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SITTING DAYS—2006

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SYDNEY 630 AM
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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 Whip—Senator Nigel Gregory Scullion
Opposition Whips—Senators George Campbell, Linda Jean Kirk and Ruth Stephanie Webber
Australian Democrats Whip—Senator Andrew John Julian Bartlett
Australian Greens Whip—Senator Rachel Siewert

Printed by authority of the Senate
### Members of the Senate

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

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

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

Prime Minister                  The Hon. John Winston Howard MP
Minister for Transport and Regional Services and Deputy Prime Minister The Hon. Mark Anthony James Vaile MP
Treasurer                      The Hon. Peter Howard Costello MP
Minister for Trade              The Hon. Warren Errol Truss MP
Minister for Defence            The Hon. Dr Brendan John Nelson MP
Minister for Foreign Affairs   The Hon. Alexander John Gosse Downer MP
Minister for Health and Ageing and Leader of the House The Hon. Anthony John Abbott MP
Attorney-General               The Hon. Philip Maxwell Ruddock MP
Minister for Finance and Administration, Leader of the Government in the Senate and Vice-President of the Executive Council Senator the Hon. Nicholas Hugh Minchin
Minister for Agriculture, Fisheries and Forestry and Deputy Leader of the House The Hon. Peter John McGauran MP
Minister for Immigration and Multicultural Affairs Senator the Hon. Amanda Eloise Vanstone
Minister for Education, Science and Training and The Hon. Julie Isabel Bishop MP
Minister Assisting the Prime Minister for Women’s Issues
Minister for Families, Community Services and Indigenous Affairs The Hon. Malcolm Thomas Brough MP
Minister Assisting the Prime Minister for Indigenous Affairs
Minister for Industry, Tourism and Resources The Hon. Ian Elgin Macfarlane MP
Minister for Employment and Workplace Relations and Minister Assisting the Prime Minister for the Public Service The Hon. Kevin James Andrews MP
Minister for Communications, Information Technology and the Arts and Deputy Leader of the Government in the Senate Senator the Hon. Helen Lloyd Coonan
Minister for the Environment and Heritage Senator the Hon. Ian Gordon Campbell

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

Minister for Justice and Customs and Manager of Government Business in the Senate
Senator the Hon. Christopher Martin Ellison

Minister for Fisheries, Forestry and Conservation
Senator the Hon. Eric Abetz

Minister for the Arts and Sport
Senator the Hon. Charles Roderick Kemp

Minister for Human Services and Minister Assisting the Minister for Workplace Relations
The Hon. Joseph Benedict Hockey MP

Minister for Community Services
The Hon. John Kenneth Cobb MP

Minister for Revenue and Assistant Treasurer
The Hon. Peter Craig Dutton MP

Special Minister of State
The Hon. Gary Roy Nairn MP

Minister for Vocational and Technical Education and Minister Assisting the Prime Minister
The Hon. Gary Douglas Hardgrave MP

Minister for Ageing
Senator the Hon. Santo Santoro

Minister for Small Business and Tourism
The Hon. Frances Esther Bailey MP

Minister for Local Government, Territories and Roads
The Hon. James Eric Lloyd MP

Minister for Veterans’ Affairs and Minister Assisting the Minister for Defence
The Hon. Bruce Frederick Billson MP

Minister for Workforce Participation
The Hon. Dr Sharman Nancy Stone MP

Parliamentary Secretary to the Minister for Finance and Administration
Senator the Hon. Richard Mansell Colbeck

Parliamentary Secretary to the Minister for Industry, Tourism and Resources
The Hon. Robert Charles Baldwin MP

Parliamentary Secretary to the Minister for Health and Ageing
The Hon. Christopher Maurice Pyne MP

Parliamentary Secretary to the Minister for Defence
Senator the Hon. John Alexander Lindsay (Sandy) Macdonald

Parliamentary Secretary to the Minister for Transport and Regional Services
The Hon. De-Anne Margaret Kelly MP

Parliamentary Secretary to the Minister for Immigration and Multicultural Affairs
The Hon. Andrew John Robb MP

Parliamentary Secretary to the Prime Minister
The Hon. Malcolm Bligh Turnbull MP

Parliamentary Secretary to the Treasurer
The Hon. Christopher John Pearce MP

Parliamentary Secretary to the Minister for the Environment and Heritage
The Hon. Gregory Andrew Hunt MP

Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry
The Hon. Sussan Penelope Ley MP

Parliamentary Secretary to the Minister for Education, Science and Training
The Hon. Patrick Francis Farmer MP

Parliamentary Secretary (Foreign Affairs)
The Hon. Teresa Gambaro MP
SHADOW MINISTRY

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

(The above are shadow cabinet ministers)
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<td>Laurie Donald Thomas Ferguson MP</td>
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<td>Shadow Minister for Population Health and Health Regulation</td>
<td>Gavan Michael O’Connor MP</td>
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<td>Shadow Minister for Agriculture and Fisheries</td>
<td>Joel Andrew Fitzgibbon MP</td>
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<td>Shadow Assistant Treasurer, Shadow Minister for Revenue and Shadow Minister for Small</td>
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<td>Business and Competition</td>
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<td>Shadow Minister for Transport</td>
<td>Senator Kerry Williams Kelso O’Brien</td>
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<td>Shadow Minister for Sport and Recreation</td>
<td>Senator Kate Alexandra Lundy</td>
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<td>Shadow Minister for Homeland Security and</td>
<td>The Hon. Archibald Ronald Bevis MP</td>
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<td>Shadow Minister for Aviation and Transport Security</td>
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<td>Shadow Minister for Veterans’ Affairs and Special Minister of State</td>
<td>Alan Peter Griffin MP</td>
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<td>Shadow Minister for Defence Industry, Procurement and Personnel</td>
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<td>Shadow Minister for Citizenship and Multicultural Affairs</td>
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<td>Shadow Parliamentary Secretary for Reconciliation and the Arts</td>
<td>Peter Robert Garrett MP</td>
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<td>John Paul Murphy MP</td>
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<td>Shadow Parliamentary Secretary for Defence and Veterans’ Affairs</td>
<td>The Hon. Graham John Edwards MP</td>
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The PRESIDENT (Senator the Hon. Paul Calvert) took the chair at 9.30 am and read prayers.

PAIRING ARRANGEMENTS

The PRESIDENT (9.30 am)—Order!

Last night Acting Deputy President Senator Murray undertook to refer to me the voting intentions of senators who have informal pairing arrangements. This followed a speech by Senator Ian Macdonald in which he indicated that he had such an arrangement with Senator Brandis. Senator Macdonald tabled a letter to the Government Whip to that effect. It is a longstanding rule that pairing arrangements are not a matter for the chair. The recording of senators’ voting intentions should be a matter for agreement among senators, notified to the whips. In cases such as the private senator’s bill before the chamber, I am aware that some senators who knew they would be absent may have made a private arrangement with a colleague voting differently so that the colleague voluntarily absents himself or herself from the chamber when the vote is put.

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

Second Reading

Debate resumed from 6 November, on motion by Senator Patterson:

That this bill be now read a second time.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.31 am)—As I mentioned last night when I began my remarks on the Prohibition of Human Cloning for Reproduction and the Regulation of Human Embryo Research Amendment Bill 2006, there are of course differing scientific opinions in relation to this issue. But there are also other issues of real concern, such as the sourcing of human eggs for cloning purposes. This was canvassed by the Senate Community Affairs Committee, and I refer to the evidence of Katrina George, Director of the Women’s Forum, an independent think tank on public policy on women’s issues. Katrina George’s evidence was as follows:

What we can see from overseas is that it is impossible to obtain near sufficient supplies of ova without offering women some sort of commercial incentive ... If cloning is opened up in this country, it then creates a demand for ova and, as I said, overseas experience would suggest that that can only be satisfied by paying women to undertake these risks.

Ms George went on to outline the concerns of the Women’s Forum about the health implications for women in relation to the harvesting of eggs and the practice of hyper-stimulation of the ovary in order to obtain a sufficient quantity of eggs. This is an aspect which is just one of many to be considered in the debate on this bill.

Another aspect concerns the Lockhart report recommendation which allows somatic cell nuclear transfer using animal eggs. The Southern Cross Bioethics Institute submitted to the Senate committee that creating hybrid embryos not only is an ethical Pandora’s box in its own right but also rests on a naive assumption that inserting the human nuclear genome into an extraordinarily complex structure with very different cytoplasmic machinery to that in the human egg will produce a comparable result. To quote the institute directly:

We can only guess at the possible result of transferring human nuclei and animal oocytes.

Of course, this begs the question of how stem cell lines derived from human and animal DNA may affect subsequent therapies for human beings. We have seen in the past the use of animal parts in relation to opera-
tions involving the treatment of human beings, but this is something quite different. Unfortunately, there is no strong scientific evidence to support such a proposal as this, which is a radical departure from previous research methods. This is a matter of great concern and raises not only scientific questions but also ethical ones.

Another concern I have with the bill concerns me in my role as Minister for Justice and Customs, and that is the recommendation from Lockhart which was to do away with the export regulation of embryos. In the review, the recommendation was made because the current export approval process was considered too cumbersome and stressful for users. I would ask senators to cast their minds back to how this came about. Four years ago when we debated this issue there was concern that embryos could be exported from Australia for any purpose at all, such as cloning. We have seen overseas some clinics which have engaged in this, or attempted to, and of course once an embryo leaves Australia we lose jurisdictional control and we do not have the safeguards which people would point to that exist in Australia. This bill has a provision which would do away with that regulation of the export of embryos.

Can I say at the outset that I take issue with the Lockhart report over its comment that this process is too cumbersome and stressful. In my time as minister which has covered the period in question, of the 55 applications that I have received, 54 have been approved and one has been withdrawn. I have received no complaint from anyone—no complaint at all in relation to the process or to delay. In fact, 51 of the 54 applications which were approved were done so within 14 days of my receiving them from the department. I would suggest that the time frame is not as cumbersome as was made out. The former Mr Justice Lockhart met with me on 8 December 2005, a short period before the report was published, and to his credit he published my view in the report. But I do think that the committee placed too much emphasis on just a couple of submissions which maintained that the process was too cumbersome and stressful. As I say, I have not received any complaints and I believe firmly that we have processed the applications in appropriate time for the purposes for which the applications were made. I also remind senators that the regulation in place states that:

Subject to this regulation, the Minister may grant a permission if the Minister is satisfied that:

(i) the embryo will, if necessary to achieve the pregnancy of a relevant woman under a relevant agreement, be implanted in the relevant woman; and

(ii) either:

(a) the agreement was made, or negotiations for agreement were entered into, before 27 March 2003; or

(b) the agreement does not provide for any valuable consideration; and

(ii) if the prospective mother has died at the time of the application— the application and the agreement are consistent with the advance directive mentioned in subparagraph 6(d)(ii).

That provided for some surrogacy arrangements that were based on commercial grounds which were in place at the time. It was as a result of a negotiation between a number of senators who were involved in this debate, and I believe it has worked well. The provision in relation to the permission that is sought requires that the person who is seeking to export the embryo provide a statement to that effect, a statement from the ART centre storing the embryos in Australia and the overseas ART centre that will be facilitating the pregnancy. I would suggest that that is not a cumbersome process and it is one which gives assurance to the wider community that an embryo is being exported
from Australia for the purposes of IVF or to achieve a pregnancy by way of some agreement for surrogacy.

The current export regulation assists the individual who is travelling overseas to achieve a pregnancy, but it also restricts the use of the embryo, which could be for any purpose whatsoever overseas. That was a debate we had four years ago, and I believe that in the circumstances that export restraint should be maintained. It does not interfere with the desires of those who travel overseas and want to achieve a pregnancy but, at the same time, it provides us with an assurance that we cannot have the export of embryos willy-nilly for any purpose overseas, which could well include human cloning. I draw that to the attention of senators. I believe it is another flaw in this bill but, as I said at the outset, there are other considerations. Recently I read these remarks:

Human beings are increasingly considered a simple product of nature and thus susceptible to being treated as just another animal, which leads to a weakening of moral and ethical norms.

I think at the end of the day we must keep that maxim in mind when we deal with these issues. No-one in this chamber is against scientific research for the betterment of human beings and no-one in this chamber, I believe, would unreasonably stand in the way of such research. But we do have to consider the merits, scientifically, of any proposal such as this, as serious as it is, and also the ethical aspects which apply to that. After all, what we are doing is looking at changes to the law in a short space of time where just four years ago we drew a line in the sand and said that therapeutic cloning was not to happen. Four years later we find a proposal that would reverse this statement. That is why it is such a weighty consideration for all of us in this debate today. I am opposed to this bill for more than one reason. As I have outlined, there are scientific and ethical issues involved. There are aspects which involve doing away with any constraint over the export of embryos overseas and there is also the issue of women’s health in relation to the harvesting of eggs. I am opposed to this bill for all those reasons.

Senator WONG (South Australia) (9.41 am)—In rising to speak to the Prohibition of Human Cloning for Reproduction and the Regulation of Human Embryo Research Amendment Bill 2006 can I at the outset thank those constituents, both supportive and opposed to this legislation, who have communicated with me, and proponents and opponents of the bill who have taken the time to present their case to me both in person and in writing. I have found their contributions extremely useful in coming to my views about the legislation. I also place on record my thanks to Senators Stott Despoja and Webber who obviously have contributed substantially to this debate through the development of the Stott Despoja and Webber legislation. I thank Senator Patterson for the work she has done in bringing this bill forward. I also thank all members of the Senate Standing Committee on Community Affairs who, in the week the parliament was not sitting, spent a significant amount of time grappling with the somewhat complex ethical and scientific issues associated with the legislation.

It seems to me that the community does have the right—in fact the imperative—to set the ethical boundaries on scientific research. A primary way in which that is done, but not exclusively, is obviously through the parliament. I do not believe that scientists should determine the ethical boundaries of research. That is in great part the responsibility of this parliament. It seems to me that the key issue in this legislation is as formulated by Father Frank Brennan in one of his papers. I agree with his formulation of this but I flag that my conclusion about the ethical issues differs
from his. Father Brennan pointed out that the key issue is this:
The moral quandary confronting law makers has been determining what respect, if any, is due to the entity which is created by means of the successful transfer of the nucleus of a human adult cell into an enucleated human or animal egg. That seems to me to be the primary issue that the Senate needs to consider when looking at this legislation. There have been a substantial number of arguments placed before the chamber by those opposing the bill as to the merits or otherwise of scientific research. There have been suggestions about the prospects of success arising out of the research that is proposed or encompassed by this legislation. There have been criticisms of any prospects of cures or other medical advances being able to be arrived at as a result of this research and there has been discussion about the relative benefits of utilising adult stem cells.

It seems to me that it is perhaps lacking in a little intellectual rigour for senators to try and second-guess where science may lead us as a basis for determining their position on this bill. It seems to me that our job, as I have outlined, is to consider whether the research that is permitted in the proposed legislation transgresses or is within ethical boundaries that we consider to be appropriate in today’s society. It is impossible for anyone, even scientists with far more expertise in this area than any senator—and certainly it is impossible for law-makers—to make some determination as to the likely future success of any research. We are not able to divine that, and it seems to me that to make an argument about whether the scientific research may or may not be questionable is not the key issue before the chamber. It seems to me that the issue of primary relevance is to consider what sorts of rights should accrue to an SCNT embryo and whether or not the research that is permitted within the fairly limited strictures of this legislation is considered ethical in today’s society.

I am concerned that some of this debate has gone to the issue of whether or not any research would be successful. I make the point that there are a great many examples through the history of science—in medical science particularly, but in all endeavours of science—where the ultimate use of research findings could never have been divined at the outset. An example is a recent quote from Professor Frazer, who would be well known to all senators, who made the point that if a proposed moratorium on genetic engineering had gone ahead in the 1970s he would never have developed a cervical cancer vaccine with the potential to prevent half a million deaths a year. Penicillin is another example of that in the history of medical scientific research.

Professor Frazer’s point is a good one. There were people some 30-odd years ago who argued that genetic engineering or that kind of genetic research was inappropriate. Obviously they are entitled to their view, but the point he makes is that at that point we could never have determined or divined that some 30 years later that research would ground the finding of a vaccine which will, I hope—and according to scientists and medical practitioners—be of great benefit to women around the world in the prevention of cervical cancer.

