

National Water Commission—Report for 2005-06. Motion of Senator Bartlett to take note of document called on. On the motion of Senator Carol Brown debate was adjourned till Thursday at general business.

Inspector-General of Intelligence and Security—Report for 2005-06. Motion of Senator Bartlett to take note of document called on. On the motion of Senator Carol Brown debate was adjourned till Thursday at general business.

Members of Parliament (Staff) Act 1984—Report for 2005-06 on consultants engaged. Motion of Senator Ray to take note of document called on. On the motion of Senator Carol Brown debate was adjourned till Thursday at general business.


Aboriginals Benefit Account—Report for 2005-06. Motion of Senator Bartlett to take note of document agreed to.

Australian Competition and Consumer Commission—Report for 2005-06, incorporating the report of the Australian Energy Regulator (AER). Motion of Senator Bartlett to take note of document called on. On the motion of Senator Carol Brown debate was adjourned till Thursday at general business.

Film Australia Limited—Report for 2005-06. Motion of Senator Bartlett to take note of document called on. On the motion of Senator Carol Brown debate was adjourned till Thursday at general business.

Great Barrier Reef Marine Park Authority—Report for 2005-06. Motion of Senator George Campbell to take note of document called on. On the motion of Senator Carol Brown debate was adjourned till Thursday at general business.

Inspector-General of Intelligence and Security—Report for 2005-06. Motion of Senator Bartlett to take note of document called on. On the motion of Senator Carol Brown debate was adjourned till Thursday at general business.

Department of Immigration and Multicultural Affairs—Report for 2005-06. Motion of Senator Hurley to take note of document called on.
called on. On the motion of Senator Carol Brown debate was adjourned till Thursday at general business.

Commonwealth Grants Commission—Report for 2005-06. Motion of Senator Bartlett to take note of document called on. On the motion of Senator Ian Macdonald debate was adjourned till Thursday at general business.

Commissioner for Complaints [Aged care]—Report for 2005-06. Motion of Senator Bartlett to take note of document called on. On the motion of Senator Ian Macdonald debate was adjourned till Thursday at general business.

Migration Act 1958—Section 486O—Assessment of detention arrangements—Personal identifiers 072/06 and 073/06—Commonwealth Ombudsman’s reports and government response to the Commonwealth Ombudsman’s reports. Motion of Senator Bartlett to take note of documents agreed to.

Australian Security Intelligence Organisation—Report for 2005-06. Motion of Senator Bartlett to take note of document called on. On the motion of Senator Carol Brown debate was adjourned till Thursday at general business.


General business orders of the day Nos 29, 30, 32, 33, 35, 37 to 39, 42 to 45, 47, 49, 65 to 68, 72 and 76 relating to government documents were called on but no motion was moved.

COMMITTEES

National Capital and External Territories Committee Report

Debate resumed from 12 October, on motion by Senator Lightfoot:

That the Senate take note of the report.

Senator CARR (Victoria) (6.39 pm)—I would like to speak on the report of the Joint Standing Committee on the National Capital and External Territories, Report on the visit to Norfolk Island: 2-5 August 2006. This is a report which the opposition fully supported. The report came after a long-delayed visit to Norfolk Island. The visit occurred after many cancellations, deferrals and postponements. In my experience as a new member of the committee, those delays were not necessarily the fault of the committee. There appeared to be an unwillingness on behalf of the Norfolk Island government up until that time to ex-
pedite a visit by the committee, and there was obviously a desperate need for the committee to examine some of the very serious problems faced by that government as well as examine the very grave concerns of Australian citizens on Norfolk Island.

I was obviously very impressed with the work of the committee and the effectiveness of the work of this committee over a period of five years in pursuing issues of basic human rights on behalf of Australian citizens on Norfolk Island. After many years of inaction, I am pleased to see that the Howard government has now finally recognised the true extent of the problems on Norfolk Island and is finally taking action to address them. At the same time it might also be said that the tabling of this report, with its summary of the many issues that have oppressed inhabitants on Norfolk Island, provides an appropriate opportunity to acknowledge the determination—and I say this with all sincerity—of the current Minister for Local Government, Territories and Roads, Mr Jim Lloyd, in pursuing these long-overdue reforms. The task of the parliament now is to ensure that necessary reforms with regard to the governance and the economy of Norfolk Island are fully implemented and done so in a way that ensures that the lives of Norfolk Islanders are changed for the better.

In terms of Norfolk Island, the work of this committee has been marked by a bipartisan approach. The opposition have already indicated to the minister that we are taking the same approach now that reform for Norfolk Island is, hopefully, imminent. But, in the opinion of the opposition, such reform must be thoroughgoing. Such reform must not repeat mistakes of the past and leave the job of reform half done. The relationship between the Commonwealth government and Norfolk Island has, for too long, been marked by piecemeal change or, worse still, indifference and neglect on the part of the Commonwealth and its departments. We should all be aware of the areas of greatest need—the worst of the social, economic and political problems that need to be addressed in this forthcoming reform package.

It should come as no surprise to any senator here that there is indeed a crisis in the governance of Norfolk Island. There are problems stemming from inadequate machinery of government. There are problems arising from a lack of regulatory codes of conduct. There are problems arising from an inability to manage perceived conflicts of interest and improper conduct. There are problems that arise as a result of the lack of any effective separation between public responsibilities and private interests on the island. In the words of the joint standing committee’s 2003 report:

It has become increasingly clear that beneath the surface, informal mechanisms are being allowed to operate with impunity. The Committee is aware of growing community concern over the activities of these elements.

Problems in governance are matched by the increasingly obvious incapacity of the Norfolk Island government to provide islanders with basic service provision in such fundamental areas as aged care, pensions, health and medical benefits. And the list goes on. There are fundamental requirements for reform in auditing practice, criminal justice, child welfare and company law. There are fundamental reforms required in the provision of basic services like telephones, power, water, roads, port facilities and garbage disposal. These are fundamental human rights that every citizen in this country would expect to be provided as a matter of right, but in my judgement they are not being provided on Norfolk Island.

The picture of crisis provided by a series of committee reports since 2003 has now been confirmed by such agencies as the Commonwealth Grants Commission as well
as by independent consultants retained by the government. There are those who still suggest that no real change is needed and therefore Norfolk Islanders do not want it. They point to a majority of submissions in recent inquiries that oppose change. We have heard them all before, and we heard them in August. They tell the committee that the island is best left to itself. That is an argument that I regard as superficial at best and, in reality, deliberately misleading. If you look, for example, at the number of submissions marked ‘confidential’ in the appendices of the 2003 and 2005 committee reports, you see a different pattern emerging. These are from people who are opposed to the oligarchy of the rich and the powerful that run the island but who could only do so behind the protection of secrecy. It is true that there are those on the island fighting hard to protect their vested interest and their privileged tax status.

There are public voices telling the Commonwealth to keep its distance, but in my opinion there are a majority of people on the island that desperately want to see substantial reform. There are stories of elderly people who, falling sick on a Saturday, have to wait until the next Monday for medical attention because they cannot afford the surcharges applied for weekend medical assistance. There are those who are spending evenings by candlelight because they cannot afford the electricity bills. There are stories of those waiting for more than a year for the reimbursement of medical expenses under the island’s health insurance scheme.

The committee has seen since 2003, and indeed for much longer than that, well-orchestrated efforts by island diehards who would have us believe that Norfolk Island is some sort of utopia with no social problems, no need for Commonwealth intervention and no need for the application of citizens’ rights for the people of Norfolk Island on Norfolk Island. That is a view that I find very far from the truth. It is my opinion that islanders do want change. Some embrace the prospect; others come to that conclusion slowly. But increasing numbers are doing so.

I suggest that those who support a greater role for the Commonwealth need to understand that there is in fact substantial support amongst the Australian citizens on Norfolk Island who want to see that occur. Most Norfolk Islanders, in my opinion, do want to see the Commonwealth return and do appreciate the grave mistakes that have been made with regard to the self-government act of over 30 years ago.

The simple fact of life is that this parliament proposed a series of administrative reforms with regard to self-government and then walked away and neglected its responsibilities to the people of Norfolk Island. I think the majority of people want certainties in service provision. They want ethical governance. Only the Commonwealth of Australia can guarantee those basic rights. Many have judged that the current arrangements are in fact a failure and must be changed. As I said, most islanders believe that is the case. This is the parliament; this is the opportunity. I hope that, in the forthcoming cabinet submission, the decisions taken by the government will allow the opposition to support legislative change in this chamber and of course in the House of Representatives. As a consequence, Norfolk Island and the people of Norfolk Island can enjoy the full benefits of citizenship and the full benefits of being part of the Commonwealth of Australia.

Senator HOGG (Queensland) (6.49 pm)—I rise as a member of the committee who participated in the two major reports of 2003 and 2005. Those reports were comprehensive reports indeed. They were difficult to put together in some circumstances; nonetheless they went systematically through the problems that were perceived by the Joint
Standing Committee on the National Capital and External Territories in its role representing this parliament.