I want to emphasise, when we are talking about the embryos that seem to be the subject of the debate, that we are not talking about an egg fertilised by human sperm. We are not talking about a human ovum fertilised by human sperm. I want to refer to page 16 of the community affairs committee report, where committee members make this point:

CHAMBER
Another source of human embryonic stem cells could be Somatic Cell Nuclear Transfer (SCNT). This is a process commonly called cloning. It is important to remember that the word cloning is used to describe replication of single cells, genetic material as well as whole beings. It is vital that the different outcomes are clearly acknowledged.

The committee goes on to explain the SCNT process:

... where the nucleus of an egg is removed and replaced by one taken from a donor adult cell eg. a skin cell. This is then stimulated and it behaves like an embryo ...

The committee then goes on to clarify that the SCNT technique cannot be used under the strictures in the legislation to clone a whole human being for four reasons: that there has been and shall remain, under the legislation, a strict prohibition on SCNT embryos being implanted in the body of an animal or a human; that such cells are prohibited from developing beyond 14 days; that there are substantial penalties in the legislation for transgression of these safeguards; and, finally, that scientists believe that the current indications of such embryos developing are extremely remote.

I want to comment on one point that is made by the committee, and that is that the word ‘cloning’ is used to describe both the replication of a whole human being or a whole being as well as the replication of single cells and genetic material. It seems to me that one of the ways in which this debate has been conducted is to conflate, in a sense, those two concepts. The replication of a whole human being is something that I do not believe anybody would contemplate as being ethical and appropriate. Unfortunately some of the conflation of these two concepts has, I fear, been utilised to try and gain the response that I think all people would have to the prospect of cloning human beings, when what we are talking about is cloning a single cell or the replication of single cells, not a whole human being.

I also make the point that the sorts of safeguards contained in the legislation, which are described in the paragraph of the committee report that I have just referred to, really do demonstrate that we are not talking about human cloning in terms of replicating a whole human being. There are substantial safeguards in the legislation and we ought not to conflate the two concepts or to utilise people’s reasonable fears about the prospects of human cloning to steer this debate towards the end that some might wish for.

I have to make this point, which relates to the previous legislation which has had some discussion in the chamber and also to the whole principle of IVF treatment. It seems to me that the ethical dilemmas associated with scientific research on human embryos are greater when considering embryos which are created by the fertilisation of a human egg by sperm. This is the same process by which all human life is created and such embryos have significantly greater potential to develop into human beings, so I am somewhat mystified by the attention or strong reaction that this legislation has engendered, given that the ethical dilemmas associated with the 2002 legislation were arguably greater. I would have thought that if we are concerned with issues about potential human life then the step the parliament took in 2002, when it permitted a human embryo created by the process by which all human life is created—that is, by human egg fertilised by sperm—to be used for research, was arguably far greater than what the Senate is considering today.

The opponents of this legislation seem to take the view that human embryos created by sperm and ova can be created and used for research under the previous legislation or in the context of IVF treatment but that entities created through somatic cell nuclear transfer...
cannot. I do not understand the ethical distinction that is being drawn by those who oppose the bill that suggests that we can create an embryo for IVF purposes through what is probably the way in which most people would conceptualise the commencement of human life and then utilise that for research but an entity that is created through somatic cell nuclear transfer cannot be so utilised. I have to say that I consider this to be an entirely illogical position.

I note that Senator Minchin previously in this debate described the proposition before the chamber as being repugnant and objectionable. I wonder whether a similar view would be taken about IVF treatment. The fact is that we create embryos through IVF knowing that a substantial proportion of those will be destroyed or will succumb, to use the term, and of course those are potential lives. As I understand the argument by some of the opponents of this bill, they argue that there is an ethical distinction between that and what is being proposed in this legislation—first, that the purpose for which embryos are created is different and, second, that the embryos succumb but are not destroyed.

Can I deal with the second issue. It seems to me that it is a questionable ethical step to suggest that, because something succumbs as opposed to being actively destroyed, that somehow removes the ethical dilemma or obviates any ethical issues associated with it. In fact, some might argue that, if you have the power to change something and you choose not to act, that is a very small step in ethical terms from actually choosing to act to destroy—if you stand by and permit something to be destroyed when you have the power to prevent that, how far a step is that from actually actively destroying it?

The first point that I raised as one of the defences or arguments as to why the regime in the bill that is proposed is somehow worse than what has been previously put before the chamber is a purposive argument—that is, that the purpose for which embryos are created creates the ethical distinction. That is a view that has been put to me by a number of people. I question this. Is the purpose of creation a sufficient ethical imprimatur to justify the creation of a number of embryos through fertilisation knowing that a substantial proportion of those are guaranteed to succumb or to have their existence ended? Similarly, is the asserted purpose of creation sufficient to justify the use of excess IVF embryos for research? It seems to me that is not a sound way of analysing the consideration associated with both IVF treatment and the research permitted on IVF embryos.

It seems to me that a better ethical framework for explaining our continued support for IVF, and I do support it, and for the research permitted on excess IVF embryos that we previously have endorsed is that we as a community seek to weigh the various ethical considerations and potential benefits. The community by and large supports IVF, which does involve the destruction or succumbing of embryos, because the benefit is seen to outweigh the negative consequences. In truth, what we do is place the potential benefit to couples or people with infertility problems and their desire to have a child above the rights of excess embryos which are produced. I am able to accept that ethical framework. Similarly, we also permit excess IVF embryos to be used for research, and we do so, frankly, not just because of the purpose for which they were created but also because of their potential benefit for research. I find it extremely difficult to accept that the ethical dilemmas posed by an entity created by somatic cell nuclear transfer, which has less potential for continued existence, mean it should be accorded greater
rights by this parliament than an excess embryo created by IVF.

My suggestion to the chamber is that the more difficult ethical dilemma was considered by this parliament a number of years ago, and perhaps a more accurate ethical framework is that we weigh the benefits and consider what are the appropriate rights or respect that are due to embryos, whether SCNT or created by the normal process of fertilisation, against the potential benefits both of IVF treatment and also of research. My view is that the ethical considerations around permitting research using a product of somatic cell nuclear transfer do not seem to be sufficient to require prohibition of this research.

I want to emphasise the safeguards which are in the legislation, some of which I have referred to and which have been referred to by previous speakers and in the community affairs report. It seems to me that those senators who are talking about potential nightmare scenarios or the misuse of the research are really doing so because they oppose the bill, and that is fair enough; that is their prerogative. But perhaps they should be moving amendments to the legislation if their concerns are that the safeguards are insufficient. Instead, the potential misuse of the research is being used as an argument to justify opposition to the bill. I would ask those senators who consider that this research might not be utilised or undertaken appropriately, if that is the basis of their concerns, to consider whether or not the safeguards in it are sufficient and, if they do not consider that to be the case, to move amendments to increase those safeguards rather than simply opposing the legislation.

Those who support this legislation have been accused of peddling hope or of manipulating people’s hopes. It seems to me that there are some on the other side who have peddled fear. I personally try always to look to hope rather than fear as a basis for behaviour and action. Whilst I do not know where this research may lead, I do not think the potential benefits which we cannot see now should be cut off because we have concerns about a somatic cell nuclear transfer entity. I again make the point that I made before, in relation to Professor Frazer, that we do not know where science will lead. That does not mean we allow carte blanche, but the circumstances do require us to consider the ethical boundaries. In my view, this legislation is within the boundaries that the parliament should support. So, in the light of the potential benefits and the safeguards in the legislation, I intend to support this bill.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (10.00 am)—I also intend to support the Prohibition of Human Cloning for Reproduction and the Regulation of Human Embryo Research Amendment Bill 2006. I came to that decision last night. I slept on it, and I woke up feeling the same way this morning. It is not an easy decision, but it is an obligation upon us in this Senate—and it will be in the other place—to wrestle with difficult decisions like this and come to such conclusions. I want to thank all those people who have helped me make that decision, both in this place—because I have listened to the debate carefully—and outside, including Senator Patterson and, indeed, Senator Stott Despoja, Senator Webber and my colleague Senator Nettle, who has always been available to explain the almost inexplicable intricacies of the legislation.

Senator Wong just said that in many ways the decision with the last legislation two years ago was more difficult than this time. I think there is some merit in what she said. Senator Vanstone gave a salient speech last night, at the heart of which was that, in a democracy like ours, it is proper that we
make decisions in the parliaments on complex ethical matters as our society progresses—that we can no longer seek ecclesiastical judgement on such matters. This is an age of enormous growth of understanding of everything from ourselves to the whole of the cosmos.

It is on those wider matters that I want to deliberate for a little while in a moment. But let me say at the outset: there are strong safeguards built into this legislation to stop it being used maliciously or against what our society in general would find acceptable. Senator Nettle, on behalf of the Greens, has brought forward three amendments which I hope the Senate may adopt, because one of the concerns I share with her is about biotechnical companies looking at the profit line rather than at the human advantages that we can get from breakthroughs in medicine which will help people who have drawn the short straw, so to speak, in our society, who are suffering illnesses which may be alleviated further down the line, from studies made available through this sort of legislation. We need to make sure that profit never becomes the motive for such advancement in science. The amendments the Greens have brought forward are aimed very squarely at ensuring that it is the public good, not the private purse, that is at all times the motivator in such experimentation.

I am satisfied that, in the whole complexity of this matter, the public good is better served by passing the legislation than by opposing it and therefore inhibiting the potential discoveries which may come out of it. Last time around, I felt convinced that the adult stem cell option was one that covered the field generally. But, in matters such as specific stem cell investigation into specific organs from the human body, which may have the potential for better study using the embryonic stem cell option that is being canvassed by this legislation, there is also the potential through this option for studying diseased cells from specific illnesses which trouble our society, which may not be available through the adult stem cell option. So those things have been important in making this decision.

I have spoken at great length over the years with my colleague Christine Milne. We talk a lot about the way human society is evolving. I would recommend to those who want to see a contrary point of view from somebody who I think does not think very differently from me—she will allow me to say that—that they read her speech. There are, of course, great ethical issues involved here, but I think we should look to those not by opposing this legislation but by building in greater safeguards. One of those ought to be a government look at how we can have an overview of where science is taking us in this country and around the world. It would be a good thing if we had a national technological watch from an ethical point of view on the combination of sciences which some of the greatest thinkers on the planet warn us may come together to change human existence on this planet irrevocably.

This morning I had pointed out to me an article from Arena magazine by a man who has spent a lot of time thinking in this field, Guy Rundle. I will quote from his contemporary article:

Yet the limited degree to which the public has taken these arguments on board—these are arguments under the title of ‘The crisis in embryo’—largely in the wake of animal cloning—should be cause for guarded optimism, if one remains cognizant of the long-time frame within which such battles may be fought. As human life becomes increasingly abstracted, commodified, manipulable and dehumanised, a wider sense of foreboding spreads. It remains a minority opinion, but it is a level of awareness far beyond any that could have been hoped for at the beginning of IVF or
multiple organ transplants—the first practices to make visible the cultural and moral dilemmas that occur when 'life' can be isolated from 'being'.

I share that sense of dread; yet we must not inhibit ourselves from the potential for medical breakthroughs.

I have had medical training; I was a young doctor when I went to Tasmania many years ago, and I loved that profession. Of course we all learnt about Edward Jenner. He found the antidote to the scourge of smallpox, which killed millions of people around the planet in an awesomely bad death and left many others maimed and disfigured and their lives ruined. He noted, back in 1796, that after an epidemic of smallpox the people involved in the dairy industry had escaped unscathed. And when Sarah Nelmes came to see him on 14 May 1796 with pustules on her hands, he realised she had cowpox and he took some of that material. With the permission of another man in the village, Mr Phipps, he put that into some cuts he made on the arm of young James Phipps, son of Mr Phipps. A bit later he then gave the same son the smallpox virus, and nothing happened.

As a result of that process 220 years ago, literally hundreds of millions of people’s lives have been saved. If we had that debate in the Senate today, about taking cowpox virus from a milkmaid and injecting it into the son of somebody next door, we would not allow it to proceed. That is part of the dilemma. These days we in parliaments have to make decisions and laws that add restrictions but allow some things to proceed.

There has been very great alarm and concern about the misuse of this science. This is not the last time we will debate this issue. It is going to become part of the business of parliaments around the world to be discussing the use of a range of technologies, including nanotechnology, robots, artificial intelligence and, indeed, genetics, right through the rest of human existence. If we do not keep a sobriety about it—if we do not keep a reasonable lid on what potentially could become out-of-control science—then humanity as we know it will not go on into the future.

I am not just speculating wildly there. Stephen Hawking, one of the finer brains on the planet and Lucasian Professor of Mathematics at Cambridge, recently put up on his website the question, ‘How do you think humanity will get through the next hundred years?’ And he got 35,000 bloggers responding.

Senator Patterson—I know how he feels.

Senator BOB BROWN—Yes, I am sure you do. Then he put up his opinion that he himself did not know. We have taken the genie out of the bottle and we are experimenting with powers of nature inherent in the universe and changing them. He called it a sick joke, but I do not think it is at all. One of the questions we have to ask ourselves in doing the rounds in science, he says, is, ‘Why haven’t we been visited by aliens?’ And the answer to that is: because every time a civilisation gets to our stage it cannot contain its abuse of the powers available to it and it implodes—a very sobering thought. Evolution has a habit of running in parallel.

The question for us human beings on this planet, in this age of extraordinary advance and technological powers, is: can we not go the route of self-destruction but instead go the direction of the enhancement of life and the ability of our own intelligence to go on to explore the universe without unleashing powers which will destroy our biological ability to survive and therefore, ipso facto, the ability of that intelligence to proceed down the thousands of years to come? We hope it will continue to be able to grapple with the magical questions of why are we
here, how did we come to get here, who are we and what does the future hold for us.

Above all, in answering all of those questions we must take time, we must be prudent and we must be cautious. The question really facing this chamber at the moment is: is it incautious to be taking this next small step in allowing cell experimentation which may improve the collective lot of humanity? And on balance I think we are.

Nevertheless, let me acquaint the chamber with the thinking of Mr Bill Joy, who was Chair of President Clinton’s United States Information Technology Task Force, and who six years ago wrote in that salient essay, ‘Does the Future Really Need Us?’ a remarkable exposition of the dangers we face:
If our own extinction is a likely or even possible outcome of our technological development shouldn’t we proceed with great caution? Knowing is not a rationale for not acting.

The nuclear, biological and chemical technologies used in 20th century weapons of mass destruction were and are largely military, developed in government laboratories. In sharp contrast the 21st century Genetic, Nano-Robotic technologies have clear commercial uses and are being developed almost exclusively by commercial enterprises. In this age of triumphant commercialism, technology—with science as its handmaiden—is delivering a series of almost magical inventions that are the most phenomenally lucrative ever seen. We are pursuing the promise of these new technologies within the now unchallenged system of global capitalism and its manifold financial incentives and competitive pressures.

This is the first moment in the history of our planet when any species, by its own voluntary actions, has become a danger to itself—as well as to a vast number of others.

Senator Vanstone last night simplified the answer to that question—maybe oversimplified it—but I think it is at the heart of the question here. Are we doing good or are we doing harm? In the end I have come to the conclusion that this legislation will do more good than harm. But I commit myself, along with all fellow senators, to being a watchdog on the future. For those who might think that scientists are the best people to make ethical judgements, I disagree. The very fact that we have a $1 trillion armaments industry on this planet flowing out of science, with everything from cluster bombs through to hydrogen bombs, shows that that is not so. Who is the moral arbiter in the 21st century? It has to be the democratically elected makers of the law listening to the society which, from time to time, puts them in and takes them away.

I was in the United States two weeks ago, and I was implored by an 85-year-old life-long Republican man to support stem cell research. I came home and on Saturday night the daughter of an 84-year-old Tasmanian woman, an ardent Greens voter, also implored me to support stem cell research. I have had many letters with absolutely the contrary point of view. But in the end I have come to a conclusion out of all these many strands that it is better this legislation passes than we obstruct it. However, I ask all senators to look very carefully at Senator Nettle’s amendments. I think they make this legislation better. I think they curb the commercial zeal which may drive any scientific experimentation and therefore concentrate science more on what will benefit humanity. We are in an age where we have failed many moral dilemmas. The war in Iraq is a clear example of that, as is the destruction of forests around the planet and the failure to deal with climate change, although we have known about climate change for decades. It was first speculated on by Arrhenius in 1895, and here we are in 2006 with a realisation that the planet is in real trouble because we did not listen to the scientists.

When it comes to experimentation with the very basic human fabric, ourselves, and with the very basis of life, the cells that make
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up all life on this planet, we have to be ex-
traordinarily cautious. This legislation does
have the ability to improve the general well-
being and happiness of people not just in our
own country but around the world. I will be
watching carefully as further legislation
comes into the Senate or, indeed, if it does
not come in. We will be introducing legisla-
tion if we see this or other technologies be-
ing abused in our laboratories by corpora-
tions and people who have lost the ultimate
value in medical experimentation, which is a
commitment, as Senator Vanstone said, to the
good, to the general feeling that this will im-
prove our delight and happiness in the ex-
perience of life on the planet while we have it.

Senator McLUCAS (Queensland) (10.20
am)—I welcome the opportunity to debate
this important bill, the Prohibition of Human
Cloning for Reproduction and the Regulation
of Human Embryo Research Amendment
Bill 2006, which is before the chamber to-
day. Discussion about the regulation of re-
search on embryonic stem cells is not new.
Australia, along with the rest of the world,
has had to have this discussion since the
mid- to late 1990s as a result of developing
understanding of the science and the poten-
tial benefits of the use of embryonic stem
cells and now, of somatic cell nuclear trans-
fer, SCNT. In 1998 the then health minister
requested the Australian Health Ethics Com-
mittee, AHEC, to undertake analysis of the
scientific, ethical and regulatory considera-
tions of cloning techniques. Following re-
ceipt of this report, the minister then re-
quested the House of Representatives Stand-
ing Committee on Legal and Constitutional
Affairs to review the AHEC report. The An-
drews report was tabled in 2001.

In 2002 the parliament passed two bills
which responded to the earlier reports. As a
part of that process the community affairs
committee conducted an inquiry into the
bills. There has been consistency in the rec-
ommendations of each of these committees
of inquiry. The consistent themes are that
cloning for the purposes of human reproduc-
tion should be banned; that in no circum-
stances should payment for human ova,
sperm or embryos be allowed; that regulation
on the use of human eggs and embryos is
required, and that consistency of regulation
across the states and territories is essential. It
is my view that these principles should re-
main the same into the future. They reflect
community opinion and they reflect scien-
tific opinion.

So what, then, has changed? Why do we
have to return to this issue—an issue that is
difficult for some of us in this place and for
the community? We return to it because the
potential benefit for people with disabilities,
chronic illnesses, or life threatening diseases
is growing with greater knowledge and un-
derstanding.

The Andrews report tabled in 2001 ac-
knowledged that potential, recommending,
among other things, that there should be a
moratorium on the creation of embryos by
means of somatic cell nuclear transfer tech-
niques for three years, at which point the
issue should be re-examined; and, further,
that the creation of embryos by means of
somatic cell nuclear transfer should not be
permitted at that stage, although this need
not necessarily form part of the legislative
ban on the deliberate creation of embryos. It
did not rule out somatic cell nuclear transfer
at all but rather recommended analysis of its
further potential.

The legislation passed in 2002 mandated a
review after three years and, as we know, the
government commissioned John Lockhart,
an eminent jurist, to conduct that review. His
report is an important contribution to the
public discussion and I thank his committee
for their work. Following a long, detailed
and public inquiry his committee made 54 recommendations, and the legislation that we are dealing with today results from some of those recommendations. It is not true to suggest that the legislation is a result of growing pressure from the science community to continually attempt to gain greater access to research practice.

One contributor to this debate suggested that the legislation was somewhat diminished because it was not being brought forward by the government but rather as a private senator’s bill. I suggest to him that he knows as well as I do that the fact that it is a private senator’s bill is more about politics and less about the substance of this legislation. I commend Senator Patterson for bringing this legislation forward. Further, I commend Senator Stott Despoja and Senator Webber for the work that they have undertaken in the exposure draft of their bill. I also thank members of the Lockhart committee, the Senate Standing Committee on Community Affairs and those community members who have contributed to the processes that informed the various reports. I also thank my constituents who have taken the time to make their views known to me.

The proposed legislation provides the framework and the safeguards that our community requires to ensure that research using human embryos is conducted ethically and safely, and that is why I will be supporting the bill. In an open letter to the Senate, Professor Ian Frazer, the Australian of the Year this year, urges our support for the bill. He identifies that in the 1970s the debate about genetic engineering—the precursor to his groundbreaking work in the development of a cervical cancer vaccine—was difficult because the underlying science was complex and easily open to misrepresentation. He makes the point that we are in a similar situation today and that various attempts have been made to discredit the science behind embryonic stem cell research and SCNT. My concern also goes to the attempts that have been made to discredit individuals who support legislation in these areas, and I urge calm and careful language from all sides in the course of the discussion and debate.

One of the arguments being offered by those in opposition to the legislation is that false hope is held out to those who suffer from conditions that may—in the future be alleviated by therapies that could be derived from the research that is facilitated with the passage of this legislation. This argument was also used in the 2002 debate. As was the case then, many people now with chronic conditions and disabilities are offended that others would deem what they are allowed to feel.

Recently, MS Australia held an information evening in the parliament, where a young woman by the name of Sarah Ross-Smith, who has multiple sclerosis, spoke. She was not speaking about the potential of cures derived from SCNT or embryonic stem cells but, rather, more broadly about the goal of MS Australia to find a cure. She spoke eloquently and passionately about the fact that, for her, the hope that a cure will be found is her motivation to keep going in the face of what she knows will be a difficult journey for her and her family. Hope is her incentive to continue to go to work, to manage her treatment and to speak on behalf of MS Australia to encourage the much-needed funds to conduct the research that is required.

It was that story and her expression of hope that made me somewhat angry at the assertion by people that it is wrong to even contemplate that hope is an essential part of dealing with a chronic condition. Is it false hope? The science is a growing area of research. Alzheimer’s Australia says:
While in the short term, stem cell based therapies may be more likely to benefit other neurodegenerative disorders, such as Parkinson’s disease. Alzheimer’s Australia believes that stem cell research is a valuable research area that holds great promise to yield insight into many neurological disorders.

Scientists involved in the research are most explicit. Treatments, let alone cures, are decades away. It is simply dishonest to claim, as people have in this chamber and elsewhere, that the scientists are peddling false hope or asserting that cures are around the corner. Can I suggest to those who do: read the evidence and point to any scientist or research organisation who has made that assertion.

All medical research takes time—considerable time. It is simply the nature of research that involves humans that it will take time. It took over a decade for Nobel Prize winners Barry Marshall and Robin Warren’s work on stomach ulcers to be broadly accepted, and it has taken 20 years for Ian Frazer’s work on the human papilloma virus vaccine to emerge. But the point is that they are typical stories.

I ask: is false hope being ‘peddled’? It is a term that is often used. Some contributors to this debate have alleged that it is the scientific community which is promoting hope in order to maintain their position. This is disingenuous and reflects more on those making the allegations than the scientists that they are trying to impugn. Scientists are realistic in their assessments of the potential timeline in which therapies and cures can be achieved. CAMRA, the Coalition for the Advancement of Medical Research Australia, says:

While no-one can claim with certainty what benefits may eventually result from allowing therapeutic cloning in Australia, it is the overwhelming opinion of the scientific and medical community that this research has tremendous potential to better human life...

The fact is that we do not know the answers to the questions about the potential for therapies or cures. But to deny people the right to have a hope that their condition may be assisted is to take away their right to believe. As I have said, the understanding of the science in this area is growing. We have much to learn and the results to this point are at best promising. It is wrong to say that we should therefore not be undertaking any research because to this point there have not been significant results in terms of therapies.

Much has been said about why there have not been large numbers of applications and approvals since the passage of legislation in 2002. We have to be honest about why. There has been one ART licence granted to tackle an explicit disease and three licences granted which are intended to develop stem cell lines which will be used to tackle a range of diseases. It is misleading to extrapolate from that, because there have been a small number of licences granted, there is little interest or potential. The research is on the stem cell lines, not on the embryos.

One contributor contended that SCNT is designed to take resources away from other areas of research even though, in his view, it does not work. This is a profound misunderstanding of how science operates. No scientist will deliberately try and drag funding to a dead end. That is the exact opposite to the pathway of how scientific credibility operates, and consequently how the funding streams lie.

It is contended that, as there is apparently a lack of scientific agreement, we should not proceed. This is disputed. Most of the scientific community support regulation of the use of embryonic stem cells and somatic cell nuclear transfer. Of course, there are some who, for largely personal reasons, do not. But, I say again, most do.
A point constantly made by the scientists is that adult stem cells and embryonic stem cells have different properties. We simply do not know which is going to be more appropriate for any disease. Professor Bob Williamson, representing the Academy of Science, stated during the inquiry:

... we are in a situation now where all of the possible approaches—those involving embryonic stem cells, somatic cell nuclear transfer, cord blood stem cells, adult stem cells—should continue in parallel. We believe that these approaches will cross-fertilise each other and help us to develop a more robust scientific answer.

The same point has been made by other scientists and scientific organisations. This was a consistent message from scientists in 2002 and is again now. Adult and embryonic stem cells have different properties and research into one, including through SCNT, can shed important light on the other.

I want to go to the issue of a stem cell bank. In 2002 the Senate agreed to an amendment to the legislation that we were then debating that requested analysis of the potential value of establishing a stem cell bank here in Australia. The Lockhart committee undertook that analysis and recommended that a national stem cell bank be established and that consideration be given to the feasibility of the Australian Stem Cell Centre operating as the bank. I support the legislative elements that are proposed in the Patterson bill that refer to that recommendation—that is, to require the minister to report to the parliament within six months on the most appropriate method to deliver the stem cell bank and also the appropriateness of a register of excess ART embryos. It is not a measure that requires legislation at this point; it can be delivered through regular government processes.

In conclusion, I think that the fundamental question that needs to be answered is this: if research into somatic cell nuclear transfer is allowed to proceed in Australia, can treatments, therapies, cures for motor neurone disease, MS, chronic diabetes et cetera be found? The answer is maybe. But if research into SCNT is not allowed to proceed, can treatments for these debilitating conditions be found? Definitely not in Australia. Research will proceed in other countries in the world, and the reality is that only those who have capacity to access support in those countries—that is, those who are wealthy enough to travel to those countries and pay for the services—will be able to access that assistance. That is not most of us. Australia has an enviable record in the regulation of research. We are recognised as a country that has been cautious and conservative in regulating this area of research, and this legislation fits that description. This legislation will allow for research that is well regulated, that is safe, that is ethical and that will respect the boundaries that our community expects. Public opinion supports the passage of this bill. I urge senators to reflect that opinion.

Senator McGauran (Victoria) (10.36 am)—I rise to speak against the private member’s bill before the Senate entitled Prohibition of Human Cloning for Reproduction and the Regulation of Human Embryo Research Amendment Bill 2006. The bill in essence enables stem cell research involving an array of embryo types. The explanatory memorandum says that a person may apply for a licence to use IVF embryos—which is already law—and to ‘create human embryos... containing genetic material provided by more than 2 persons’.

The misconception of some of the speakers—and understandably so in this somewhat complex scientific issue we are dealing with—is that, because there is no sperm involved, the embryo is not a potential life or real life and cannot become life. I would like to refer to the speech delivered yesterday by my colleague Senator Eggleston, who is a
doctor, to explain away that misconception or, if you like, out clause. He said:

... some colleagues seem to place on the fact that sperm are not involved in the creation of a cloned embryo, apparently not understanding that sperm are just a vehicle to transport nuclear material and that they play the same role as the glass pipette ... in making an embryo.

But it gets worse. In the explanatory memorandum it says:

... create human embryos using precursor cells from a human embryo or a human fetus ...

This is black and white. It opens the gate, without doubt, for the use of aborted fetuses, because aborted fetuses are believed to have, if not the same, almost the same potential as embryonic stem cells. The explanatory memorandum then goes on to allow for a licence to:

... create hybrid embryos by the fertilisation of an animal egg by human sperm, and ... create hybrid embryos by introducing the nucleus of a human cell into an animal egg ...

The Senate ought to note that the key words in the explanatory memorandum are ‘create human embryos’.

If you believe life begins at conception, then what choice do you have but to reject this bill? The bedrock for me is that this is a pro-life issue. Even before we get to the issue of the slippery slope of producing a cloned human or the lie of hope that is embedded in the science of such research, this private member’s bill is little different to the two previous conscience votes in which I have been involved in this parliament—that is, the anti-euthanasia bill and the RU486 abortion bill. Both bills dealt with the respect and preservation of human life from beginning to end. The private member’s bill before us today deals with life at its very beginning, yet it is no less precious than at any other time. It is worth noting that the first seven days of human life after conception is the greatest period of growth in the whole human life span. In other words, the human embryo is hurtling towards birth and an independent life in those first seven days.

During this debate over the last few months it has been said by no less than the mover, Senator Patterson, that in a way this is science versus church and that the church has many times been caught out being scientifically foolish over the centuries. Of course, people drag up the old Galileo case. I have yet to see a better example—and that is getting towards a thousand years ago. To answer that claim, I refer to the inquiry of the Senate Standing Committee on Community Affairs into this legislation and to quote testimony given by Bishop Fisher from the Catholic Church. Given that that is my church, I would like to use this as an example against the critics who believe that this is a church versus science issue. The bishop said:

The Catholic Church is the oldest and largest healthcare provider in the world. Its worldwide network of universities, medical schools, teaching hospitals, research facilities, hospices and nursing homes provides the best that contemporary medical science and nursing art have to offer. The church is a major funder and host for medical research. Many of Australia’s top professionals are proud to be part of Catholic health care and research. So the church is not anti science.

Needless to say, we should not be creating the array of embryo types listed in the bill. However, under these sets of beliefs I have stated, once an embryo is created it all becomes a horror story. That life is created by scientists to carve up and destroy within 14 days has all the pride equal to a Nuremberg rally—a rally of Dr Strangebloods chanting for such weird experiments as the creation of hybrid embryos mixing humans with animals. Ironically, the Nuremberg code titled ‘Directives for human experimentation’ was developed post World War Two and came out of the experience of some of the terrible research done in that era. The declaration has
been updated many times since then and clearly lays out a worldwide standard. It states that you may not do destructive research on human beings and you may not use one human being and kill them or harm them in order to gain knowledge or advantage for another human being.

I have found it absolutely striking and bewildering that the delusion our scientists have placed themselves under is that the world seems to await Australia’s great breakthrough in this area of embryonic stem cell research, that if Australia does not take up the research then the world will suffer and that all they require is the time and the money—of course, the big money—yet the truth is that embryo experimentation is being undertaken in many other parts of the world already. Furthermore, there has not been so much as a skerrick of a breakthrough to match the false hope given out—and, on the strength of it, there never will be. Besides, if there is a slim chance of a breakthrough in the coming decades, it simply will not be worth the hundreds of thousands, if not millions, of embryos—that is, in my belief, human life—being harvested to reach that point.

It is from a leading scientist, Professor James Sherley, of the Massachusetts Institute of Technology in Boston, that I draw my view that the embryo stem cell research experimentation is basically fanciful. Professor Sherley came to this parliament and outlined his views. I will quote from the Australian of Thursday, 12 October. The quote is lengthy but I think that, given much of this debate is rooted in science, it is worthy for me to read the whole context. Professor Sherley said:

... it is well known that cloned embryos and the stem cells derived from them have defects in their genetic program. These defects will certainly render tissues derived from them ineffective and potentially dangerous.

Second, cloned embryonic stem cells, as with embryonic stem cells in general, form tumours when transplanted into adult tissues. Though some scoff that this problem can be solved with research, it is as difficult as curing cancer.

The third reason is due to a fundamental aspect of mammalian biology. Embryonic cells cannot be used to replace adult tissues. Adult stems cells are responsible for the continuous renewal and repair of adult tissues and organs. They accomplish this by dividing to remake themselves and create new cells that mature to carry out the function of the tissue.

These mature cells have a limited lifetime and must be continuously replaced by the special division of adult stem cells.