While the first report was met with an amount of derision from some people on the island, as Senator Carr has outlined there were a number of people who greatly supported the very logical recommendations that were arrived at by the committee in a totally bipartisan arrangement. There was no hint of any dissent in what came out of that report. As Senator Carr said, this is basically about the democratic right of those people on Norfolk Island as Australian citizens. As an active member of the committee, in the wake of those two reports I was always anxious for the committee to return to Norfolk Island to meet with the government and to meet with the people of Norfolk Island to see the way forward because, simply, what was there was not acceptable to any reasonable person on the mainland, no matter their political persuasion.

To his credit, Minister Lloyd has taken the bit between his teeth and he has, I understand, set about a reform package which is still to be considered by the government. Nonetheless, there seems to be a clear commitment by the government to ensure that reform takes place—and sooner rather than later. That is to be commended indeed. This will lead to legislation that will be presented in both the House of Representatives and then finally here to amend the Norfolk Island Act 1979 and other related acts to ensure that basic entitlements are given to the people on Norfolk Island.

My purpose in rising this evening is to draw attention to one of the recommendations made in the report of the visit to Norfolk Island. Unfortunately, we were supposed to go on a number of occasions and on each occasion that I made myself available to go the visit was cancelled. When they finally came up with a date on which the committee could travel, I found myself with another commitment that I could not get out of. I would have enjoyed being there to witness the change in attitude that has come across both the Norfolk Island government and a number of the leading players in the business community and in the community at large on the island.

One concern that came out in the report has been an ongoing concern for me. The recommendation at page 17, paragraph 1.67 of the most recent report—which we are addressing this evening—looks at the issue of the right to vote of the people on Norfolk Island. Paragraph 1.67 says:

The Committee also believes that, as per its recommendations in the 2003 report and 2005 findings, Norfolk Island should be included within the Canberra electorate for the purposes of more equitable federal representation and that the voting system for the Norfolk Island Assembly should be changed.

This issue was canvassed in the December 2003 report over quite a few pages, from page 141 to page 144, so it is a fairly important issue indeed.

The Norfolk Island Act does not make it mandatory for Norfolk Island residents, although they are Australian citizens, to be on the roll or to be compulsorily attached to an electorate. They also have the option of enrolling in an electorate that they had an association with or may have lived in. There are a number of other options available to them which I cannot recall off the top of my head. Basically, they are not situated in a designated or specific electorate like every other Australian citizen. They can enrol in an electorate in Western Australia, South Australia, Queensland, New South Wales or wherever. Norfolk Island residents do not have a single representative of the House of Representatives that they can collectively turn to when
they have a problem with the government of Australia.

The second thing that they lack because of that is the right to access a senator. As we know, in a single electorate you might end up with either a member of the Labor Party, a member of the Liberal Party or National Party, an Independent, a Green or someone else.

Senator Parry—You would prefer a Liberal, though.

Senator HOGG—We would actually prefer Labor, but that is beside the point, Senator Parry. One of the things about the Senate is that invariably the people in the constituencies of the territories get at least one of either major political persuasion, so if they do not like the Liberal representative they can go to the Labor senator or vice versa. But, in the case of the people of Norfolk Island, they do not have this choice because there are no designated senators for them.

The report back in 2003 made recommendations that the citizens of Norfolk Island should be on the roll attached to the federal electorate division of Canberra. They therefore would be given access not only to whoever the federal member for the federal division of Canberra is but also to two senators. In that case, that would be one from the Liberal Party and one from the Australian Labor Party. I do not care who they choose to go to—that is their business—but it at least gives them a basic and fundamental democratic right that is not available to them currently. That is terribly important.

My call right throughout this—and I am not a lone voice—has been for the government to act on the electoral reform earlier than any other governance reforms that it might implement regarding Norfolk Island. There is a simple reason for that: these people, if they have the opportunity to all have a single designated member such as the member for the federal division of the electorate of Canberra, would have access to that person and to two senators. That would be important in going forward with the legislative package that the government will undoubtedly bring to this parliament. The people of Norfolk Island have the right to go to more than just a member of a single political party, which will happen if they are stuck with just the House of Representatives seat. They will have at least some alternative in terms of having their views represented through the Senate. That is terribly important. As part of their reform program, I urge the government to consider bringing early legislation into this place to enact this part of the reforms so that these people can get proper representation and can use the facilities of the Parliament of Australia to have their voices heard when this legislation finally hits.

Senator IAN MACDONALD (Queensland) (6.59 pm)—I rise to speak to the report by the Joint Standing Committee on the National Capital and External Territories on the committee’s visit to Norfolk Island. I have not studied this report in any detail, but I was pleased to hear the two presentations that have just been made, by Senator Carr and Senator Hogg, on the report. I congratulate Senator Lightfoot, the chairman of this committee, on the work that the committee has done. I was delighted to hear from the previous two speakers of their support and determination to do something because, as I recall, in the years when I was the Minister for Regional Services, Territories and Local Government—from 1998 to 2001—I am not sure that the Labor Party was always supportive of some of the reforms that obviously had to be implemented.

I achieved fame far beyond my abilities by being attacked on New York radio by none other than Colleen McCullough, world renowned author and then resident—and I
think still resident—of Norfolk Island. I had tried to implement some first-toe-in-the-water reforms, but they were very strongly resisted by many on the island, including the good Colleen McCullough, who had very strong views then, and I am sure still does, about the way life should exist on Norfolk Island.

The voting system in those days—and I assume it is still the same—was such that an individual voter was given a handful of votes and could then cast all of those votes for one candidate or cast one vote for five or six different candidates. I am not sure of the exact detail, but it was a very strange system. The thing that always galled me was that, in such a small community—from memory I think there were about 800 voters and a couple of thousand people on the island—they had a parliament with, in those days, four ministers plus a chief minister and, because it was such a small community, very often those in parliament and those who took the name of minister were actually dealing with themselves. There were a couple of celebrated incidents where contracts were being let by ministers to companies in which they had a very direct interest—and that obviously could not continue.

Some of the remarks that Senator Hogg and Senator Carr have made certainly do highlight some of the difficulties, particularly for those people on the island who cannot fly at the drop of a hat to the mainland for medical or other attention that might be needed. Reform is long overdue. Of course, I have no idea what proposals are going to cabinet, although I am aware, as the two previous speakers are, that there is a package of measures going to cabinet for consideration to try to address some of the quite obvious problems on Norfolk Island. I wish those deliberations well, and I am delighted to hear that there will be, hopefully—depending on what the proposals are, I suppose—bipartisan support.

Senator Carr—A reasonable caveat.

Senator IAN MACDONALD—Yes. Obviously something needs to be done, and I congratulate the committee on drawing attention to some of the problems and perhaps some of the solutions for Norfolk Island.

Question agreed to.

Migration Committee Report

Debate resumed from 12 October, on motion by Senator Kirk:

That the Senate take note of the report.

Senator BARTLETT (Queensland) (7.03 pm)—I rise to speak on the report of the Joint Standing Committee on Migration, of which I am a member and have been a member ever since I came into this place, I think. The report, which was tabled a month or so ago, is entitled Negotiating the maze: review of arrangements for overseas skills recognition, upgrading and licensing. I have spoken on this before, so I will not take up my full 10 minutes—at least I do not plan to. Once I get started it sometimes can be hard to stop, but I will try not to take up the 10 minutes.

I again want to draw attention to the report, because I think it is an important report. It is a unanimous report that deals with skills in the migration area. Given the contention around that whole area politically at the moment, it is quite an achievement to have a unanimous report on anything to do with skills and migration in the same sentence. For that reason, I think it is a report that is very much worth noting.

I do try to take the opportunity whenever we speak to committee reports, either at this stage on a Thursday evening or at other times during the week, to continually urge the government to do a lot better at responding to committee reports. A lot of work goes into
these reports not just from the members and senators and the secretariat but also from the community, who have the expertise and the real world experience of what the pieces of legislation, the policy and the administration of all our laws are like for the people that are subjected to them. They put in all that effort, and we take on board their experiences and expertise and present that to the parliament. The least the government could do is respond. They do not have to agree; but the least they could do is respond much more promptly.

This report has only recently been tabled, so hopefully this will be an example where there is a response within what is supposed to be the required three months—though I would suggest that it would be a very small minority that are responded to within that period of time. The government should respond promptly, particularly when reports are unanimous and particularly when members of all sides—and I put the Democrats as well as the Labor and Liberal members of the committee in this category—have sought to work together to address existing problems and put forward constructive solutions, which is what has been done here.