Embryonic stem cells cannot replicate in this fashion and the mature cells proposed from them are not sufficiently long-lived to allow effective cures for diseases and injuries in the tissues and organs of children and adults.

Scientists in Australia who promote research based on cloned embryos may be interested in probing living human beings at the earliest stage of life, but they are certainly not going to provide any benefit in the form of new cures.

Much of this debate has been based on the hope of miracle cures of the diseases and disabilities that plague us. Hope of future cures is a great thing and has driven man, medicine and science since, and even before, Louis Pasteur. The truth, as has been well documented, is that adult stem cell research has provided great breakthroughs and advancement in this area of medicine. The hope lies with adult stem cells. All the breakthroughs announced to date have come from adult stem cells, and that includes the reported breakthroughs just a few weeks ago on the use of placenta blood, for example.

If this legislation is passed, we will cross the scientific Rubicon; there will be no turning back. The scientists who have controlled this debate to date will be back again demanding greater freedoms for their research. Their record is on the board. It does not sur-
prise any of us that scientists who do not accept the embryo as life—that is, body and soul—will push the boundaries as far as they can. Why wouldn’t they? Yet what is disappointing is that the parliament has let itself down, because if the legislation is passed it has done what it said it would not do in 2002—that is, allow cloning. So why wouldn’t many in the public fear that the parliament will again extend the boundaries at some time in the future, given that we are already on the threshold of cloning?

In conclusion, it was the *Australian* newspaper in its editorial that, whilst urging the support for the bill, claimed: ‘What does it matter? The embryos are only a dot at the end of a sentence.’ In urging the Senate to reject this bill, I remind senators—let alone the editor from the *Australian*—that under the big bang theory the universe was a dot at the end of a sentence to begin with and that, more poignantly, we were all once dots at the end of a sentence.

Senator POLLEY (Tasmania) (10.50 am)—I rise to speak on the Prohibition of Human Cloning for Reproduction and the Regulation of Human Embryo Research Amendment Bill 2006. As a member of the Senate Standing Committee on Community Affairs, which looked into this bill, I believe we are here today to determine several main points: if the destruction of a human embryo for the reason of scientific research could ever be justified and if there is any scientific evidence that human embryonic stem cells would be more advantageous than the already widely used and successful adult stem cells. But I think that the point that remains the most important is that this science, whichever way you choose to look at it, would require a human to be cloned. Whether it is to create embryos for the purpose of their destruction in research, as this bill would allow, or whether it would be for the purposes of reproductive cloning, this legislation would still allow for human cloning. That is the issue we must keep at the forefront of our minds when making a decision regarding this legislation.

Only four years ago, before my time in this place, the Australian parliament debated the merits of this very issue. Back then, both houses of the parliament unanimously rejected all forms of human cloning—that is, reproductive and therapeutic. During that debate Senator Patterson said:

... it is wrong to create human embryos solely for research. It is not morally permissible to develop an embryo with the intent of truncating it at an early stage for the benefit of another human being.

What has changed? That was just four years ago. We could well be mistaken for believing it was half a century ago, given the rate at which Senator Patterson and other people’s consciousness and views seem to have changed on this issue. Back in 2002 the Australian parliament voted to approve the release of surplus IVF embryos for research and study. However, during the Senate Standing Committee on Community Affairs hearings we heard that only 30 per cent of these surplus embryos have been used for the purpose of obtaining embryonic stem cells for research. Apparently, the other 70 per cent have been used for training clinicians and refining infertility treatments. We can only assume, as a result of this, that some scientists are now craving other sources of embryonic stem cells, specifically from therapeutic cloning through the process of somatic cell nuclear transfer.

However, back in 2002 not a single senator or member chose to move an amendment to allow for therapeutic cloning while banning reproductive cloning. That is exactly what is happening now through this legislation we are considering today. So, if the ethical boundaries and opinions of people can change so quickly in just four years, it leaves...
one to wonder exactly what we could be back here debating in four years time. Those who have changed their mind from their position on this issue are saying at the moment that they are opposed to reproductive cloning. But how do we know that, in a few short years, we will not be back here debating whether it is appropriate for women to be implanted with cloned embryos or whether it is appropriate for scientists to be able to create another little Johnny for parents who are sick with grief over a lost child?

As much as the proponents of this bill will try to play it down, there are very real ethical considerations behind this legislation. This major alteration in the boundaries of what is acceptable has been advocated by supporters well in advance of research being performed on cloned embryos. There is very little evidence which supports as advantageous a move in the direction of producing cloned embryos for research. We are instead seeing some scientists seeking to lobby members of parliament and asking for freedom to pursue research of this kind purely because they have decided that this is an avenue they want to explore.

By now we are all very familiar with the Lockhart committee’s review into the Prohibition of Human Cloning Act 2002 and the Research Involving Human Embryos Act 2002. Throughout the course of the Senate committee’s recent inquiry several doubts were cast on the Lockhart committee’s findings in its review, especially due to the amount of time the committee had to report and the work of the Korean researcher Dr Hwang Woo Suk, since proven to be fraudulent, on which the committee relied heavily. In its submission to the standing committee’s inquiry, the Catholic Archdiocese of Adelaide stated:

Successful, repeated and peer-reviewed trials in animals has always been seen as a necessary prelude to human trials. Yet Lockhart appeared to ignore such basic scientific processes, basing their conclusions about the potentiality of SCNT and embryo stem cell research on the work of Korean Scientist, Hwang Woo-Suk (since discredited) and a 2005 report from the United Kingdom... which described a process other than SCNT.

Hardly a mandate for change and hardly evidence of such a pressing nature as to give such warrant as to be able to dismiss the ethical concerns so lightly.

Indeed, it seems that the only scientific evidence which members of the Lockhart review drew from was Dr Hwang’s work. Dr Hwang’s claims that he succeeded in taking stem cell lines from the SCNT process were found to be false. Dr Hwang has also significantly underreported the number of eggs used in his experiments. He actually used four times the amount he reported in his studies, or more than 1,600 eggs. Where did he get all of these eggs from? His research opened up a whole other can of worms, with claims that his junior female researchers were encouraged to donate their eggs for his research. This particular point raised what could become a very real problem regarding this so-called science.

If this legislation were to pass and therapeutic cloning were to be allowed, the biggest problem would be in sourcing eggs from which to create embryos. As in Dr Hwang’s case, this opens up the possibility of women being exploited in order for researchers to get their hands on more eggs. The horrible truth is that we do not know the lengths to which this could go. Just last week we saw the story of a young woman who, at 26 years of age, has put her eggs up for sale on the internet to pay off her £15,000 credit card debt. We have all heard of numerous other cases, some in which young women have been coerced or even forced to donate their eggs. These stories may not all be true, but unfortunately it comes down to the question: how can we be sure? There is a risk that
women could be moved to put their health at risk, with the promise of pay-off for their eggs. Women’s Forum Australia, in a media release issued on October 26, stated:

We want the Australian Parliament to know that women are not side issues in the cloning debate. We are central to this debate. Without thousands of eggs from Australian women, cloning will be impossible. To get the eggs, women will have to take large doses of powerful hormones to hyper-stimulate their ovaries. This procedure carries well-recognised health risks including ovarian hyper-stimulation syndrome, organ failure, stroke, respiratory distress and in some cases even death. If cloning goes ahead we know that some women will get sick and some will die. Women will pay the price for research which has no proven benefits.

Women’s Forum Australia goes on to state in the release that overseas experiences show that a commercialised trade is the only way to obtain enough eggs to fulfil the requirements for research. I very much agree with the Women’s Forum when they say that this could lead to marginalised and disadvantaged women putting their health at risk.

The proponents of this bill have sought to allay fears relating to the commodification of human eggs. To be fair, the bill does seek to maintain the current prohibition on the sale of human eggs. However, as is the case in things of this nature, how can we be completely sure that this will not occur? How can we be sure that disadvantaged women will not be subjected to dangerous drug stimulants in order to harvest their eggs in return for payment? Again, the answer of course is that we cannot be sure.

Another issue that seemed to leave many of the committee inquiry participants bewildered was the information, from previous research already completed, that there are inherent dangers in the application and use of human embryonic stem cells, including cancer formation. In his submission to the inquiry, Dr Nicholas Tonti-Filippini said:

Nothing has changed scientifically to support some kind of new argument of necessity to use SCNT embryonic stem cells. If anything, the possibility of developing therapies involving cultured embryonic stem cell transplant has become more remote as more has become known about the difficulties.

It was explained during the inquiry that while the capacity for embryonic stem cells to differentiate easily—known as pluripotency—is seen as a promising characteristic for their use, this very trait is also a significant problem. In his submission, Professor John Martin explained the damaging effects pluripotency may have:

Whatever the origin of ES cells, animal or human, whenever they are transplanted into an animal, they have up to a 25% incidence of growth of a particular type of cancer, a teratoma. No substantial progress has been made towards resolving this problem of cancer development with ES cells. This problem is sufficient by itself to exclude any possibility of using ES cells in therapy for human disease, even if there were strong indications of likely efficacy on other grounds.

And add to this that it would seem that stem cell lines from the process of somatic cell nuclear transfer are thought to be quite unstable. We have seen numerous cases of science creating cloned animals that have been fraught with genetic abnormalities. Dr Tonti-Filippini described it as such:

A disadvantage of SCNT embryos is that they are epigenetically compromised. That is to say, because they have been formed using the nucleus of a somatic cell, many of the gene functions that would normally be available in an embryo are not available. The latter explains the problems of immune system diseases in cloned animals such as Dolly the Sheep. (Dolly was euthanased). It may also explain why it has proved to be so difficult to clone some animals, including humans.

A great difficulty I have had in considering this legislation—and it is a view I know is...
shared by many of my colleagues in this place—is that it would seem that this debate is almost irrelevant. We must ask ourselves the question: what is the point of crossing this ethical boundary, a boundary which has long been recognised in medicine—the creation of cloned human life only for the purpose of its destruction in the pursuit of knowledge—when there is already so much hope and promise from adult stem cells?

There is plentiful evidence to indicate that adult stem cells are not as erratic or as unpredictable in comparison to embryonic stem cells, nor do they come with the ethical implications that relate directly back to the issue of cloning or destruction of life. Indeed, an independent MP Consulting report, prepared as advice for the Department of the Prime Minister and Cabinet and released by the Prime Minister in August, found:

On each of these issues—the definition of a human embryo, the creation and use of embryos for ART research and the creation of embryos for stem cell research—there has not been any significant change in the state of play since 2002.

That brings me back to my primary point as to why some people in this place have changed their minds in such a short period of time about not just the ethical implications of this issue but also the implications for society as a whole. There is a real danger that, just as some involved in this current debate have changed their minds from completely opposing therapeutic cloning in 2002 to promoting it just four years later, the current ban against reproductive cloning or procreating cloned embryos beyond the 14-day window could, in an equally short time frame, be back on the agenda because the scientific community comes up with an argument based on: ‘Let’s do it because we can.’ Dr Tonti-Filippini suggested in his evidence:

In the future, there may be some greater benefit to be obtained from using embryos, but as a matter of science it is not clear that they will be of benefit. There seems to be little reason to overturn the existing compromise supported last time by the NHMRC and by a large majority in the Parliaments. A balanced approach may be to maintain the status quo allowing access to excess IVF embryos only and then address the question of deliberately creating them for research purposes at some time in the future if and when animal models show some evidence that benefit is to be obtained from them.

For my part, I do not see that there could ever be a situation where this sort of science could be beneficial. There is so much uncertainty regarding the potential for embryonic stem cells that there is no reason that we should allow the process of cloning or the destruction of human life to take place simply because science says, ‘We can do it, so why not?”

Science cannot be allowed to make decisions for our society. Science cannot be allowed to set the ethical and moral boundaries from within which we are governed. Take a moment to imagine what kind of world it would be if science and research were given free rein without thought for the sanctity of human life. These are the very ideals we must keep in mind when making a decision on this legislation, because this bill is not just a vote to allow for cloning; it is a vote to allow for the destruction of human life and the first step towards handing science a free rein over our morals and over our very lives. I will be voting against this bill and I urge all senators to do the same.

**Senator BARTLETT** (Queensland) (11.07 am)—I should make it clear at the outset that I have not yet decided how I will vote on the Prohibition of Human Cloning for Reproduction and the Regulation of Human Embryo Research Amendment Bill 2006 when it comes to the final question being put at the third reading stage. I am suffi-
ciently supportive of the intent of the legislation to vote in favour of giving it a second reading but I wish to listen to the debate at the committee stage of the process to see what amendments are put forward and to give further consideration to some matters before deciding on a final position.

I was one of those who supported the 2002 legislation legalising the use of surplus IVF embryos for stem cell research. Whilst I certainly gave serious consideration to that matter, I would have to say I did not find it a particularly difficult decision, so much so that I did not feel the need to even speak on the legislation. I did not think the matters were anywhere near as complex to consider. The prospect of therapeutic cloning and the issues we are debating today were not genuinely on the agenda at that time.

When I first started examining the issues currently before us, back when the Lockhart committee first reported, I must say I expected to be in a similar situation. I have been somewhat surprised to find that the more I have examined the issues involved and the arguments put forward, the more unsure and conflicted I have become about some of the key issues—a process that has continued over the last week and which continues as I speak, as I have read a wide range of material and sought the views of many people in the scientific and general community. My final vote on the legislation will depend on what amendments might be made or put forward to the legislation at the committee stage and also what is outlined during the debate as being the principles behind certain aspects of the legislation.

I emphasise that I believe there are some positive, indeed necessary, changes to existing laws being made by the legislation before us, particularly with regard to current impediments to research into reproductive technology. Whilst the debate has, understandably, focused on cloning or somatic cell nuclear transfer, many of the Lockhart recommendations went to other issues. I support those as being sensible and desirable. I think it would be unfortunate if those changes were not adopted because they got caught up with other components of the bill that potentially a majority of senators might not support. I do not know whether there is a majority of opposition to any factors in this legislation.

My concerns with some parts of the legislation are not scientific, they are ethical. They do not particularly go to my personal ethics. If I were here simply to look at ways to implement my own personal ethics, I would be moving amendments every second day of the week seeking to restrict the practice of killing animals purely so people can have a more enjoyable meal. But we are not here, even in conscience votes, to seek to impose our personal ethical framework. We can put forward arguments in relation to it but we are here to consider the wider social ethical framework within which we as a society should operate and the laws that should govern our society. My concerns go to the potential wider ethical consequences for our society and some of the individuals within it. I must say that I have found the majority of the debate on the legislation to date—the committee report—to be taking a fairly black and white approach. It has not really touched on my concerns, which has not made my deliberations any easier.

Much has been made in the debate about the possibility that people suffering terrible diseases have been offered false hope of better treatments and cures with unrealistic promises about the potential of research involving embryos made through cloning—also known as SCNT. Whilst the occasional scientist may have gone overboard in promoting the potential of this research, I think that criticism of offering false hope is very
unfair for the vast bulk of the scientific community and particularly unfair if it is levelled at the Lockhart committee. It is a criticism that is more fairly aimed at some in the mainstream media who will readily run a miracle cure story alongside the latest miracle diet story, usually with about as much substance. Not surprisingly, such stories can rate well and grab people’s attention, but they can irresponsibly create false hopes, as well as feed community misunderstanding about the nature of scientific and medical research. We cannot blame scientists, on the whole, for this behaviour.

Whilst it is a genuine issue to guard against creating false hopes, we need to be equally conscious of the consequences of taking hope away from people by preventing research that might help produce a cure or better treatments. I simply cannot see how anyone who objectively examines this issue and the matters that have been raised through this legislation can fail to acknowledge that this research—using embryos created through cloning, as well as embryonic stem cell research more broadly, which is already legal in certain circumstances—clearly has the genuine potential of assisting in the development of better treatments and cures of some truly terrible diseases. The evidence provided to the Senate committee and the Lockhart inquiry and in the wider public domain demonstrates this quite clearly.

In this circumstance I believe the onus is not on those promoting this research to have to prove its potential benefits. It is quite clear the potential is there and the only way to determine its real value is to allow the research to happen, as would occur in most other areas of scientific endeavour. The onus is on those of us who would seek to prevent this research to provide very strong reasons as to why it should not be undertaken and why we should take that hope away from people who have some of the conditions that this research may assist with. It is that key question that my considerations are turning upon. The extra onus is really on those who would vote against components of this legislation to have extra justification as to why there is sufficiently good reason to take away some of that hope for future sufferers. Is it for the wider long-term good of our society not to legalise some of this activity and not to give tacit approval to the argument being used to justify its use? We can all think of arguments and circumstances where we would say, ‘No, research in this circumstance should not be allowed.’ To use an obvious and extreme example, conducting fatal brain experimentation on living adult humans could no doubt yield useful medical information in certain circumstances but it is something that is clearly accepted as unethical by society, no matter what the potential gain.

I use that extreme example simply to demonstrate that we all recognise that boundaries must be drawn in many areas of life, including in medical research. The key challenge is in deciding where those boundaries should be, particularly when the setting of such a boundary can involve taking away hope of a better life for sufferers of serious diseases, however far in the future those improvements may arrive. One must have good reasons, rather than simply indulging oneself in personal preference.

I believe that legalising the creation of human embryos through cloning is a significant ethical shift for our society. Creating those embryos solely for the purpose of research is also a significant shift. Allowing human embryo clones to be cultivated in the eggs of animals for research purposes is also a significant shift. Making a conscious policy and legislative decision that those embryos have less intrinsic worth than other embryos is perhaps the most significant shift of all, and it is the one that I have most concerns
about. It could go beyond the confines of the specific situations covered in this legislation.

Of course there is nothing wrong with the parliament or a society deciding to make significant ethical shifts in response to new knowledge, enhanced understanding or evolving values and beliefs. In many ways, that is the way progress is built upon and we move beyond previous understandings. If we look back at what were seen as the ethically accepted views 100 years ago, in some circumstances we would see some of them as being quite ignorant by current standards. So I am certainly not arguing against the notion of making such shifts. But when we make such shifts I think we need to be very conscious not just as a parliament, although that would be a good start, but also as a community more broadly, as much as is reasonably possible, about what it is we are doing, why we are doing it and what values we are adopting and incorporating along with that. At this stage of the debate I can only say that when it comes to the key question of whether it is the right thing to legalise the creation of embryos through cloning techniques specifically for the purposes of research I am still unsure, as I am about whether the use of animal eggs in such a process should also be legalised.

It is not my job, nor would I suggest is it the job of anyone in this Senate, to second-guess what type of scientific research would bear the most fruit. We are not scientists, or very few of us are; we are legislators. Indeed, the anti-science and anti-scientist flavour of some of the debate around this legislation has concerned me greatly. I do not think you can pick and choose when you want to say science is a good thing depending on whether or not it produces answers that you are comfortable with. We need to open ourselves to the exploration of knowledge wherever possible, unless there are very good reasons not to.

I have been particularly baffled by the arguments that suggest that embryonic stem cell research, whether using SCNT embryos or other embryos, can produce nothing of medical value that cannot be done through pursuing research into adult stem cells. Frankly, for anyone, and certainly for a senator in this place—who should and must have done some research into this issue before speaking on this matter—to say point blank that the science tells us that this will not produce cures is simply intellectually dishonest. I understand those who say that ethically they cannot support any legislation which authorises the destruction of embryos, even though that is not a view I share. However, I find it harder to respect those with no scientific qualifications who still try to attack the science as having no potential when the facts so obviously show otherwise.

As I have said, those who oppose this legislation have the strongest responsibility to justify why we are taking away the hope of treatments and cures from the sufferers of debilitating illnesses and why we are turning ourselves away from the potential knowledge that we could find. To use the reason that our society’s values should be such that no human life, even that of a 14-day-old embryo, should be deliberately terminated in any circumstances is a reason some might put forward that I can see as valid, even though it is not one that I agree with. But to say that this research should not be permitted because of a spurious assessment that it will not produce cures I think not only is to engage in intellectual dishonesty but also is a cowardly way of avoiding accepting responsibility for a decision to take away legitimate hope.

I have found the unfounded attacks that some have made on the integrity and professionalism of the members of the Lockhart committee particularly unfair and unreasonable. Attacking scientists because they have a view that you do not like is most unfair. At-
tacking them for the fact that they might make money out of some of their research is equally unreasonable, particularly in a society like ours. As a person who has been wrestling with some of the issues involved here, such personal and unfounded attacks have certainly not made me any more favourably disposed towards considering the views of those who engage in them. However, whilst my examination of the matter before us has increased my general admiration and respect for scientists and the work they do, they must of course, as they themselves acknowledge, operate within the bounds of our society’s laws and ethics.

There have been many different reasons and rationales put forward for and against this legislation. Some of them I have found to have some merit but insufficient weight on their own to make the case for or against. Some I have found to focus on matters that are really outside the legislation we are considering. A lot of the debate and argument surrounding this legislation has been rerunning embryonic stem cell arguments, which frankly we dealt with four years ago.

As we all know, this legislation is subject to a conscience vote. As a Democrat senator, I always have the right and responsibility to vote according to conscience on any matter, should I feel strongly enough about it. However, the fact that senators from all parties have the opportunity to do likewise on this specific legislation does of course bring greater weight to my own deliberations. I wish we had more conscience votes in parliament or at least a greater acceptance of the right of parliamentarians to vote differently from the majority of their colleagues on those occasions where they have strongly enough held and well enough informed views to the contrary. I think that would dramatically improve the effectiveness and legitimacy of our democratic process. However, that is a debate for another day. A conscience vote means we are all entitled to vote according to what we believe is right, but the right to use our conscience also entails a responsibility to do what we can to ensure our conscience is well informed. I think that means opening your mind to the arguments and seeking to consider a range of views.

Father Frank Brennan has just released a book which is quite timely—not just for this debate. I would suggest, but also for many issues our society is currently wrestling with—called *Acting on Conscience: How Can We Responsibly Mix Law, Religion and Politics?* Perhaps we could add in science and a few other things as well there. As he notes, exercising one’s conscience, particularly in a public decision-making capacity, does not just mean going with one’s own personal preference or being free to do your own thing; it means coming to a decision after making a genuine effort to fully inform oneself and draw on the wisdom, views and beliefs of others and the wider society more broadly where possible and necessary.

I thought the Senate committee process examining this legislation was somewhat unsatisfactory. Rather than a genuine attempt to inquire into the issues, it seemed more like a partisan exercise, which is probably not that unusual in this place, except that the partisan divide did not run along party lines for a change. It was also, clearly, too rushed for such important legislation and such significant issues. That is also something that has become much more commonplace in this Senate, unfortunately, in the last year or so. However, there have also been some very worthwhile and thoughtful contributions from all sides of the debate. I would like to thank those people who provided submissions and evidence to the Senate committee inquiry. Given the importance of the issue before us, we need to examine more the substance of the arguments that need to be considered.
I would like to particularly pay tribute to the members of the Lockhart committee, both for their original inquiry and report and also for the way they have conducted themselves and continued to make themselves available throughout this process, even though this has opened them up to some quite disgraceful and unfounded attacks on their character and professionalism. Whilst I may end up disagreeing with some of their recommendations, I think they have undertaken the task that they were given with great distinction and they deserve credit for it. I think the process they used, whilst it was not totally perfect, certainly contrasts well with the process that we have had to use in considering the legislative aspects of this issue.

This legislation is not about abortion. It is not really about whether to allow embryonic stem cell research, something which it is already legal to use embryos for in certain circumstances. Whilst I am very keen to give scientists in Australia every opportunity to be at the cutting edge of international scientific research, that is not reason enough on its own to legalise research that is currently illegal.

I am one of those who believe that the ends do not, on their own, justify the means. The means by which we pursue something do tend to influence the end that we actually reach. I can accept that it may be appropriate in some circumstances for our society to legalise the creation of embryos for the purpose of using them for research, as long as such research is undertaken before the embryo starts to develop the beginning of any sort of nervous system. I appreciate that many in the community do not support such a view, but I do not think that their view is held widely enough or strongly enough throughout our entire community to prevent those who hold a different view from being able to conduct such research when it clearly has the potential to bring great benefits to many people.

However, I am very uncomfortable with the prospect that our society could legally institutionalise a notion that some embryos have greater intrinsic worth than others depending the method of their creation—whether they were created through cloning techniques or through an egg and sperm. I am very uncomfortable with the fact that the very first step our nation takes towards legalising the creation of a human embryo through cloning should be accompanied by a very specific assessment that this embryo has a lesser status and a lower intrinsic value than a human embryo produced by an egg and sperm. Frankly, I can live with that in the context of the specific activities the legislation seeks to legalise, but the rationale and values accompanying that are not quarantined within a single piece of legislation; they do become part of our social and scientific ethical base into the future.

This was a matter that was touched on in the Lockhart report, where it spoke about different embryos having different social and relational significance. It was specifically touched on, although briefly, in the majority report of the Senate committee inquiry in paragraph 3.31, which quite specifically stated that embryos created through cloning have a lower status than an embryo produced by egg and sperm. That concerns me, and I will continue to wrestle with the concerns I have about that over the next day or two.

Senator HURLEY (South Australia) (11.26 am)—Politicians are not elected to make expert decisions about complex technical matters. I believe our role is to represent our electors in evaluating a reasonable outcome from competing interests, often in quite complicated debates such as the debate on the Prohibition of Human Cloning for Reproduction and the Regulation of Human
Embryo Research Amendment Bill 2006. I majored in biochemistry and microbiology for my Bachelor of Science degree, and it was tempting to get immersed only in the scientific detail of this debate. However, it has been over 20 years since I was in a laboratory and, while not quite as deficient as some of the opinions in this debate, my scientific expertise is nothing to be relied upon.

For my scientific understanding of the relevant facts I have relied very heavily on an excellent summary, *Key recent advances in human embryonic stem cell research* by Dr Nicholas Gough. Clearly Dr Gough has no blame for my ultimate decision on this bill. His paper in fact removes any excuse, I believe, for voting against the bill on scientific grounds. His paper outlines that human embryonic stem cells have been derived for over eight years now and there are more than 75 fully characterised lines and perhaps 300 with unstated levels of characterisation. There have also been some improvements in tissue stem cell field research. These improvements have demonstrated greater developmental potency than previously thought, so that is some advance, but have also demonstrated some significant restrictions, which means that tissue stem cell work cannot be taken as far as the human embryonic stem cells. Dr Gough, as part of his research, concludes that 'to maximise the potential of regenerative medicine in its totality, appropriate, non-polarised research across the spectrum of cell types' is required.

I am convinced also from my review of the information that using adult stem cells will not, certainly over the short to medium term, substitute for somatic cell nuclear transfer. That means that by restricting SCNT technology we run a clear risk of not developing technologies that will assist human medicine.

I have to say, almost in parentheses, that I am very attracted to the proposition outlined under one of the points in the Parliamentary Library paper *Therapeutic cloning: the pros and cons*. It says:

Markus Grompe, a leading US researcher in the field, suggested that, theoretically, it should be possible to by-pass the embryonic stage and proceed from a somatic cell to a stem cell by over expressing a gene in either a somatic cell or oocyte. A US ethicist, molecular biologist and priest, Tadeusz Pacholczyk, favours such a future possibility because it would avoid over-reaching to a toti-potent state, that is, where a complete embryo could be developed. The somatic cells would be reprogrammed to a pluri-potent state only.

But obviously that is a future technology which will take many years to reach, if indeed it does fulfil its potential.

I think many of these technologies that we are discussing will take some time to get past even an approved research stage to a clinical stage, and I am very disappointed that this debate has encouraged some people with severe diseases or who know people with severe diseases to think that there may be some sort of cure in sight. I certainly do not blame anyone in this chamber, but I had a call today in my electorate office from a man whose wife has been recently diagnosed with multiple sclerosis, who was very unhappy about a report in my local newspaper that I would vote against this bill. I think it is very disappointing that vulnerable people who are sick themselves or whose family members are sick—and I think many of us would have been in that situation and would understand exactly what he is going through—might have this false hope that this kind of technology can produce cures within a few years. I think that is a very unfortunate aspect of this debate, which has otherwise produced some very interesting and good conclusions.

However, despite my view that voting against this bill will restrict scientific discov-
ery. I do not think that it will be critical to advances in this area in Australia. Above all, my reasoning is that it is essential that such sensitive research be appropriately regulated and overseen, as it has been up to now. It is also critically important that scientific and ethical policies be monitored and enforced. But I do not think we have clarified the ethical parameters that will be tolerated by our society, and it is therefore impossible to put in place adequate policy to cover the justified concerns put during this debate. In particular, I believe we need to proceed cautiously and conservatively with regard to any science that deals with human life and reproduction. Therefore, it is a difficult decision, but I have decided that I will not support this bill.

Senator MURRAY (Western Australia) (11.33 am)—Senator Patterson’s Prohibition of Human Cloning for Reproduction and the Regulation of Human Embryo Research Amendment Bill 2006 may end up as the lucky 18th private senator’s or member’s bill to pass into law in 105 years of the Australian Commonwealth—or it may not. The numbers are close, apparently. In terms of the two houses, there have been 10 private senator’s bills and seven private member’s bills—17 altogether—passed into law in the 105 years of the Australian Commonwealth. As those numbers show, these occasions when private bills come to the vote are rare events. They require prime ministerial backing to be given the Senate sitting time to even advance this far. The numbers of private bills that never make it are legion. Right now there are 54 private senator’s bills on the Senate Notice Paper, of which eight are mine. Mine focus on issues of accountability and integrity, like freedom of information or public disclosure, electoral matters and political honesty—so they will never see the light of day under the coalition. Can you even imagine this government attending to moral and ethical issues like those? I cannot. So congratulations to Senator Patterson on breaking through. Perhaps it is indeed a miracle.

Of course, as in most legislative endeavours, Senator Patterson is not alone. Senator Stott Despoja has laboured for many a long year on these scientific health and research matters, consistently and persistently raising them in public and chamber debate. If Senator Patterson triumphs, it will be Senator Stott Despoja’s victory too. Senator Webber has joined Senator Stott Despoja in proposing a draft bill that parallels Senator Patterson’s, and there are many others deserving credit for advancing this particular cause, such as Dr Mal Washer from the House of Representatives.

This bill has been characterised by some as religion versus science, belief versus reason. If this is true at all, it is only true to an extent. The ranks of those against these initiatives are filled with those who wear religion as a badge, but they are also filled with those who do not; and the ranks of those who support Senator Patterson’s bill are also filled with those who are churchgoers. So to describe this bill as religion versus science is somewhat simplistic and probably inaccurate. If there is perceived to be a small group of parliamentarians who argue as if they are under orders, that would somewhat diminish the claim to conscience. I am sure that, if such a group does indeed exist, it is very small.

Personally, I am too conscious of the past and present of history and practice to be inclined to automatically accept the urgings of many religious leaders. I am too conscious of some of the old religions’ attachment to profit, power and politics, of the practice of hypocrisy, of pockets of paedophilia, of bellicosity and hatreds, of misogyny and homophobia, to be unquestioning of their orders. As for some of the new religions, they seem
to have the vices of the old, as far as I can see, with a particular love of profit. I am unimpressed by thin-lipped bigots who extol the virtues of families, tearfully begging for forgiveness when they are found out. I am unimpressed at the way too many have latched onto the ‘con’ in congregation—but I will concede that their trancelike devotees do look happy to have their pockets so entertainingly picked. And when you are confronted by images of people who shout, ‘God is great,’ while blowing up some poor woman on the way to the shops, you can understand how religious fervour can get a bad name.

No, I am all for the old-fashioned idea of faith. The religions and priests I like are those that do not blanch at the thought of a female archbishop, that are not con artists and that do not think men are so beastly that women have to be covered in cloth from head to toe. I like people who practise faith, hope, light, peace, charity and good works; I like people who are fallible, tolerant and human. Fortunately, I know quite a few like that, so it turns out that one can have faith after all.

There are of course mad scientists as well as religious maniacs. Science has given us many of the evils of our time: environmental, social and economic disasters. This bill, however, is not about harming but about helping. Certainly there are ethical issues to weigh up. Certainly there are scientific and ethical arguments that support cases for and against the provisions of this bill. I am not going to indulge, in this speech on the second reading, in a forensic determination of the scientific and ethical arguments on either side. To some degree I do not understand them all and to some degree I am not equipped to do that in full.