It is worth emphasising that the area of skills recognition of people overseas—and this includes not only recognition of qualifications but also upgrading and licensing arrangements with regard to those skills—is, by and large, not dealt with by the Department of Immigration and Multicultural Affairs, which is partly one of the problems, although it cannot be avoided. Skills recognition is often still done on a state-by-state basis in some circumstances with some industries and trades. It is also still done through a whole range of industry bodies, and sometimes that is the best way to do it. There is certainly a lot of heavy involvement from the Department of Employment and Workplace Relations, rather than the Department of Immigration and Multicultural Affairs—and, again, there is some logic to that. As the title of the report suggests, it is a maze—and it is very hard to negotiate. For people like us, who are connected to the system, it is hard to negotiate; but, for people who want to come here, whether as permanent migrants or temporary residents, the skills area is a maze.

I think we need to recognise it is always going to be difficult and a bit messier than we would like in an ideal world, though that should not stop us from trying to make it better—and I think we should make it better. One of the reasons it is all the more important, and also more difficult, to do that is the massive increase in people coming here under various skilled visas. That is one of the reasons why areas like the 457 visa are, in my view, becoming more contentious—not because of any fundamental problem with the concept but because the numbers coming here have increased so dramatically so quickly.

Here I cite one of the reports we were recently considering—the immigration department annual report, which has only just been tabled—and note the increases in this area. The number of people who entered Australia through the permanent skilled stream in the last financial year increased from 77,880 to 97,340. That is an increase of 25 per cent in one year in the number of people coming through the permanent skilled stream, which is not on 457 visas, I might say; that is in areas like skilled independent, employer sponsored, state and territory sponsored, skilled Australian sponsored, business skills visas and distinguished talent visas, almost all of which involve issues to do with skills recognition.

On top of the nearly 100,000 arrivals in the last financial year, we have the temporary resident area, which is where the skilled 457
class comes in. The number of visas issued by category in the skilled visa classes has increased in the last financial year from 55,600 to 74,600, a change of 34 per cent. If you go back a year, it went from 48,000 to 55,600. So in one year we have had increases of 25 per cent in the permanent area and 34 per cent in the temporary skilled area. As is noted with regard to the 457 visas sponsored area, there is a performance measure that 100 per cent of 457 visa sponsors are monitored for compliance with their visa conditions. The goal of 100 per cent was met two years ago—they checked the lot of them. The following year it was 96.6 per cent—a bit of a worry but not too bad. In the last financial year 65 per cent were checked—less than two-thirds of the people who came here on 457 visas were actually monitored to see if they complied with their visas.

I believe that is the core problem: we do not have the resources in the department to adequately deal with compliance. The government has talked a lot about compliance in the migration area with regard to people who come here under other circumstances but is letting in 20,000 or 30,000 extra people a year—which I do not oppose, let me emphasise. I support it if it is done in a way where the regulatory regime around it is able to be properly monitored and complied with. That is the problem. When the problems outlined in the core report I am talking about here come into play as well, that is magnified. People might still get here, but then there are all of the difficulties of having their skills adequately recognised.

By way of a final comment, I would mention what it means with regard to the culture of the area. In recent years the immigration department and the minister have notoriously acknowledged that the culture of the department went bad. I think that is a valid issue when looked at against the workplace changes. It is not just what is in workplace laws—we all have views about that, of course; they are different on all sides—it is the signals that are sent to people in the community that the culture has changed. That is another example of where some people in the community may have got the mistaken message that, because of the political debate surrounding things, workplace culture has changed so it is now okay to try and exploit people and see what you can get away with. That is all the more reason to do better with compliance; that is why it is important.

Senator BARNETT (Tasmania) (7.11 pm)—I speak also to the report Negotiating the maze: review of arrangements for overseas skills recognition, upgrading and licensing. I commend the Joint Standing Committee on Migration for the work that it has done. The report highlights a range of issues and the importance of getting our immigration system and arrangements correct. It also notes the importance of working holidaymakers. It is interesting that, just this afternoon, the Senate Standing Committee on Employment, Workplace Relations and Education tabled the report Perspectives on the future of the harvest labour force. I acknowledge Senator Bartlett’s comments in that debate, as he has just been discussing immigration arrangements. In the debate earlier this afternoon he referred to my supplementary comments in that report and noted his support for those.

In that regard and with regard to getting the system right, I proposed a targeted and tightly controlled pilot scheme to meet a demonstrated labour force need in a certain area over a certain time. That was based on visiting places like Mildura, Robinvale, the Northern Territory, the Ord River, the mango farms in and around Katherine and the vegetable-growing areas in Queensland. Even in
my home state of Tasmania, during certain times of the year there is a desperate need for labour. There is clearly a labour shortage at a certain time, and there has been a growing reliance on working holiday-makers over the years. Over 100,000 working holiday-makers have been employed in the last 12 months. Their make-up is ever increasing, and seasonal horticultural workers are an increasing part of that sector. It is acknowledged that that is important, but it is quite clear that there are two distinct needs in these areas: one is the labour shortage and the other relates to the reliability of that labour. Working holiday-makers are obviously there for a time to do the work, get the cash and then get back to their holidays. For the small or larger businesses that might be employing them it is a very serious matter. The serious labour shortages and the issue of reliability have caused no end of difficulties and challenges for the various groups.

I note that there has been strong support for a pilot scheme from Australian Citrus Growers Inc, Yandilla Park Pty Ltd, Growcom and Horticulture Australia, not to mention the National Farmers Federation. I also note and acknowledge the very good work of Peter Mares and Nic Maclellan, two of Australia’s foremost experts on seasonal labour schemes.

The World Bank completed a report. Dr Manjula Luthria, representing the World Bank, put forward a very substantive report and strong evidence basically saying, ‘Yes, a pilot scheme would be appropriate for Australia.’ Crop losses in Australia due to labour shortages have been estimated by the World Bank at some $700 million. That is a huge amount of money, so this is an opportunity to get the system right and to consider it, as I say, in very tightly targeted areas under strict conditions. If growers ever breach those conditions then they should face the full force of the law.

The full payment and the minimum payment of the award or the appropriate agreement—whichever is the case—should apply. There should never ever be an opportunity for undercutting. Issues of transport and accommodation need to be dealt with, and in my view those costs should be covered by the employer in each case. I also support the view that the community should support those particular guest workers, whether it be for three to six months or three to eight months. Let us look at and at least consider the merits of a pilot program. In those circumstances, I think we could see the merit or otherwise of such a scheme. In areas like Mildura, Robinvale and the other places that I have mentioned, I know that there is certainly very strong support for such a pilot program, not to mention support from many members of the National Farmers Federation.

The protocol is set out in chapter 4 of the report that was tabled earlier today, and I commend that. A strict protocol is definitely required. Seasonal workers should be paid in accordance with the Australian Fair Pay and Conditions Standard and the relevant classification that applies in the particular award or agreement operating in that workplace. I have made that point and, if at all possible, the community should support such an arrangement.

In terms of the migration arrangements, I think it is worth looking at. I appreciate the work of the committee and of the committee secretariat. Of course I was disappointed not to have the opportunity to express some of those views earlier today. In the context of the report of the Joint Standing Committee on Migration, the views that I have expressed can hopefully be considered. I thank the Senate.
Senator CAROL BROWN (Tasmania) (7.18 pm)—I seek leave to continue my remarks later.

Leave granted; debate adjourned.

Electoral Matters Committee Report

Debate resumed from 12 October, on motion by Senator Carr:

That the Senate take note of the report.

Senator WEBBER (Western Australia) (7.20 pm)—I rise to take note of the report of the Joint Standing Committee on Electoral Matters entitled *Funding and disclosure: inquiry into disclosure of donations to political parties and candidates* and to take the opportunity to place on record a few remarks about some donations to political parties.

Senators in this chamber may recall that some time ago I raised the issue of the use of the 457 visa by a company called Fletcher International based in Albany, Western Australia. The statements I made about Fletcher’s came in for some controversy from those opposite, and on examining the disclosure reports it is now apparent to me why.

Fletcher International are a renowned donor to the National Party. They have been a consistent donor to the National Party since at least 1998. They donate about $5,000 at a time, and they donate exclusively to the National Party. So when people want to come in here and defend the practices of some companies I think they should declare their interests in those companies.

At the time I was raising my concerns about Fletcher’s, it generated some publicity in Western Australia. I talked about their use of 457 visas rather than seeking to recruit local labour. At the time, I was contacted by a number of people who had actually received letters of rejection from Fletcher’s at the same time they were seeking to bring in overseas labour. I talked about some of the conditions that Fletcher International have been known to put in their Australian workplace agreements.

I was lucky enough to get hold of an old copy of an AWA—I will concede that it is old. At the time, they were offering $12.80 an hour. The AWA went for three years. It had a stand-down clause allowing the company to stand down any employee on the basis of stock shortage with, it says, ‘length of service or seniority not being the criteria for determining being stood down’. A three-day absence without notifying the company would lead to the employee being dismissed. There is a list of offences that led to instant dismissal. Most of them are justifiable, but there are ambiguous items such as horseplay; inefficient work performance was also a viable ground. It was a 45-hour week. Annual leave had to be taken during the shutdown period only and there was no sick pay provision at the time. As I say, that is an example of one of the AWAs that was on offer.