With all due respect to the sincere speeches from all sides of the chamber, in following this debate I have taken particular interest in the views of senators from the Liberal Party, at last left off the leash from the awful oppression of the Howard doctrine of conscienceless conformity. I wanted to see where their new consciences would take them. I always attend carefully to the views of Senator Humphries—a careful, kind and thoughtful man. I was captured by a beguiling speech from Senator Ronaldson. Senator Vanstone, a woman worth having on your side, entertained us, as she nearly always does, with an intellectual and at times idiosyncratic exposition. Senator Minchin was reasoned, forthright, consistent and unshakeable—all characteristics of his. My friend Senator Ferguson was his usual open, honest and decisive self. When he said he could not forgive himself if he voted against this bill, he really did mean it. Like Senator Ferguson, Senator Barnett brought his own anguish over incurable diseases with him to the debate, but has come to a different conclusion.

I weighed up the conflicting views of two good doctors, both Liberals from Western Australia: Drs Alan Eggleston and Mal Washer. My decision is that I give my vote to Mal. The rule of law is under assault in this country and our rights and liberties are being eroded by the executive, but I do not fear that the rule of law is so eroded that the safeguards and penalties that prevent human cloning in Australia will prove useless. I do not fear that I will live to see centaurs, minotaurs or satyrs. I do not fear that Frankenstein will be regenerated, although some would say he already has been and he has got a Senate seat. I do not fear mad scientists will pervert the intention of this legislation, not because I do not expect Australia to have its share of mad scientists but because I think the legislation gives us appropriate safeguards against them.

What I do fear is that if I voted against this bill my vote could extinguish the chance
for scientists to find ways to cure diseases that are beyond us at present. What I do fear is what Senator Alan Ferguson captured in the final words of his speech. To repeat his words exactly: I would never be able to forgive myself if I did not support a bill that would give medical scientists every chance to find a cure for these diseases. That is my position. I will consider amendments on their merits, but I will support the bill.

Senator SHERRY (Tasmania) (11.41 am)—The Senate is considering the Prohibition of Human Cloning for Reproduction and the Regulation of Human Embryo Research Amendment Bill 2006. We have a conscience vote. This is the fourth occasion in my 16 years in the Senate where we have been allowed to decide the issue based on our own examination of the facts and come to a personal decision based on our own set of personal values. I would have to say I do not fear conscience votes. In fact, I wish we had a few more conscience votes in the parliament. I do not see that they are a threat or will undermine party discipline or democracy as it has evolved and as we currently practise it in Australia. So I think it is a good thing that we are from time to time presented with decisions that we have to arrive at in a non-collective way and that we will be held accountable for those decisions. I do not shy away from that responsibility, nor do I fear it or worry about it, although I have worried a great deal about the decision I have to make on this particular piece of legislation.

It is not my intention to go into detailed analysis of the vast amount of material on the issue before us. That has been referred to to varying extents very well by a considerable range of senators and the issues are well canvassed in the Senate Standing Committee on Community Affairs report. I would like to congratulate all the senators who were involved in that particular report on their diligence and hard work—again, I think, a good example of the very good work that Senate committees do.

My approach to issues around human life has been a socially conservative one. It is not a social conservatism based on an active involvement in religion or Christianity. However, I am a student of history. I read a lot of history, and I have a general moral view that in our approach to dealing with issues surrounding human life we should be extremely cautious about how we proceed. It was very difficult for me to come to a conclusion on this matter. The central problem is moral and ethical; there are two difficult moral and ethical issues to resolve. On previous occasions in considering these matters, as is on the record, I have made it clear that it is with great trepidation and worry that I view developments around experimenting with the fundamental building block of life. I have great concerns about where experimentation in this area is going to lead us, perhaps not in my lifetime but in 50 or 100 years time. That is a socially conservative view. I know that on both sides of this debate there has been some exaggeration, but I do genuinely worry about the ‘Boys from Brazil’ type evolution of the human species.

The other moral and ethical issue I had to consider was the possibility—and I do say it is a possibility—and the hope that there may be some scientific advance as a consequence of this legislation that would see the improved diagnosis and treatment of what are currently untreatable diseases. I had to consider whether there was any realistic possibility of dealing with these serious medical diseases with an alternative approach. So they are the two difficult ethical and moral issues I have had to deal with.

On this occasion I have to say, without a great deal of confidence and with a great deal of worry about where we are headed, that I have come to the considered view that
I will support the second reading of the bill. It was a very difficult decision and not one that I have easily come to. I believe this experimentation is not without some risks in the future, as experimentation proceeds in this area. Nevertheless, I have with a great deal of worry, concern and reluctance, come to the conclusion that it is best that the bill should pass the Senate and the Parliament of Australia. However, I will be looking very closely at amendments that attempt to deal with further safeguards as experimentation moves forward in this area. I am sure those amendments will be forthcoming. I have not seen any as yet, but I will examine those amendments on their merit.

I have come to a general conclusion that the bill should pass, with the possibility of perhaps greater scrutiny and safeguards with regard to the moral and ethical issues involved. I have had to weigh up very carefully the issues around experimentation with the building block of life versus the argument that there is the possibility of a cure for presently incurable diseases. I do not like to see people offered false hope. I do understand the significant medical health issues faced by people who suffer a range of serious diseases. If there is some hope that treatments can be developed then morally and ethically that should proceed, but with great caution. In my case, it will involve a great deal of worry about how that should occur and about ultimately where it will lead.

It is strange in politics how you come to a conclusion. When I flew into Devonport last week the cab driver and I got involved in a conversation. He had a retarded child, 33 years of age. He was explaining to me some of the great difficulties he and his wife had experienced in having to deal with the issues around having a retarded child. I do not know how a family can cope with these often grave issues. I have enormous respect for any parent who has to look after a child whose capacity is limited and who experiences suffering in this way. I think governments should place much greater priority on providing the resources to assist in this area. I just do not know how these families cope with the grave difficulties associated with having such a child.

Talking to that cab driver encapsulated my general worry and my belief that we should at least try to do more for the people in the community who suffer these appalling diseases. Some claims about the great advances that can be made have been a little overblown—such advances remain to be seen. But if the life of even a few people can be improved by advances in research, and thus diagnosis and treatment in this area, certainly that is a more important ethical and moral consideration when weighed against the ethical and moral considerations involved in experimenting with the building block of life. It was not an easy decision I came to last night, after a great deal of thought and grappling with what is an extremely difficult issue.

I would like to thank all the senators who have participated in the debate. I think it has generally been a debate conducted well and based on a great deal of knowledge and thinking. It is our role as legislators in a community to set parameters around a variety of moral and ethical issues. That is the role of government. We might disagree about how it is done, where it is done, and the amount of detail, but it is the role of the government of the day to deal with these issues. This is not an issue that should be solely dealt with by scientists. We have a community responsibility, in a Western society where Judaeo-Christian values are rightly at the forefront of our consideration of life, and we should not shy away from that or be afraid of it.

I have been pleased with the general respect shown by senators towards each other
in a debate where there are strongly held views. For my own part, perhaps I should not have indicated to the Australian last week that I was undecided on this matter because I then received an absolute bombardment of emails, requests to speak to me, and all manner of information through the mail. Generally, my approach has been to consider the issue on its merits, read at least some of the material—particularly the Senate committee report—weigh up the issues based on my own personal experiences and ethical values, and come to the conclusion that I have. In concluding, I state that I will look very, very carefully at amendments that may deal with some of the more difficult regulatory and governance type management issues of this legislation, as I anticipate it will be passed. I think we need to focus on some of those issues in the committee stage.

Senator COLBECK (Tasmania—Parliamentary Secretary to the Minister for Finance and Administration) (11.55 am)—I rise to make my contribution to the second reading debate on the Prohibition of Human Cloning for Reproduction and the Regulation of Human Embryo Research Amendment Bill 2006. Like others in this place—certainly mirroring the comments that Senator Sherry has just made—this has been an extremely difficult process for me. It is very exposing to stand up in this place and, in front of the nation, on an issue of such importance as this, put yourself out there on the public record.

In that context, I congratulate Senator Patterson, Senator Stott Despoja and Senator Webber for having the courage to bring this particular issue before the parliament in the first place. It is very confronting and, as the debate has indicated so far, it is a difficult issue for people to grapple with. It takes a significant amount of thought time to come to a decision. Like the speaker before me, Senator Sherry, it has taken me a long time to sort this out and work out what my general direction is going to be.

I thank my constituents who have contacted me, and my colleagues for the way they have conducted this debate. I think it has been very considered. There have been some extrapolations, on both sides of the debate, in relation to what might or might not occur but generally it has been a very civilised process. And I think that stands this chamber in very good stead.

When I first came to the debate and when I first took notice of some of the issues being put before us it was in the context of the potential for development of unique therapies that removed the risk of rejection—therapies developed specifically for an individual through the process of cloning. At that point in time I started considering the scale of what was being considered, and an issue that came to my mind was the resource that was required to deal with that process. There were some people who, very early in the piece, expressed concern about where that resource was going to come from. I think John Anderson was one of the people who expressed concern. Not being so brave, or perhaps keeping my own counsel, I decided not to say anything about that but to do some further research.

It now transpires, following further discussions and questioning, that that may not be the way that it is all going to go. It may be that there are a number of lines that are developed that assist a majority of people. Up to 80 per cent of the population can be looked after through this process through a certain number of lines. But that demonstrates to me that within the process there are still a huge number of possibilities, options and directions that this can take. It may be that a unique therapy is developed, and that raises serious concerns in my mind. Those concerns, particularly in relation to supply of
eggs, have been expressed a number of times on all sides of the debate during the last two days.

In my mind, what we are considering is research that is complementary in respect of what we decided on in 2002 in relation to adult stem cells. What is being proposed is obviously another step, and some see it as the thin end of a wedge and the progression down a so-called slippery slope. As it took me a long time to come to a decision in relation to adult stem cells, consideration of that next step, and whether it was in fact the thin end of a wedge or a progression down a slippery slope, was something that I really needed to take some time considering. My conscience told me that I had essentially crossed the Rubicon when I decided to support the stem cell research in 2002, as difficult as that might have been. But having made that decision still did not take away the concerns that I had in relation to the regulation or management of the supply of human body parts, specifically eggs, to deal with this process.

We heard several times today and yesterday about who ought to be in control of the ethics surrounding this process. It is a concern that I also have in relation to this. Senator Bob Brown, whom I very rarely agree with in most debates, I think expressed very well that we need to maintain some control, as the Australian parliament, of the ethics and the regulation of these technologies and where they are heading. In my view that is, importantly, our responsibility—that we retain oversight of this. It was said very early in the debate that this was just the first step and we would be back to debate this again—and perhaps we should. As the technology develops, we should consider where we are at and where we are going, and we should not be frightened of coming back to consider it. As hard as it may be, as exposing as it may be, I think we should be more than prepared to come back as many times as it takes to ensure that the proper regulations, the proper protections, are in place that ensure that this research is carried out in a moral and ethical way that is in accord with the wishes of the Australian people through the Australian parliament. To that end, I flag that I will be moving amendments to the bill to that effect.

The bill calls for the NHMRC to develop guidelines that support the legislation in relation to the donation of eggs and how they are managed. In my view, a better way to deal with that, and a more responsible way for us to oversee that, would be through regulation. So I will be moving an amendment that regulations rather than guidelines be put into place to oversee that process. That obviously means that potentially we will be back here to look at the regulations, but I do not have a problem with that. I do not fear that. I think that is our responsibility. I think that is a way that we can ensure that the issues that I have spoken about before are properly and responsibly managed by us and that we can retain that proper oversight.

Further, I will be moving an amendment to the effect that the bill does not effectively commence until those regulations are in place, so that we know that the protections are in place before we start moving things forward. I see that fundamentally as our responsibility. During previous debates on other issues, particularly on RU486, the responsibility for oversight was taken away from the parliament—from the minister, initially, but in my view it should have remained with the parliament. I see that we have a responsibility in relation to this.

I did some research on the situation that exists nationally in relation to oversight of human tissue. The results were quite interesting. They demonstrated a very varied regulatory oversight regime across the country,
which varies from state to state. A paper was prepared in 2004 by Imogen Goold, ‘Tissue donation: Ethical guidance and legal enforceability’, and published in the *Journal of Law and Medicine*. In the conclusions it indicates that the ‘regulation of human tissue donation and use in Australia is well regulated in many ways’. But it did indicate that legislation has not kept up with ethical guidelines. The proposition was put that all state human tissue acts require comprehensive revision.

Given the context and the import of the issues that we are discussing today, that drives me more strongly to assert that what we should be considering in relation to the oversight of this issue is regulation, not guidelines. Beyond such state legislation, eggs, adult and embryonic stem cells are not necessarily nationally covered in a consistent way. Therefore, in my view, it may be argued that regulations may be developed as part of this process. However, the growing complexity of non-blood based human-tissue based therapies and therapies yet to be devised—whether adult or embryonic stem cell therapies—suggests to me that an overarching national regulatory approach is required.

My support for the bill is in some sense conditional. I will be putting those amendments during the committee stage of the debate. I strongly urge senators to positively consider them. I think it is the right thing for us to be doing, and that is the basis of my support for the legislation after all the consideration, thought and consultation. I will not say ‘lobbying’ because I do not think you can lobby a conscience. Unlike Senator Sherry, I have remained aloof to media calls and other things of that nature. I can make up my own mind and I can seek out my own information. Fortunately, that approach has spared me the inundation that some others might have received from one side of the equation or the other. Perhaps, having let the cat out of the bag, I might not be so successful next time. It has been a very difficult process for us all and I think it is appropriate that my views are rightly demonstrated here in the chamber rather than counted in a poll in one of the newspapers or elsewhere in the media. I look forward to engagement with senators in further parts of the debate.

Senator SANTORO (Queensland—Minister for Ageing) (12.08 pm)—I am sure that colleagues both in the Senate and in the other place will appreciate that my position as a commentator on this bill is somewhat delicate. As the Minister for Ageing, I potentially have carriage of the activities which could be carried out under the Prohibition of Human Cloning for Reproduction and the Regulation of Human Embryo Research Amendment Bill 2006 if it receives parliamentary approval. At the same time, as a senator for Queensland, I must deliberate on this bill by considering the merits of the various arguments even if my personal sympathies are ultimately at odds with my responsibilities as a minister. Such, I suppose, is the nature of so-called conscience votes and such, of course, is the nature of being a minister. Each of us is required to implement equally without prejudice or bias both those laws we are naturally inclined to celebrate and those laws we privately find unpalatable.

Since I became the Minister for Ageing early this year, I have had a strong interest in the response of the government to the Lockhart inquiry, as well as in the efficient implementation of the licensing regime for embryo research created by this parliament in 2002. I have, as is appropriate within a pluralist democracy, taken a professional rather than a personal approach to these tasks. Today, however, I believe it is in many ways more appropriate to make a personal statement. My personal views on issues of live embryo experimentation, cloning, hybrids, chimeras and other variants of destructed
embryo research are well known to senators both beside and opposite me. Nonetheless, this issue calls for clear and plain speaking and I am happy to restate my position.

I believe that, at the most basic level, the decision to suspend the recognition of a life or to redefine life as being at a certain point which suits a particular branch of scientific research offers a threat to our most fundamental concept of our own humanity. Many colleagues will be aware of the notion of Pascal’s wager, which is the proposition that one should accept Christianity because, if it is wrong, the cost of participation is low but, if it is true, the cost of exclusion is high. While I do not dispute the logic of that, I have always found it to be a somewhat disreputable proposition. It asks us to choose faith as a risk management tool rather than as a source of illumination.

In this bill, we are being asked to make a similar though somewhat more challenging wager. We are being asked to stake the many potential lives of embryonic humans on the prospect that there may be some benefit, either incremental or miraculous, for those whose lives have already passed from the potential to the actual. I have several problems with that wager, not the least of which is that it sets a precedent for exchange and values one life more highly than another. I know that many people console themselves that this is not a real exchange, that we can delineate a critical point where life begins, but I suggest that this is an argument of convenience and not a contention of fact. Again, I suggest that what is at stake here is our humanity. It is a question of justice, which should not be answered in terms of convenience.