But consider the fact that local labour had received letters of rejection from the company and that Fletcher International has donated money to the National Party in the disclosure year 1998-99 as well as the years 2001-02, 2002-03 and 2004-05. Obviously, we do not have the data for the latest round yet. But it would seem that, if people are going to seek to defend companies, they should get hold of a copy of the relevant AWA. They should disclose the fact that they are donors to a political party when they try to defend their employment practices. And they should actually try to work with people to ensure that they are employed on decent wages and conditions. I seek leave to continue my remarks later.

Leave granted; debate adjourned.
Consideration

The following orders of the day relating to committee reports and government responses were considered:

Intelligence and Security—Joint Statutory Committee—Report—Review of the re-listing of Al-Qa’ida and Jemaah Islamiyah as terrorist organisations. Motion of Senator Ferguson to take note of report called on. On the motion of Senator Carol Brown debate was adjourned till the next day of sitting.

Rural and Regional Affairs and Transport References Committee—Interim report—Australia’s future oil supply and alternative transport fuels. Motion of the chair of the committee (Senator Siewert) to take note of report agreed to.

Foreign Affairs, Defence and Trade Legislation Committee—First progress report—Reforms to Australia’s military justice system. Motion of the chair of the committee (Senator Johnston) to take note of report called on. On the motion of Senator Carol Brown debate was adjourned till the next day of sitting.

Community Affairs Legislation Committee—Report—Transparent Advertising and Notification of Pregnancy Counselling Services Bill 2005. Motion of the chair of the committee (Senator Humphries) to take note of report called on. On the motion of Senator Carol Brown debate was adjourned till the next day of sitting.

Community Affairs Legislation Committee—First report—A national approach to mental health—from crisis to community. Motion of the chair of the committee (Senator Allison) to take note of report called on. On the motion of Senator Carol Brown debate was adjourned till the next day of sitting.

Aquaculture—Select Committee—Report—Australia’s aquaculture industry. Motion of Senator Corbett to take note of report agreed to.

Justice—Select Committee—First report—Australia’s legal aid system: Reforming the criminal justice system. Motion of Senator Brandis to take note of report agreed to.

Community Affairs References Committee—Reports—Forgotten Australians: A report on Australians who experienced institutional or out-of-home care as children—Protecting vulnerable children: A national challenge: Inquiry into Australians who experienced institutional or out-of-home care—Government responses. Motion of Senator Murray to take note of document called on. On the motion of Senator Carol Brown debate was adjourned till the next day of sitting.

AUDITOR-GENERAL’S REPORTS

Report No. 8 of 2006-07

Debate resumed from 18 October, on motion by Senator O’Brien:

That the Senate take note of the document.

Senator STEPHENS (New South Wales) (7.24 pm)—I rise to take note of the Auditor-General’s Audit report No. 8 of 2006-07, which is the performance audit of Airservices Australia’s upper airspace management contracts with the Solomon Islands government. In considering this document, I want to
go to the public administration issues that are highlighted in this Auditor-General’s report. The issue was, as I said, referred in June to the Auditor-General by the former federal transport minister, Mr Truss, to investigate Airservices’ contracts with the Honiara government. While the investigation found no evidence of any criminal act by the government owned, air traffic control provider, Airservices Australia, the Auditor-General did make some very telling points. He certainly questioned the transactions worth more than $2 million that were made by the agency, suggesting that the payments could raise ‘a perception of corruption’.

This is quite an extraordinary report. When I sat down and read it I thought, ‘How could this possibly be, when we have had very strict public sector management guidelines, conditions and financial procedures in place in the federal sphere for more than 10 years and almost 15 years?’ These standard public sector management processes have been totally disregarded by Airservices Australia as it has tried to operate as a commercial entity, as a private sector organisation, when in fact it is a Commonwealth statutory authority. I would imagine, given the comments by Senator Macdonald about what he saw and the reforms he tried to put in place on Norfolk Island, that he would be aghast at the kinds of things that have been revealed by this report as well.

Going to some of those extraordinary revelations, the context is that Airservices Australia administers the payment of navigation fees to the Solomons government. It collects those fees on behalf of the Solomons government. What is quite extraordinary is that the processes and administration of Airservices Australia departed so significantly and so radically from the approach specified in the written contracts. The ink was hardly dry on the contracts before these unauthorised and unapproved variations and practices began to occur. More than $2.1 million, or 20 per cent of all the payments from the air navigation fee revenue, was paid outside the terms of the contract. Airservices made 305 payments to third parties between February 1999 and September 2003. Those payments included the expenses of an aviation adviser contracted to the Solomons government, education expenses for Solomon Islanders studying at academic institutions in a number of overseas countries, and travel expenses. The transactions included 17 cash advances and payments totalling more than $28,000, which were made by Airservices Australia’s corporate credit cards, mostly for travel allowances and travel expenses. It was totally in breach of the public sector management act, public sector management guidelines and all of the financial accountability measures that have been put in place by this government. The Auditor-General found: Airservices Australia relied upon authorisation from Solomon Islands Government Ministers and officials as sufficient basis to depart from the terms of the written contract ... This was not only a departure from sound contract management practices but was not prudent given the number and variety of payment transactions.

We know that the Auditor-General writes in cautious terms in his reports and is always very circumspect in accusing people of bribery, corruption or corrupt practices. For the Auditor-General to make a statement that the payments could raise a perception of corruption is, I would say, an understatement.

The transactions were processed as deductions from air navigation fee revenue, which has also generated a number of irregularities in the use by Solomon Islands government ministers and officials of these funds. So we have some pretty tawdry arrangements put in place by a government owned organisation, a Commonwealth statutory authority, that should and does know better and has really operated like a cowboy in the Solomons, a
very vulnerable country which we are all concerned about becoming the next failed state in the Pacific. We are concerned about what these kinds of arrangements do to undermine the credibility of RAMSI forces over there in the operation that is being undertaken.

The Auditor-General’s report actually raises as many questions as it answers. Here are some of the things that came to my mind as I read that report last night. First of all, where else have Airservices Australia been operating services in this way and what do we know about the facilitation fees that were paid to this Solomon Islands individual as the middleman for this process? How can we condone this kind of activity in developing countries where we are supposed to be providing aid to develop good governance and strong democratic processes while all the time the people who are supposed to be modelling good processes and governance are undermining those processes and allowing corrupt practices and behaviours to continue? This certainly cannot be the way we want the world to perceive we do business.

Airservices Australia operates internationally. It is operating in China at the moment, and I will be very interested when we get to estimates to ask some questions about its operations in China. The minister has advised that he has asked Airservices Australia to respond within four weeks. I certainly hope that when that response is received we have some transparency and openness about the information that is provided and that the minister places it on the public record.

I would certainly like to know why Airservices Australia had no comment to make on the report. I would have thought that there would be plenty of things to be said in defending your own reputation if it was possible to do so. I think that we have a real question to ask. I understand that since this investigation has taken place several of the people in senior management positions in Airservices Australia have been replaced. It is very telling to ask: where are these people now, are they still operating in another government agency and are they still operating with these kinds of cowboy tactics?

We have a government that is belting new and emerging democracies around the head about good practices and accusing people of corruption. This is the kind of behaviour that actually fosters corruption and the kind of behaviour that we certainly do not want to be hearing any more of. We have the AWB scandal, which the government has been trying to pretend is not an example. These are kickbacks in the same way as we have heard about with the AWB. It is symptomatic of a government that does not value transparency and integrity and it is symptomatic of a government that stinks. I seek leave to continue my remarks later.

Leave granted; debate adjourned.

Consideration

The following orders of the day relating to reports of the Auditor-General were considered:

Auditor-General—Audit report no. 3 of 2006-07—Performance audit—Management of Army minor capital equipment procurement projects: Department of Defence; Defence Materiel Organisation. Motion of Senator Bishop to take note of document called on. On the motion of Senator Carol Brown debate was adjourned till the next day of sitting.

Order of the day No. 2 relating to reports of the Auditor-General was called on but no motion was moved.

ADJOURNMENT

The ACTING DEPUTY PRESIDENT (Senator Kirk)—Order! There being no further consideration of government documents, I propose the question:

That the Senate do now adjourn.

Southern Bluefin Tuna

Senator BERNARDI (South Australia) (7.34 pm)—The Eyre Peninsula in South Australia is one of the most beautiful and economically important areas of that great state. It also hosts a very important fishing industry, much of which is centred around the town of Port Lincoln. The industrious South Australians who live in this part of the world have proved themselves to be at the forefront of innovation within the fishing and aquaculture industries. They have been among the pioneers of the farmed abalone industry. They grow and harvest arguably the finest oysters in the pristine waters of the natural jewel that is Coffin Bay. And the Eyre Peninsula, and specifically Port Lincoln, is unquestionably the home of Australia’s southern bluefin tuna industry.

Recently I was able to visit this part of the world with the Minister for Fisheries, Forestry and Conservation, the Hon Eric Abetz, who joined me on a tour of this important part of South Australia’s economy. We experienced first hand the innovation and contribution that these industries make to Australia’s prosperity. South Australia produces 38 per cent of Australia’s aquaculture production and 14 per cent of the national seafood production, with an estimated output of over $518 million in 2004-05.

The economic benefits for South Australia attached to the tuna industry should not be underestimated. The industry provides direct jobs for many Port Lincolnites and supports indirectly a broad range of supplementary businesses. It has revitalised a small regional community. It is even good for tourism. For those senators or members of the Australian public who enjoy regional festivals, I thoroughly recommend the annual Tunarama Festival, where they can join with 8,000 other visitors over the Australia Day long weekend. And Port Lincoln, as many senators would know, is also home to Olympic gold medal winner Dean Lukin.

Whilst there are many other industries sustaining Port Lincoln and the surrounding area, it is the tuna industry, and specifically the practice of tuna farming, that has provided the engine room for continued growth. The total impact of tuna farming in the Eyre Peninsula region in 2004-05 was $333 million. This highlights the benefits and importance of the sustainable use of natural resources. The key word here is ‘sustainable’, and this is very important in any industry that relies on natural resources. In my mind no industry requires sustainable use of resources more than the fishing industry.

During the 1970s and 1980s there were no quotas for the fishing and harvesting of tuna, and the fishermen of Port Lincoln were able to fish as much as they wanted. However, it soon became apparent that the continued viability of the southern bluefin tuna fishery depended on actually having some tuna available to catch. Hence, the establishment of the international Commission for the Conservation of Southern Bluefin Tuna was a landmark decision for the fishing industry, and Australia became a proud member. Other member nations included Japan, New Zealand, Korea and Taiwan. The commission introduced a series of quotas, and from 1984 the world quota became 10,000 tonnes. Prior to this, Australian fishers had been catching in excess of 20,000 tonnes of tuna every year.
In response to continuing low fish stocks the quota began to be reduced, and by the early 1990s the tuna fishermen of Port Lincoln started going broke. The allowable size of the catch was not enough to sustain their livelihoods. In fact many of the current tuna fishers of Port Lincoln wear as a badge of honour how they struggled through those difficult times in the face of very trying personal circumstances. They are proud to have got through it, and quite rightly so, because the pressure of the industry quotas forced them to find new and innovative means of adding value to their fish stocks.

Just like cattle farmers and feedlots, our tuna fishermen became tuna farmers. They captured mighty schools of tuna in the Great Australian Bight and used giant pens to make the long, slow journey back to the tranquil waters of Boston Bay. Then, over a number of months, the tuna were fed and fattened, ready for harvesting and supply to the lucrative Japanese market via the Tsukiji fish markets. Indeed, South Australia and Australia export 99 per cent of their southern bluefin tuna to Japan.

This valuable addition to the Port Lincoln tuna industry has also given rise to a number of supporting industries, including a $40-million-a-year pilchard fishery which is used to feed the fattening tuna. It has opened new jobs in the local cannery and has helped South Australian tuna from the Port Lincoln Tuna Processors’ G’Day Gourmet range appear on the shelves of US supermarkets. From an environmental perspective, it is also heartening to note that many of our fishers are accredited by the international standards organisation to the highest level of environmental sustainability and accountability.

The greatest threat to this amazing industry and to the continuation of the prosperity of Australian fishers is the practice of overfishing. It goes without saying that if the species were to be depleted the southern bluefin tuna industry, which operates almost entirely out of Port Lincoln, would be at risk.

At the 13th meeting of the Commission for the Conservation of Southern Bluefin Tuna, held in Japan last week, independent evidence was presented confirming an overcatch of a massive 178,000 tonnes over the past 20 years, which is valued at somewhere between $6 billion and $8 billion. The Australian government described the ‘bluefin tuna scandal’, as it became known, as the world’s worst case of overfishing.

Bluefin tuna has been on the world list of endangered species for more than a decade. However, the discovery of the actual amount of tuna sold on the international market reveals that fish stocks are much stronger than previously believed. Indeed, it was Australian investigators who discovered that the amount of sashimi fish being sold in Japanese markets was more than double the official reported catch. The Port Lincoln community had long disagreed with scientific stock assessments showing declining numbers of bluefin tuna, and the Australian government stood shoulder to shoulder with the tuna fishers. Minister Abetz showed steely resolve in ensuring that Australian fishing interests were not disadvantaged. The outcome of that meeting in Japan last week has confirmed Australia’s reputation as a global leader in marine conservation.

Under agreements reached by the commission, strong penalties have been agreed that will see quota levels more than halved for offending nations. But Australia’s quota will remain at 5,265 tonnes over the next three years—the highest of any commission country. These revised quotas, however, are only useful if they are adhered to. As such the commission has also agreed to a range of Australian proposals to enhance monitoring and compliance. These measures include a
new catch documentation scheme, compulsory vessel monitoring systems and 100 per cent observer coverage on vessels used to ship southern bluefin tuna.

The Australian government and the tuna fishers of Port Lincoln are very appreciative of the responsible position adopted in this regard by the new Japanese government. During the exploration and negotiation of this difficult issue not only did the Australian government pursue an entirely appropriate course of action but, I need to state for the record, the responsible position adopted by the new Japanese government was an absolute credit to them. The resolution of this issue demonstrates how strong our relationship is with Japan and ensures that for the tuna farmers of Port Lincoln the future looks very bright indeed.

Committee Procedure

Senator CONROY (Victoria) (7.44 pm)—I rise to speak briefly on the events that took place in one of the committee hearings earlier today. I know that a number of senators in the chamber were in attendance. I think it is worth noting the conduct of the government members—although I accept that not all government members were as actively involved as others in this—and particularly that of the chair, Senator Eggleston.

Senator Ian Macdonald—You weren’t even there.

Senator CONROY—I am happy for you to say something, Senator Macdonald, because I do not believe you were comfortable with what transpired. If you would like to add to this I welcome your contribution.

Senator Ian Macdonald—I am supposed to be on now; you aren’t even on the list.

Senator CONROY—I replaced Senator Forshaw on the list for the ALP. I want to raise the issue of the conduct of Senator Eggleston and other committee members. There are a number of conventions involved in running and chairing a committee. Courtesy is always a good convention. In politics it sometimes gets pushed aside in the pursuit of political opportunities but, by and large, most of the committees that I have been on have worked, in the organisational and administrative sense, very cooperatively. Even when there have been genuine disagreements about who should be called and who should not be called, there has always been a sense of decency and chairs of all political persuasions have behaved appropriately.

What transpired today requires some commentary. When a committee meets when the parliament is sitting there are some basic rules. If there are seriously controversial issues you cannot just force them through while the Senate is sitting because some members of the committee cannot be there. Some members may be unable, because of other parliamentary duties, to participate in the discussions. What transpired was that government senators, led by Senator Eggleston, decided that Telstra would no longer be called to appear before Senate estimates even though they are still substantially owned by the government. We could have a lengthy debate, for hours, about that and we probably may never agree, but what is inexcusable is that, as the Senate bells began to ring for a division, the chair insisted that he was going to put a vote as members had to leave to attend a division. This is not an acceptable way to chair a meeting.

Worse, when senators said, ‘We would like to debate the proposition you have just put forward; we would like to debate that Telstra should still be required to attend,’ the chair decided and stated words to the effect: ‘No, there is going to be no debate; I am putting the motion.’ This is as senators were being required to leave the committee hearing to attend the Senate division.
Normal rules of debate are that you need at least two speakers for and against before you can gag a debate. But the chair was not even moving a procedural gag motion; he was just instructing that there would be no speakers and no debate—he was just going to put it to the vote. This is not an acceptable way for committees of the parliament to do business. Yes, committee discussions can be robust—I accept that. As I said, I am not even sure all government senators were entirely comfortable with this course of action though, out of party solidarity, they may have been drawn into supporting the chair’s ruling. But it is not acceptable, when the Senate is meeting, to insist on a vote on a contentious issue like this when the division bells are ringing.

Fortunately, this matter has gone further and advice has been sought from the Clerk. The Clerk has made it clear to the chair that this is a void vote. You cannot do this when the division bells are ringing. It is unacceptable procedure.

Senator Ian Macdonald—I don’t think that is what he said.

Senator CONROY—I think you will find, Senator Macdonald, that next week or tomorrow, possibly, there will need to be a phone hook-up to recommit this issue. The outcome may be entirely the same.