I would also alert colleagues that what is being presented here as a simple extension of the decision supported in 2002 is in fact a radical reinterpretation of the principles of that decision. In 2002 the parliament accepted that surplus embryos—in effect, unfortunate by-products of the IVF process—might provide a public good by being used for experimentation rather than being allowed to naturally expire. The argument relies on two pillars: first, that IVF is a positive act towards creating life—and I am certainly not going to contest that—and, second, that there is an extended good in deriving scientific information from embryos created as surplus in this process.

The latter point remains highly controversial. It is a judgement with which I personally retain some discomfort. More importantly, I note that the proposal that we are here to deal with today throws those two pillars out the window. We are now told, contrary to the 2002 assertion that the creation of embryos which might find their way to the research laboratory should only be a consequence of the creation of life, that at least two new categories of embryos—clones and hybrids—should be created subject to the condition that they may never be allowed to advance life. This is a remarkable reversal in four short years. It limits any confidence we might have that the new and final ethical boundaries being offered in this debate are more than transient positions.

Other colleagues in the last 24 hours have spoken most eloquently on the issue of studied incrementalism and the proximity this proposal gives us to reproductive cloning, and I commend them on that. But what bothers me even more than such abhorrent prospects is that this Senate and this parliament are being asked to make the wager, the exchange of life and to reverse the tortuously agreed upon position of 2002 on little more than rhetoric.

In coming to my position on this bill, I have, as have undoubtedly many other colleagues on both sides of the argument,
sought the advice of the most learned ethicists and scientists available. After each discussion, I have found the argument to be less and less clear. The proposition being put is that the exchange of life between the potential and the actual is justified by possible breakthroughs to end current suffering. I am confident that all 76 members of this chamber are naturally sympathetic to the goals of that argument. We recognise that many fellow human beings suffer greatly on a day-to-day basis and that, where there is an opportunity to alleviate that suffering, whether today or in 20 years, there is a moral drive to do so. But we draw lines on that. We no longer allow involuntary experimentation on prisoners and we no longer view any branch of society as having diminished rights against threats to their privacy, dignity or life where science is concerned.

But here we are asked to create a new dividing line which diminishes further the rights of embryonic humans in exchange for our common desire to help those who are suffering. Others, both publicly and in this place, have noted that honourable senators, including proponents of the current bill, are making proposals which they explicitly rejected and abhorred in 2002. This is a chamber of debate and reflection, and colleagues are both allowed and encouraged to change their minds when evidence changes. I must say that I am troubled that one can not only change one’s mind but also contest the very validity or appropriateness of a claim one was willing to endorse so strongly in relatively recent times, but that is a matter for individual conscience—and that, I suppose, is what the debate today is all about.

The real problem I have is that, after the best part of a year of public and parliamentary discussion on this matter, the evidence for this dramatic ethical realignment has failed to emerge. I really do appreciate that there is a list of diseases for which we currently have no cure. I appreciate that there are theories by which, after 15 years of research and a few more years of commercialisation, cloned and hybrid embryos might—might—provide a pathway to relieve suffering. I appreciate that those senators committed to supporting this bill will do so in the belief that this is a sufficiently complete equation. But for me it is not complete. Such a bold reversal in our communal ethical judgement should require compelling evidence to support it, and even the most dogmatic supporters of this legislation have, during this debate and before it, failed to provide any such evidence. There is no proof either that therapies will be derived from this vein of research or that the research itself is safe for human experimentation. The latter, of course, explains the drive to create embryo experimentation. If we accept the new regime, then we have the opportunity to experiment on humans without worrying about the consequences. Amongst other things, embryos lack the wherewithal for a class action.

I find it remarkable that this bill has been put with such force and such haste and in such an absolute vacuum of evidence. As senators would know, embryo cloning is legal in some countries, and has been for some years, yet it does not appear to have been the irresistible magnet for top scientists that proponents of today’s bill would have us believe. One cannot help but get the feeling that at the roots of the desire to remove the prohibition on cloning and hybrid embryos is a lack of faith in the democratic process—that parliament is unfit to draw a line between what is right and what is possible.

It is a peculiar feature of recent times, and of this Senate in particular, that science is now our ‘new sacred’. It was once a given that our values and actions had reference points in what was right and good and what most of us believe about this world and the
We are now told that there is no place for such petty abstractions where they stand in the way of research. We are asked to baptise what is possible rather than what is good. I would contest this change in approach, because I believe it is both unsustainable and dangerous. The presumption behind this proposed reallocation of our trust and faith is that science is purely an altruistic endeavour. For those of us involved in politics, or for anyone who has their eyes open, this requires a fairly broad suspension of disbelief.

Without denying the desire for good which drives many researchers, I would suggest to senators that science, from the time of the ancients, through Newton and through to today, has been accompanied by a range of perhaps less admirable drivers. At heart, science is driven by curiosity, which is a necessity for a good researcher but does not in any way translate to justice. Accompanying this are the traditional structures of universities, research institutes and peer environments in which scientists operate, where prestige and promotion are common goals and where ‘publish or perish’ remains a powerful dictum. Again, one struggles to find elements of justice here.

Finally, we have the more contemporary challenge to the natural altruist: the lure of biotechnology commercialisation. I do not think that anyone in this place would think that someone of my philosophical colour would find it difficult to reconcile the prospect of justice and economic return, but it concerns me that in this case an imbalance between the two is eroding the quality of the argument. This problem is also present in contemporary ethics, where the commercial sources of many ethicists’ incomes are insufficiently distant from the objects of their contemplation. In short, science, as the Lockhart report so clearly reminds us, is a business, and I think that it is the business of science we are being asked to approve here today rather than its more noble goals.

We all know what I mean. Most of us here are old enough to remember the tobacco researchers who told us that there was no link to cancer. So when I hear colleagues saying, ‘I don’t fully understand this but I trust the scientists,’ I think a note of caution and a healthier dose of scepticism might be in order. As I say, science is the ‘new sacred’. It offers a liturgy of delivery from suffering and the mystery of a better life. Peculiarly, we are told that it must replace what is now apparently the ‘old sacred’.

I had an odd experience a couple of months back when I was maligned in a national newspaper for my attitude to cloning and misrepresented as to my role in the debate. During that process, a journalist who deserves no mention in this lofty place put it to my media adviser that my personal faith provides a conflict of interest for me both as a senator and as a minister. I have never been quite sure what it means to ‘boggle’, but I think that this is one of those cases where the mind unquestionably boggles. We are asked to believe that the universities, individual scientists, biotechnology vehicles and drug companies who would patent this research have no conflict of interest and that economic returns are but a happy consequence and a market mechanism for good, yet belief in the goodness of God and man, and the presence of objective truth is a conflict of interest. The boggling is overwhelming.

In July this year, I had the honour to address a large gathering of Jewish Australians in Melbourne on the issue of the Australian media. In that speech, I asserted that we have a duty to:
... rescue the concept of moral truth from the dustbin of history into which post-modern moral relativism seeks to discard it. If we want to protect basic and fundamental universal human rights, and in so doing inoculate our democracy
from the possibility of repeating the horrors of the Holocaust, or the Gulags, or Pol Pot’s Year Zero, we must remember that human rights rest on the foundation of moral absolutes. We seem to be losing that memory and replacing it in so many areas of our society with a rhetoric of transactional good: the kind of ethical transaction which allows us to exchange one life for another and which we are asked to accept today.

Let me make it perfectly clear. I am certainly not going to draw comparisons between this proposal and those most hideous events of the 20th century, but it concerns me that when we substitute our desire for objective truth, even when that desire is to relieve suffering, we are straying from the underpinnings of our humanity. I am further concerned that the progress of this debate has seen not simply a departure from our core beliefs and values but also an open contempt for the traditions which delivered them to us.

In my address on the proposal earlier this year to legalise chemical abortifacients, which was an infinitely simpler proposition than this bill, I said that there was a dangerous implication from one group that only one side of the conscience debate was good conscience. The implication was that Christianity has become somehow incompatible with good conscience and that sympathy and opportunity are higher values. I called on the Senate at that time to never again accept denigration of Christian values as biased, baseless or ill informed. It will not surprise fellow senators to hear that I am consequently disappointed by aspects of this debate and the contempt shown for the Christian tradition both publicly and privately.

I would say this to you today. I understand that not everyone in this Senate is a Christian. Likewise, I recognise that the absence of personal faith does not preclude senators from voting honestly and without prejudice. And I accept that my faith will never be accepted by the acolytes of scientific curiosity as an appropriate barrier to their interests. But let me make this clear: our society is built on the foundations of Christianity, which have been handed down over the past 2,000 years, and the bedrock of Judaism, which fathered it. Whether or not one believes in the message of Christ, one should be willing to acknowledge and respect the guidance which Christianity has offered, and continues to offer, to our society. It is our strongest and most reliable guide as to what is good and just, it is our greatest historical reference point and it is our final protection against the excesses of either anarchy or excessive government.

For me, it is simply truth. But you do not need to accept that to recognise that there is a powerful correlation between faith and justice. In 412 AD, St Augustine, the Bishop of Hippo, wrote a response to an inquiry from his friend the Christian Roman official Marcellinus on the subject of the compatibility of Christianity and politics. He wrote this:

... hearts of mortals nevertheless think that human affairs are prosperous when the splendour of buildings is attended to and the collapse of souls is not, when massive theatres are built up and the foundations of the virtues are undermined, when the insanity of extravagance is glorified and the works of mercy ridiculed ...

I think that that 1,600-year-old paragraph is instructive for us all, whether Liberal or Labor, Christian or not. It reminds us not simply that this world is temporary or that virtue and justice are most worthy goals but also that we should guard against making priorities of what is attractive rather than what is right. I will vote against this bill because I believe it is hasty, ill supported by evidence and offers a fundamentally unjust exchange of one life for another. I would commend all other senators to this perspective.
Senator FIERRAVANTI-WELLS (New South Wales) (12.26 pm)—My contribution is twofold. First, I wish to address a number of arguments and assertions made in the course of the debate and, secondly, I seek to summarise the major arguments against the Prohibition of Human Cloning for Reproduction and the Regulation of Human Embryo Research Amendment Bill 2006. In short, this is a bill that seeks to legislate to create cloned human embryos for research and their destruction. Before proceeding, however, I seek leave to table a petitioning document that is not in conformity with the standing orders relating to petitions. This document contains 15,820 electronic signatures from all over Australia opposing human cloning, including therapeutic cloning.

Leave granted.

Senator FIERRAVANTI-WELLS—I turn first to some incorrect assertions in the debate. It has been suggested that attacks on the members of the Lockhart committee and their recommendations have been personal attacks. There have been serious and genuine critiques of the science, methodology and ethical paradigms employed by the Lockhart committee. A critique is not a personal attack. The angst expressed by supporters of the bill, claiming these attacks are personal, do a disservice to the genuine and legitimate critiques offered by esteemed members of the scientific community and others.

Professor Jack Martin, hailed by then Minister Bishop as one of Australia’s research giants when announcing his appointment to the Human Genetics Advisory Committee, has expressed publicly and repeatedly to the Senate committee that there is no proof of principle about the virtues of embryonic stem cell research. He has cited often, but it seems to have been ignored by many, the remarks of the Lockhart report at page 42:

... at this stage ES cell research has not reached the stage needed to start clinical trials (ie proof of principle of a safe and efficacious treatment in animal models).

This does not constitute an attack on the integrity of the members of the Lockhart review.

It has been stated in this chamber that to claim that this bill will promote further, more radical research, including reproductive cloning, is a reprehensible slur on the advocates of the bill. The sad facts are that the evidence from overseas, especially the UK—which is held up increasingly as the model to follow—confirms that the slippery slope is well greased. There is significant evidence in this regard. For example, Professor Julian Savulescu, of the Melbourne Oxford Stem Cell Collaboration research unit, has already been quoted. His article ‘Should we clone human beings? Cloning as a source of tissue for transplantation’ makes it very clear where this is heading. He gave similar evidence to the House of Representatives Standing Committee on Legal and Constitutional Affairs in 2000 and repeated the same basic line at the National Press Club last year.

Or there is this from University of Melbourne academic D Elsner, who published only late last month in the prestigious Journal of Medical Ethics a piece entitled ‘Just another reproductive technology? The ethics of human reproductive cloning as an experimental medical procedure’, where ‘reproductive cloning’ is promoted as simply ‘an experimental medical procedure’ and part of the armory of reproductive technology, especially to produce ‘saviour siblings’.

Is this Senate to limit its considerations to an unquestioning acceptance of one committee? Surely not. It is critical on such a groundbreaking proposal which this bill represents, namely the creating of human life so that it can be destroyed in research—a bill
which I would remind senators has not crossed the scientific threshold of proof of principle, on the admission of the Lockhart committee itself—that it be rigorously tested and critiqued.

I now turn to the bill and the arguments against it. If someone comes up to you and says: ‘We have this new process. It’s called somatic nuclear cell transfer. We’ll be able to use embryonic stem cells derived from this process to cure all sorts of things,’ then the average person would think: ‘Sure, that sounds impressive—fine, yes, we all want to help people with incurable diseases.’ But if someone comes up to you and says, ‘We want to create cloned human embryos, do research on them for up to 14 days and then get rid of them because it may, maybe in a couple of generations time, help us find cures for all sorts of things,’ then the answer would likely be different. At the very least, that person would ask: ‘Why?’ Fellow senators, this debate is about why. Why do we need to do this? And why do we need to do this now?

Supporters of this bill have followed the edict of the Ethics Committee of International Stem Cell Research when, back in 2004, they posted a statement recommending: instead of referring to cloning, use somatic nuclear cell transfer. This is misleading and intended purely to disguise that this is really about human cloning. No less relevantly, the US President’s Council on Bioethics devotes one whole chapter in the first of its three detailed reports—surprisingly, none of which were referenced by the Lockhart committee—to these definitions. It says that the relevant term should more correctly be described as follows: ‘reproductive cloning’ is ‘cloning to produce children’; ‘therapeutic cloning’ is ‘cloning for biomedical research’. The Lockhart review was able to cite the Indian Council of Medical Research’s draft guidelines for stem cell research, but none of the US President’s Council’s three reports, in 2002, 2004 and 2005. Professor Skene told the inquiry that time precluded a comprehensive inquiry into relevant literature.

The other troubling aspect is the redefining of ‘embryo’. What is happening here is that the proponents of the bill are saying, on the one hand, the prohibition on reproductive cloning will remain but, on the other hand, they want to change the definition of embryo. In short, they are saying that an embryo is not an embryo for the first 14 days; therefore we can experiment on it and then dispose of it and still say we are not undertaking human cloning. The Australian public need to know, in simple terms, what is happening here. Professor Skene herself stated at the inquiry that a somatic cell nuclear transfer embryo is an embryo. She stated:

We did not shy away from calling it an embryo because it is conceivable, as happened with Dolly the sheep, that if that entity were put into a woman, after a lot of care, it could in fact develop into a foetus. So we did call it an embryo. We still regarded it, as many other people did who made submissions to us, as having a different moral status from the embryos that are created in fertility programs.

Indeed, the new definition recommended in the Lockhart report was not and has not been endorsed by the NHMRC. Hence, it is not only premature but misleading to rely on a definition which has not been endorsed.

This debate is not about the merits of adult stem cell research versus embryonic stem cell research—both are legal. This is about community standards and the dignity of legislation. We need to be sure that the Australian people are prepared to make the quantum leap of creating embryos for the scientific purpose of research and then destroying them—and only four years after this parliament comprehensively rejected it. Unless we
can do so with certainty then we must oppose this bill.

The media has portrayed this issue as simply being about finding cures for debilitating diseases, when in fact the evidence before the inquiry suggested that such cures were extremely unlikely from cloning. Cloning raises complex scientific, medical and ethical issues. All are equally important. All deserve consideration. Over the course of this debate we have heard many impassioned speeches about this legislation. Having been a member of the Senate Community Affairs Committee and having been afforded the opportunity to read much of the material and to question all the witnesses who appeared before the inquiry, I am in no doubt that this legislation should be opposed. It crosses a scientific and ethical boundary that should not be crossed. Once crossed, we can never return. Once crossed, no parliamentarian will be able to withstand the next demand and the demands thereafter.