Senator Ian Macdonald—Stephen, you weren’t even there; you have it all wrong.

Senator CONROY—I have not got it all wrong; I know exactly what has happened. There will need to be another meeting to reconsider this issue, Senator Macdonald, and the outcome may actually be the same because the government, by definition, has the numbers on the committee. But this is still not an excuse for the sort of arrogant behaviour demonstrated by the chair. I am surprised and shocked because the chair of this committee is not an arrogant man. No-one could describe the chair of this committee as an arrogant person. He is a thoroughly decent person. But I believe that he has acted outside the bounds of decency, at a minimum, courtesy and procedure. My understanding, and others may want to make a contribution, is that there is going to have to be another meeting to revisit this issue, and that is the appropriate course of action. It is not appropriate to gag debate without a gag motion. It is not appropriate to instruct people that they cannot speak. It is not appropriate to force a vote when the bells are ringing.

I promised I would not take up too much time, because I know that a number of senators in the chamber were present at the hearing. I am sure that Senator Macdonald has done his best to defend his colleague, but I am also sure that Senator Macdonald was uncomfortable with the course of events—and rightly so. Since Senator Macdonald has come onto that committee, he has shown a willingness to facilitate outcomes and to ensure that the committee acts appropriately. He has been uncomfortable about the brevity of some committee hearings and the conduct of some committee hearings. I know that to be the case. But, as I said, I will not speak for long, and I pass over to the next speaker.

Committee Procedure

SIEV X

Senator BARTLETT (Queensland) (7.50 pm)—I should devote a brief part of my contribution to the committee issue. I will not go into all sides of it. Frankly, at stages of that meeting a number of people got more intransigent than they needed to, and that tends to back people into corners. With just a little bit more stepping back and people operating with a bit more willingness to get the business done, there would not have been the sorts of problems that have been mentioned. Clearly when the government has the num-
bers on a committee it can put through a vote, although it is a matter of the standing orders that, if a committee has a private meeting whilst the Senate is sitting, then, if there is not a unanimous view on the matter before the committee, it cannot make that decision. The outcome can still occur via a phone hook-up, and that will be what will happen.

I am more concerned about the committee just deciding that Telstra not be called. Arguments no doubt will be made that that is necessary at the moment. I do not go to every Senate estimates committee—not least because four of them sit all at once, and you cannot be at all of them at once—but I have not previously heard of the situation where a blanket determination is made, point blank, that a government agency will not appear. I think that is a concerning precedent.

Earlier today we were discussing a range of annual reports. One that we did not get to was the annual report of Telstra. It is a matter of longstanding practice—it is a matter of standing orders—that annual reports stand referred to the committees and that committees consider annual reports of departments and the issues in them at the next estimates committee hearing. We as a committee will not be able to do that. I say ‘we’, but I would not be there anyway because I have to be in another committee, the Senate Standing Committee on Legal and Constitutional Affairs, considering the DIMA annual report. But the committee will not be able to consider Telstra’s annual report, because it has been determined—it will be re-determined, no doubt—that Telstra will not be there. I think that is a very dangerous precedent. Unless there are extremely strong reasons for it, this is very concerning. I know that some reasons were put. I thought about them, and asked other people afterwards; they do not sound strong enough to me. The precedent of just determining that this agency will not be able to be questioned—no questions asked, literally—is very concerning.

Earlier this evening we had documents from a whole range of different organisations—the National Water Commission, the Great Barrier Reef Marine Park Authority, the Migration Review Tribunal, ASIO, the Australian Sports Anti-doping Agency, the Aboriginal Benefits Account, Film Australia Ltd and the Australian Electoral Commission. All of those annual reports normally would be able to be used as the basis for questioning at the upcoming estimates. But that is not the case for Telstra Corporation Ltd, whose annual report was just tabled. That is a serious problem. I know there are issues around market matters and all that sort of thing, but I am not convinced that is an adequate reason.

That is in a sense the substantive decision, but there are also concerns about the process itself. As I said, it is probably not appropriate to report what everybody said, but obviously it is no secret that I was not very comfortable with the way the dispute was handled. We can all have disputes, but it is obviously better to try and handle those disputes in a way that does not force people into corners and generate division when you do not need to. I just reiterate that it is a very concerning precedent to be determining that agencies will not be able to be questioned by Senate estimates committees. I hope I do not see it again unless there is an extremely good reason.

The main issue I want to talk about this evening is the fifth anniversary of the sinking of the SIEV X. A number of people have referred to that event over the course of this week. Today, 19 October, is actually the fifth anniversary of the sinking. I was pleased to attend today the launch of a case study for secondary schools that has been developed, called ‘The sinking of the SIEV X’. This was
referred to today in an article in the *Australian* which I thought was quite disappointing. I know this is a politically contentious issue, but an enormous number of issues can be politically contentious, whether they are recent or ancient history. Nevertheless, the case study is a great tribute to the people who put it together, particularly Don Maclurcan, who spoke to it at the launch today.

Comments and criticisms were made by the Minister for Education, Science and Training, Julie Bishop, saying that this was ‘an outrageous attempt to disguise a political agenda as school curriculum’—ignoring the fact that this is not actually a curriculum; it is a case study that schools can use as part of fulfilling their curriculum if they wish. We had the *Australian’s* usual, frequently quoted, education critic Kevin Donnelly saying that it is a case study that implies a predetermined answer about the tragedy and that students are being directed towards a politically correct response. I can only assume that neither of those people read the case study, because that is not what it does. I would urge them to read it, because it asks questions about the event.

This is a major tragedy. It is not every day of the week, every month or even once a year that 353 people drown trying to seek protection in Australia. It is a major tragedy—it is an unprecedented tragedy—particularly since there were 146 children involved. If we want to learn from this—on all sides—we should not just say, ‘Well, that’s too hot; we don’t want to talk about it.’ The Minister for Immigration and Multicultural Affairs, Senator Vanstone, is quoted as saying that students should be presented with the facts as we know them rather than being given a biased presentation. I would agree with that; they should be presented with the facts as we know them. I think that the case study makes a good effort to do that. I really urge people to read it and make up their own minds.

One of the wider issues is that we do not know all the facts. There are more facts we could know if the government did not keep insisting on making them unavailable. Indeed, the fact that we are not able to access the facts is a fact that is relevant. But the questions that are asked are questions that people who support asylum seekers—that side of the debate—need to ask themselves as well.

It is totally appropriate for students to be asking themselves these questions. These are years 11 and 12 modern history students. The case study includes questions such as:

Why were the passengers trying to reach Australia?

Who arranged the trip and were passengers forced onboard?

In what state was the vessel and how did it sink?

What events immediately followed the sinking?

Where did the SIEV X sink?

What is so horrendously biased and politically outrageous about assessing those questions in regard to a major tragedy that linked to a major issue—a social issue, a political issue—in Australia at the time: how did this happen, how did people get there, and what was going on? And then there is the issue of the intelligence and response:

What was known, when was it known and how was the information used?

I remind the Senate and the critics that an assessment was made, including by non-government people, on the basis of the intelligence response—what was known when, and what happened. There are some criticisms about the response, but there was also an assessment made that, even if everything had been followed through, it would have been unlikely to have made a difference.
based on the information available. There are some other questions:
What was the disruption program?
In what context did the events occur?
That issue has a political context, and that is the one area where you might suspect that, if there was going to be a big bias, you would find it. It starts with source 36, an extract from a briefing paper for members of parliament by historian and writer Dr Barry York. It contains six long paragraphs—one of the longest sources in the book—and ends by saying that the government weathered the criticism and achieved its objectives of stopping boat arrivals. It is hardly biased; it is not biased against the government anyway.

There is the issue of where responsibility for the sinking might lie. And the final question is: ‘Was the sinking and subsequent loss of life preventable?’ They are all very valid questions. I think that people who support the asylum-seeker side of arguments need to acknowledge that it is quite feasible to argue that the sinking and subsequent loss was not preventable in the context of the time. But to say that we cannot even ask these questions is just terrible.

Finally I want to say that I saw the unveiling of the temporary memorial on the shores of Lake Burley Griffin earlier this week. It is a fantastic memorial. It involved schools and churches from around the country. I urge the National Capital Authority to recognise this as a valid activity and a beneficial one. It will happen one day or the other eventually; they should just allow it to happen and stop being seen to be preventing it. It is important to remember the people who died in this tragedy, and particularly the children who died. It will forever have a link with me because it was also the day that my own daughter was coming into the world—at the same time as so many children were tragically leaving it. That gives a special poignancy to thoughts about the purpose of life. (Time expired)

Committee Procedure
Southern Bluefin Tuna

Senator IAN MACDONALD (Queensland) (8.01 pm)—I want to talk on the adjournment about a number of things, but I feel compelled to start by refuting most of the allegations made by Senator Conroy in his contribution earlier. Regrettably, Senator Conroy was not at the meeting about which he spoke for 10 minutes, so anything he has said to the chamber is hearsay and very much second-hand evidence.

Perhaps it is important to go to the bottom line first but, before I do, could I just say what a significant chairman, senator and, indeed, person is Senator Eggleston, whom we are fortunate enough to have as Chairman of the Standing Committee on Environment, Communications, Information Technology and the Arts. I do agree with the part of Senator Conroy’s address where he said what a wonderful person Senator Eggleston is. Senator Eggleston chaired the very difficult committee hearing on the recent package of media bills and he did an exceptional job—one that I think few others in this chamber could have emulated.

A meeting of the Senate Standing Committee on Environment, Communications, Information Technology and the Arts was called today to discuss a number of issues. Four government senators and two Labor senators were present, and Senator Bartlett came a little late. I myself was a little late and so I did not hear what happened in the beginning. But I am told—and I accept—that Senator Lundy indicated that, if the meeting did not go the way intended, she would leave and then there would be no quorum—and, as you know, Mr Deputy President Hogg, to have a quorum it is essential to have present members of the Labor Party and the govern-
ment. On the basis of that threat, a number of issues were dealt with. We then got to the issue of what the timetable was to be for the estimates committee in a couple of weeks time.

For very good reasons, which time will not permit me to go into, there is a real concern that the sale of Telstra could be inextricably interfered with if certain things were said by any range of people at the estimates committee hearings. This is a very significant sale for Australians and members of the committee thought it was not appropriate to put it in jeopardy. I have a different view, I have to say, in that I do not think Telstra should be present anyhow. The sooner the government can get rid of its shareholding in what is a multinational, very significant company and business enterprise, the better. I have long said that governments have no purpose in being involved in a significant multinational communications company. Governments certainly have a role in the provision of communications around Australia, but they do that by regulation, by subsidy or by some other means and certainly not by using shareholder influence in what is a significant multinational company.

Anyhow, for all the right reasons, which we do not have the opportunity to go into just at the moment, it was obviously thought by government members that Telstra’s presence at those hearings was inappropriate. As we were about to vote on that, the bells started to ring. After being threatened with and with the real fear of the meeting being made inquorate, the vote—

Senator Chris Evans—Quite appropriately so.

Senator IAN MACDONALD—What, to walk out so that you could not even have a meeting?

Senator Chris Evans—When you ambush people—

Senator IAN MACDONALD—that sort of interjection, which I willingly accept, shows the extent of the inappropriateness of the Labor Party’s approach to these things.

Senator Chris Evans—Why are you having the meeting again? It was outside the standing orders. You ignored the advice of the Clerk.

The DEPUTY PRESIDENT—Senator Evans!

Senator IAN MACDONALD—Let me come to that, Senator Evans. If you would just keep quiet, just shut your mouth for a little while, I will be able to—

Senator Chris Evans—No, I won’t. They’re the sort of bullyboy tactics you used—

The DEPUTY PRESIDENT—Senator Evans! Senator Macdonald, address your comments to the chair. Senator Evans!

Senator Colbeck interjecting—

Senator Chris Evans—When you start bullyboy tactics, I will take you on.

The DEPUTY PRESIDENT—Senator Evans!

Senator IAN MACDONALD—Mr Deputy President, thank you for the protection. This bully sitting there who thinks he can shout while I am speaking and intimidate me has another think coming. I have been intimidated by better people than Senator Evans, and his shouting will not in any way interfere with what I have to say and I will continue to say it.

On the threat of the Labor Party making the committee inquorate, which means we could not have decided anything, the vote was held as the bells started to ring. We have had lots of advice—fortunately not from Senator Evans, who would not have a clue—on what should and should not happen. Senator Conroy and Senator Lundy later wasted
much time on this matter but, as it turns out, it was pointed out to us that, under the standing rules of the Senate—like every other committee, this committee meets regularly each week and has met regularly each week for years and years but without the approval of the Senate—unless there is total agreement, the committee does not operate. So, getting to the bottom line first, the whole thing was a farce.

Senator Chris Evans—That’s the advice you got at the meeting.

Senator IAN MACDONALD—This is a regular committee meeting that happens every week of the parliamentary year, and it happens with every other committee.

Senator Chris Evans interjecting—

Senator IAN MACDONALD—Do not try and bully me, Senator Evans. You will have your chance later if you were clever enough to put your name on the adjournment list, which I suspect you were not—well, you certainly were not on it before.

Senator Chris Evans interjecting—

Senator IAN MACDONALD—I listened to Senator Conroy in relative silence. But these are the facts of the matter: if there is any disagreement in any committee meeting that is held while the Senate is sitting, then those committee meetings may as well not be held because nothing that is decided by a majority of 95 per cent matters any more. We obviously have to do something about that. As it turned out, the whole thing was a bit of a farce. But I think it shows the attitude that the Labor Party, led by their leader who sits at the table and shouts all the way through my presentation, adopt to these things. If they do not get their way, they pull out the bottom lip and say, ‘We’ll go home.’ In that way they can disrupt things. You could probably all go home now and stop me speaking, Senator Evans. I am surprised that you have not adopted that tactic as well. Perhaps you will even call a quorum.

Senator Chris Evans—Don’t get all bitter and twisted because you got dumped from the ministry.

Senator IAN MACDONALD—I might be bitter and twisted, Senator Evans, but not about that issue tonight. I am disappointed that I am no longer a minister, but I have been a minister for seven years, and it is a lot longer than you ever will be. You will never be a minister. So do not bring that up. In this instance the chair was absolutely appropriate.

Until I was provoked by Senator Evans, I wanted to agree with Senator Bernardi on the tuna industry. I want to quickly put on record—although perhaps it will be lost to anyone who might happen to read Hansard—the great work that Glenn Hurry, an officer of the Department of Agriculture, Fisheries and Forestry, did in relation to that
Japanese issue. It is an issue which the Commonwealth government has been following for over a year now, and I must give all credit to Glenn Hurry on the way that he actually got the evidence together, with the help of the South Australian tuna farmers, and got that through. Senator Bernardi was quite right in what he said. The other issue I wanted to talk about was the bushfire season and how the Greens continue to lock trees away in parks that can be burnt down, but I have not got time to go into that. (Time expired)

Committee Procedure

Senator WEBBER (Western Australia) (8.11 pm)—Senator Ian Macdonald has just indicated that he was not at the committee meeting. As a full member of the ECITA committee, I was not able to attend either.

Senator Ian Macdonald—Mr Deputy President, I rise on a point of order. The rules of this chamber do not allow senators to be verballed. I was late getting to the committee. I was there for most of it.

The DEPUTY PRESIDENT—There is no point of order.

Senator WEBBER—Fair enough. I indicated to the committee secretariat at the time that I would not be able to attend what is indeed a regular meeting of the committee. In working out whether I could get there, I had a look through the agenda for the meeting. It talked about apologies, confirmation of minutes and the supplementary budget estimates, noting the committee was to consider the draft program. It attached the draft program and listed Telstra as one of the agencies to appear at 9 am on Monday, 30 October. Who was I to know, by not being available for the regular meeting, that the government was going to pull this stunt and try to have a deliberative meeting? Who was I to know? There was no indication in any of the agenda papers that the government had an issue with an agency that they still currently own fronting up and being accountable regarding how they spend taxpayers' money and deliver on their universal service obligations and other issues that the minister comes in here and trumpets quite often.

Telstra was very clearly listed in the draft agenda as an agency that would be called. There was no indication in all of the meeting papers that the chair would try and ram through some other agenda—some other issue—in ensuring that Telstra will not appear before us. As I say, these meeting papers were delivered to my office somewhere between 11.30 am and 12 pm for a 1 pm meeting. I indicated to the secretariat at the time that I thought it highly unlikely that I could be there. I flicked through the agenda and it did seem that it would be the normal consensus arrangement that private meetings of committees have to go through if they do not seek leave of the Senate to meet. It did not in any way indicate that it would be a deliberative meeting where votes were to be taken. It did not in any way indicate that there would be controversy, that there would be something rammed through just before a division was called. Everyone in this place knew that there would be a division on the message back on the Trade Practices Act legislation some time in that hour. Everyone in this place knew that, and it was highly unusual—

Senator Ian Macdonald—I didn't.

Senator WEBBER—Senator Macdonald, if you did not know that there was going to be a division, you must have been one of the few people who did not. I work in a whip's office and I can tell you that every Labor senator knew that there was going to be a division, and I am sure my friend Senator Ferris ensured that all of you knew that there would be a division at some point.
We all knew that there would be a division. We all knew that it was a regular meeting but we thought it was just a consensus meeting to establish a subcommittee to have another hearing on the national parks inquiry, to sign off on some minutes and, as I said, to consider the draft agenda, the draft program, for the budget estimates that clearly outlined that Telstra would appear some time after 9 am on Monday the 30th. There was no indication that the government had anything else planned. There was no consultation. There was nothing. And now, lo and behold, because the chair has been caught out, because he tried to do something contrary to standing orders, we now have to have another meeting by teleconference at 11 am eastern standard time next Wednesday.

Senator Ian Macdonald—I rise on a point of order, Mr Deputy President. The terminology ‘caught out’ is a reflection on Senator Eggleston. I think that is improper under the standing orders, unparliamentary and should be withdrawn.

The DEPUTY PRESIDENT—It should be withdrawn.

Senator WEBBER—I withdraw. But the committee was caught trying to do things—

(Time expired)

Senate adjourned at 8.16 pm
QUESTIONS ON NOTICE

The following answers to questions were circulated:

Defence: Litigation
(Question No. 2064)

Senator Webber asked the Minister representing the Minister for Defence, upon notice, on 16 June 2006:

(1) What is meant by “the commonsense test in litigation”.
(2) Does this commonsense test include a cost-benefit analysis.
(3) Do all cases involving the department pass the commonsense test in litigation.
(4) To date since 2001, what is the total amount spent by the department on litigation involving HMAS Melbourne.

Senator Ian Campbell—The Minister for Defence has provided the following answer to the honourable senator’s question:

(1) and (2) When I ask Defence to apply the commonsense test to litigation, I mean that taxpayers’ hard-earned money should not be spent defending the indefensible. This is determined by the obligations regarding the handling of monetary claims and the Commonwealth’s obligation to act as a model litigant set out in the Legal Services Directions issued by my colleague, the Attorney-General. It includes endeavouring to avoid, prevent and limit the scope of legal proceedings wherever possible. It also includes an obligation to participate in alternative dispute resolution processes where appropriate.

(3) My directive to Defence is to apply this test to cases involving compensation.
(4) The information sought in the honourable senator’s question is not recorded in the requested format. To collect and assemble such information solely for the purpose of answering the question would be a major task, and I am not prepared to authorise the expenditure and effort that would be required.

POS Auckland
(Question No. 2184)

Senator O’Brien asked the Minister representing the Minister for Transport and Regional Services, upon notice, on 14 July 2006:

(1) For each financial year since 2003-04, on how many occasions has the Government permitted the vessel POS Auckland to operate on the Australian coastline under a single or continuous voyage permit.
(2) On each occasion: (a) what type of permit was it issued; (b) what Australian ports did the vessel visit; and (c) what cargo (including high consequence dangerous goods) did it carry.

Senator Ian Campbell—The Minister for Transport and Regional Services has provided the following answer to the honourable senator’s question:

The Department’s records indicate that the vessel POS Auckland was not issued a single or continuous voyage permit during the period 1 July 2004 to 30 June 2006.
Defence: Termination of Employment
(Question No. 2425)

Senator Mark Bishop asked the Minister representing the Minister for Defence, upon notice, on 22 August 2006:

With reference to the answer to question on notice W25 relating to the Foreign Affairs Defence and Trade Committee Budget estimates 2006-07:

(1) (a) on what grounds was the public servant dismissed on 10 March 2006; (b) who made that recommendation; and (c) who conducted the inquiry which led to that outcome.

(2) Did this person take any action in the Industrial Relations Commission for wrongful dismissal and as a result, was a settlement reached by way of payment to that person: if so: (a) what was the reason for that payment; (b) was the payment made in recognition that either the process or merit was found wanting; (c) on whose advice and approval was the payment made; and (d) from what part of the departmental budget specifically, or under what scheme, was the payment made.

(3) Does the fact that such a settlement and payment was made indicate the original investigation and recommendation was flawed; if so, what corrective action has been taken against those who so advised.

Senator Ian Campbell—The Minister for Defence has provided the following answer to the honourable senator’s question:

(1) (a) The public servant was dismissed under Section 29 of the Public Service Act 1999 for a breach of the APS Code of Conduct. It was found the employee had breached sections 13(1), (2), (3), (4), (5), (8) and (11) of the APS Code of Conduct.

(b) The decision to dismiss the employee was made by the Director Personnel Services, Defence Materiel Organisation, a delegate of the Secretary of Defence under section 15(1) of the Public Service Act 1999.

(c) An investigator from the Inspector General’s organisation within Defence conducted the initial investigation.

(2) The person lodged an application for relief in relation to his termination of employment in the Australian Industrial Relations Commission (AIRC) claiming that the termination was harsh, unjust or unreasonable. The matter was conciliated in the AIRC, which included a payment in settlement of the matter. Following conciliation, the person lodged a notice of discontinuance of his claim in the AIRC.

(a) The matter was settled in accordance with legal principle and practice as required by the Legal Services Directions. An explanation of the reason would require the disclosure of legal advice provided to the Commonwealth. As previously indicated, the content of this advice is subject to legal professional privilege. Disclosure of the content of the advice has the potential to harm the interests of the Commonwealth in responding to current and future litigation.

(b) No. No finding of fault was made as to either the process or merit. The matter was settled in accordance with legal principle and practice. This did not mean that the process or merit was found wanting, but rather recognised the legal rights of both parties and the financial risk and prejudice to the Commonwealth in pursuing its rights.

(c) The payment was made on the basis of legal advice, and approved in accordance with the Financial Management and Accountability Act 1997 by the Director-General, Personnel Policy and Employment Conditions, a delegate of the Secretary under Chief Executive Instructions.
The payment was made under Chief Executive Instructions, Claims against the Commonwealth, in accordance with the Financial Management and Accountability Act 1997. The payment was paid from the Defence Materiel Organisation salaries budget.

(3) No. No finding of fault was made as to either the process or merit. The matter was settled in accordance with legal principle and practice. This did not mean that the process or merit was found wanting, but rather recognised the legal rights of both parties and the financial risk and prejudice to the Commonwealth in pursuing its rights.

**Defence: Review of Training Establishments**

(1) Was the review due to be completed by 30 June 2006; if so, why has it not yet been completed and published.

(2) What was the cost of the review.

**Senator Mark Bishop**—The Minister for Defence has provided the following answer to the honourable senator’s question:

(1) The review has been completed. The report was presented to the Chief of the Defence Force on 7 July 2006. The Chief of the Defence Force is considering the response to the report’s recommendations prior to publication.

(2) $464,419.

**Private Jacob (Jake) Kovco**

(1) Did the Minister on 22 April 2006 explain the death of Private Kovco as being the result of his pistol discharging while he was ‘maintaining’ it; if so, was that advice provided by the Chief of the Defence Force (CDF), another member of the Australian Defence Force (ADF) in Australia or by a member of his personal staff.

(2) Did the Minister or any member of his personal or office staff speak to, or otherwise communicate with, ADF personnel in Baghdad in the days following Private Kovco’s death concerning the circumstances of the death; if so: (a) who conducted the conversation(s); (b) when; and (c) with whom.

(3) In the days following the Minister’s statement about the cause of Private Kovco’s death, on how many occasions did the Minister speak to the CDF, other senior ADF personnel or Defence officials concerning the death, and was any alternative advice conveyed to the Minister about the cause of death.

(4) Did the Minister personally speak to the CDF and the Chief of Army, and at any time did either of them advise the Minister not to venture opinions as to the cause of death.

(5) Did the Prime Minister or anyone on the Prime Minister’s staff also speak directly to the Minister advising him against expressing any further opinions as to the cause of death.

(6) Why did the Minister alter his view of the cause of death on 27 April 2006, and did he say that it appeared that Private Kovco had not been handling his weapon after all, or that he had knocked it causing it to fire; if so, who provided the Minister with that advice.
(7) Did the Minister cancel a planned trip to the United States of America (US) leaving on or about 27 April 2006; if so (a) who was the Minister intending to meet and for what purpose; and (b) did the Minister consider that to be a very important commitment.

(8) Given the importance of that commitment, did the Minister or his staff inquire of the ADF or the department about the timing of the repatriation of Private Kovco’s body, and the means of transport; if so (a) was a request made for the body to be repatriated by the quickest means possible; and (b) who made that request.

(9) Did the Minister cancel his trip to the US so he could be present in Australia for both the repatriation of the body and the funeral.

(10) At any stage was the Minister or anyone in his office advised of the protocols and procedures applying to the investigation of ADF deaths overseas, including estimated time needed to properly conduct investigations by both military and civilian authorities; if so, who provided the advice and when.

(11) To what extent was the demand for the immediate repatriation of Private Kovco’s body to suit the Minister’s timetable the cause for all the breaches of investigation protocols, as referred to in detailed evidence given to the current inquiry.

Senator Ian Campbell—The Minister for Defence has provided the following answer to the honourable senator’s question:

(1) to (11) A Board of Inquiry is currently being held into the circumstances surrounding the death of Private Kovco, and has received submissions from the Minister for Defence and other senior Defence officials. It would be inappropriate to answer these questions while the Board of Inquiry is still running.