Before summarising the fundamental arguments against the bill, I wish to deal with the deterrence of penalties on research. It has been argued by the proponents of the bill that a 15-year jail term for placing a human embryo clone in a human body or body of an animal is or will be an effective deterrent. I would remind senators that penalties do not deter crime. Take these examples from New South Wales. Trafficking of commercial quantities of heroin and cocaine—at least 250 grams—carries a 20-year jail term, and for one kilogram or more, life. Robbery attracts 14 years, and if aggravated, 20 years. But people still traffic drugs and commit robberies. For greed, people will risk long terms of imprisonment. Many think they will not get caught and will take the risk. In the area of cloning we have already seen examples of fraud and unethical behaviour overseas. I would also remind senators that human or animal cloning is different to other crimes because, unlike robbery or, say, kidnapping, there is no victim and therefore no one to report the crime. In the privacy of the laboratory, no guarantee can be given that such practices will not be undertaken.

Much has been made of science in this debate, but this is also a debate about money, intellectual property, patents and commercialisation in the biotech industry. There is invariably the potential for conflict of interest whenever researchers are themselves shareholders in biotech companies. This has not been adequately explored, nor declarations of interest sought from researchers, in this debate. The best and most laudable of motives can be coloured by the prospect of significant commercial gains, through intellectual property rights and the international biotech industry. Such was certainly the case with Professor Hwang in Korea.

There are, in my view, 10 basic reasons why the Senate should oppose this bill and I now summarise them. The first is the lack of proof concept. There is a lack of scientific evidence, including a lack of ‘proof of concept’ and a lack of any clinical trials regarding the potential benefits of human embryonic stem cell research, which I referred to earlier, that have been cited by senators in this debate.

The second goes to cancer and the cellular difference between adult versus embryonic stem cells. There are dangers, such as cancer formation, inherent in the research and clinical application of human embryonic stem cells. There was significant evidence from researchers of all scientific persuasions that embryonic stem cells, precisely because of their plasticity, remain so volatile as to have the propensity to produce teratomas.

Third, there is the fraudulent Korean research—part of the failure to reach the evidentiary threshold for change. The Lockhart review relied upon the published work of
Korean researchers led by Professor Hwang, who claimed to have perfected human embryo cloning. That research was publicly retracted as fraudulent shortly after the Lockhart report was released last December. It has also been revealed that Professor Hwang pressured some of his female research assistants to ‘donate’ eggs for use in his research. The absence of reliable scientific evidence about cloning alone should be sufficient reason to reject any scientific basis for regime change.

The fourth reason goes to adult stem cell technology offering genuine cures. The significant number of clinical trials already underway around the world in relation to adult stem cells indicate that it is highly unlikely that SCNT—therapeutic cloning—will actually be necessary. The Senate inquiry received evidence that there are approximately 80 therapies currently in place in relation to adult stem cells. There are approximately 1,200 US Food and Drug Administration approved clinical trials. There are no clinical trials in relation to embryonic stem cells.

The fifth is that the commercial driver for change is assisted reproductive technology—and not medical cures—which, again, is part of the failure to reach the necessary threshold for change. Only a very small number of licences—nine—have been granted by the licensing committee since the establishment of the current regulatory regime established under the 2002 legislation. There have been an even smaller number of licences granted for research into human disease. Indeed, as the NHMRC advised the Senate inquiry, there is only one such licence, issued to IVF Australia, aimed at treating a specific condition.

The majority of licences issued—five—relate to artificial reproductive technology research. If human embryonic stem cells are so efficacious and safe, why so few licences, and why even fewer specifically for research into disease? Therefore, the Senate can legitimately ask why, for example, the Monash researchers, led by Professor Trounson, according to their submission to the inquiry, wish to conduct research into a very large number of medical conditions—but there is just this one licence, issued to IVF Australia.

The point is simply that there is a significant disjunction between what the researchers say they want under this bill and what they have done since the establishment of the current regulatory regime. They have not exactly beaten a path to the door of the licensing committee seeking to use some of the 104,000 excess ART embryos for research to rid the earth of any of the terrible diseases that afflict humanity.

The sixth reason relates to ethical boundaries. There is an ethical boundary, long-recognised in medical research codes, that would be crossed in legislating to allow the creation of cloned human life exclusively for the purpose of its being destroyed in the pursuit of knowledge. Medical research codes—from the Nuremberg Code in 1948, to the Declaration of Helsinki in 1964 and endorsed by the World Medical Association in 2000, to the Council of Europe’s 1997 Convention on Human Rights and Biomedicine, including its 1998 Additional Protocol on the Prohibition of Cloning Human Beings, to the 2005 UN declaration against cloning—all prohibit cloning.

The seventh reason relates to very important women’s issues. There are health risks to women in egg harvesting, as well as the risk of exploitation of women to gain access to more human eggs. The committee received evidence about the risks to women in two respects. First, there is the process of super-ovulation, requiring administration of drugs, prior to the medical procedure of the extraction of eggs. There are, of course, the risks
associated with the medical procedure of the extraction of eggs in addition to the use of super-ovulants. Secondly, there are the risks associated with the demand for eggs for therapeutic cloning research—a point well made by Women’s Forum Australia at the hearing.

Proponents of the bill have claimed that opponents of the bill have been scaremongering and making outrageous claims. So let me note two things. The Lockhart report raises concerns about the availability of human eggs. At page 176 of the report it canvassed obtaining eggs from cadavers. But the bill goes further, in a most chilling manner, in an attempt to deal with the well-recognised shortage of eggs. Clause 23A expressly proposes the use of precursor cells from a human embryo or a human foetus. Such a proposal was canvassed by the Human Fertilisation and Embryology Authority in the UK in 1994, but it was also the subject of a study at Monash University in 1994. It was entitled: ‘Proposed regulation in Victoria of the use of donated foetal ovarian tissue for assisted conception or my mother was an aborted foetus’. Such is the world opened up by this legislation.

No-one was prepared to advise the committee how many eggs would be required to conduct research for any medical condition. Researchers from Monash Immunology and Stem Cell Laboratories simply agreed that there were not enough eggs to do all the potential research that they wanted to do. It should be stated here that the Lockhart review also strongly recommended that there be interspecies fertilisation. In newspaper comment, Professor Schofield acknowledged that there was a significant ‘yuk’ factor in relation to the recommendation in favour of interspecies fertilisation.

The eighth reason is the MP Consulting report, which again is a summary of the failure to reach the necessary threshold for change. The independent MP Consulting report, prepared for the Department of the Prime Minister and Cabinet and released by the Prime Minister on 31 August 2006, found:

On each of these issues—the definition of ‘human embryo’, the creation and use of embryos for assisted reproductive technology research and the creation of embryos for stem cell research—there has not been any significant change in the state of play since 2002.

The ninth reason is the slippery slope. There is a risk that, just as those in the current debate have changed their mind from opposing therapeutic cloning in 2002 to promoting it in 2006, the current ban against reproductive cloning and on growing cloned embryos beyond 14 days could equally, in a few short years, be lifted because sections of the scientific community, using the same arguments advanced today, argue that it would facilitate the pursuit and accumulation of knowledge. It is being proposed that we now have a limit of 14 days. How will we reject a demand from science for the limit to move to 28 days or beyond?

The 10th reason is ethical issues—again, part of the argument of the failure to reach the evidentiary threshold for change. The complexity of issues, the speed of examination and the highly contested case—medically and ethically—that promotes change are not an adequate foundation to alter the current legislative framework. I submit that these reasons compel this parliament to oppose the bill.

Senator PATTERSON (Victoria) (12.46 pm)—in reply—I thank honourable senators for their contributions, and there will be no surprise that I will be supporting the Prohibition of Human Cloning for Reproduction and the Regulation of Human Embryo Research
Amendment Bill 2006. In 2002 I had carriage of the Prohibition of Human Cloning Bill and the Research Involving Embryos Bill through this place. I foreshadowed then that the legislation required that it be reviewed and I said:

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.

I am bringing to the Senate for decision a bill that reflects the considered recommendations made by the Legislative Review Committee of those two bills.

Before I speak to the bill I want to clear up something which, until now, I have refrained from addressing. During my speech in the second reading debate for the Research Involving Embryos Bill 2002 I made the following statement:

I believe strongly that it is wrong to create human embryos solely for research. It is not morally permissible to develop an embryo with the intent of truncating it at an early stage for the benefit of another human being.

It should be noted that this statement was not made in relation to the Prohibition of Human Cloning Act; it was made in the context of the creation of sperm-and-egg embryos for research, and this bill continues the prohibition of the creation of an embryo using a human egg and a human sperm, except for the purposes of assisted reproductive technology, or ART. I stand by that statement today as being consistent with asking you to vote in favour of this bill.

My statement has been used by some people to discredit this bill by implying that I have changed my mind about issues, but they have quoted me out of context, as I have just indicated. Secondly, even if it can be argued that I have changed my mind, the implication that changing one’s mind is somehow wrong is foreign to me. My mind remains open to learning new things, to considering carefully new points of view and to changing my position on issues where appropriate—something I will always reserve my right to do.

It is interesting that many of those against this bill base their objection to it on the status of an SCNT embryo being equal to that of an egg-sperm embryo. Although they are quite correct that under Australian law, according to the definition created in 2002, an entity created through the SCNT process is classified as an embryo—indeed, a human embryo—I wonder why no-one has mentioned that in 2001 the ProLife Alliance in the UK took the definition of an embryo to their high court to get a ruling that SCNT was not an embryo in an attempt to ensure SCNT research could not happen under their Fertilisation and Embryology Act 1990.

Some might suggest that the sanctity of the status of the embryo is a negotiable commodity and will be sacrificed by those desperate to find ways to block SCNT research. I see a sperm-and-egg embryo as different from a skin cell that is cloned using an egg as an incubator. It is not a fertilised egg, it will never be permitted to develop beyond 14 days and it cannot be implanted in the body of a woman or animal. I consider that I am also amongst the majority of Australians, who are in favour of research using somatic cell nuclear transfer to help us better understand disease processes and hopefully find therapies for human suffering, so long as it is strictly regulated and that reproductive cloning remains prohibited.

I note that some of my colleagues believe that we have not had enough time to consider the issues. The issues contained in this bill have been on the table for around nine years. In that time our parliamentary colleagues in Britain have accepted this type of research. We have had five—not one, as we have just been told—formal inquiries, all of which
unanimously recommended prohibition of the cloning of whole human beings and all of which acknowledged the varying views that existed in the community regarding the status of the human embryo. Neither the 1998 AHEC report, nor the 2001 Andrews report, nor the 2005 Lockhart report, nor indeed the recent 2006 Senate committee report on this bill recommended legislation prohibiting cloning of human cells for research. They were indicating that they should be subjected to regulation and regulatory processes.

The initial 1998 AHEC report predicted there would be confusion about the differences between therapeutic and reproductive cloning. Only a few weeks prior to AHEC handing down their report, two labs in the USA announced that they were able for the first time to derive embryonic stem cell lines from human blastocysts. This was significant for two reasons: firstly, it meant that there was potential to use donated surplus IVF embryos to acquire embryonic stem cells; and, secondly, if SCNT research could be applied to human cells then this could be potentially another source of embryonic stem cells. This also meant that therapeutic cloning had an additional meaning. So there was potential to use donated surplus IVF embryos to acquire embryonic stem cells; and, secondly, if SCNT research could be applied to human cells then this could be potentially another source of embryonic stem cells. This also meant that therapeutic cloning had an additional meaning. So there was a slight shift in terminology and new things for the House of Representatives Standing Committee on Legal and Constitutional Affairs to consider when they were asked to make legislative recommendations based on the AHEC report in 1999.

The 2001 Andrews House of Reps committee report states under recommendation 5, item 12.44:

The Committee recommends that the Commonwealth regulate human cloning and stem cell research within the strict parameters outlined in paragraphs 12.41-12.43.

Item 12.42, while calling for a moratorium on their creation, recommends:

The creation of embryos by means of somatic cell nuclear transfer ... need not necessarily form part of the legislative ban on the deliberate creation of embryos.

Despite the Andrews report recommending SCNT research not be banned by law, the resultant bill put before the House in June 2002 did propose just that. However, the bills did allow for a review, the recommendations of which we are now considering in this bill.

Looking back, I think that somatic cell nuclear transfer as a source of embryonic stem cells became an unfortunate victim of the fear and confusion about what cloning meant. While the Andrews report recommended a moratorium on licensing SCNT research, I think somehow it got caught up in the quest to prohibit reproductive cloning. Meanwhile, SCNT research has been allowed in countries like the United States, the United Kingdom, Singapore and Sweden, and we have been left behind.

The fourth inquiry was, of course, the Lockhart review. This time, although still complex, the issues were clearer because embryonic stem cell research using excess ART embryos was permitted and there was no doubt about the prohibition of reproductive cloning. The main focus was whether SCNT research should be allowed. The Lockhart committee recommended it should only be permitted in the setting of strict regulatory control. Of course, the majority of the fifth inquiry, by the Senate Standing Committee on Community Affairs, endorsed the findings of the Lockhart committee.

I want to address some specific issues that have emerged as furphies in the arguments against this bill. There is no evidence of a slippery slope. Cloning of whole human beings will continue to be strictly prohibited. Let me repeat that: cloning of human beings will continue to be strictly prohibited. From
some of the stuff we have seen in the newspaper and some of the claims that we have heard around the debate of this bill, you would not be aware, nor would you believe, that the legislation continues to prohibit the cloning of whole human beings. Allowing SCNT research, as the bill prescribes, does not take us down that path. The safeguards are the 14-day development limit on SCNT embryos and prohibition of implantation as well as incarceration for up to 15 years for anyone who attempts to break this law.

Some antagonists of the bill have cited a lack of proof of concept as being reason to legislate against SCNT. This is not a scientific argument in this case but, I believe, a thin veil, albeit maybe subconscious, for people who have a moral objection to the research. While SCNT research in humans has not produced embryonic stem cell lines, given the success in animal models this is no reason to ban it. The proof of concept exists. In the words of Professor Martin Pera in response to a question during the Melbourne Senate hearing:

... with respect to the statement that there are no—

and I insert ‘human’ here because that is what he was talking about—

therapies from cloned embryonic stem cells, of course there are not because research has not been done on a human yet that would enable it. However, there is proof of concept in animal studies that you can treat disease with such an approach.

Some claim that embryonic stem cells cause cancer and so the research should cease. Only those who do not understand the science or those deliberately trying to muddy the waters will claim this. Although embryonic stem cells in their primitive state might form teratomas if injected into a person, these people choose to ignore the fact that human clinical trials must conform to recognised safety protocols and pass ethics committees. Secondly, potential therapies developed from these cell types would come from directing them to differentiate into more specialised cells or tissue, giving them the same risk as those derived from adult stem cells. People also forget that even treatments like kidney transplants result in high incidences of cancer in people. There are some treatments in which the benefits sometimes outweigh the associated problems. As I said, these cells will be differentiated into more specialised cells and there are also risks in implanting adult stem cells.

Contrary to claims that there has been no progress since 2002, ample evidence was provided to the Senate committee, and only as recently as mid-October—the very time we were having the hearings—D’Amour et al reported that they had directed human embryonic stem cells to become insulin-producing pancreatic cells. Finally, many opponents fail to accept that it is not only development of therapies for which embryonic stem cell research is needed; they are essential for the elucidation of our limited understanding of early cell differentiation and disease processes.

Some claim embryonic stem cell research is not needed because adult stem cells can provide all the answers. This is not true, but one advantage of adult stem cells is that their use is not weighed down by the same strong differences of opinion. Scientifically we need them both. It is not a competition, as one of my colleagues suggested. We need both embryonic stem cells derived from surplus IVF embryos as well as SCNT and adult stem cells. Adult stem cells are restricted in their scientific use, as the committee report explains, and the claims attributed to Dr David Prentice of 65 diseases being cured by adult stem cells have been seriously challenged in respected journals.

It is vital we pursue SCNT as a source of human embryonic stem cells as it offers a
significant advantage over ART embryo derived stem cells in the ability to create disease specific stem cell lines. By taking a cell from an adult with a particular known genetic disease and producing stem cell lines via SCNT, we could have an array of particular cells with known defects. Scientists could research or test drugs on those diseased cells, so hastening the process of understanding and possibly finding therapies for those diseases.

Legitimate concern has been raised about the potential for exploitation of women with regard to egg donations needed in relation to SCNT technology. I believe that the proposed legislation covers this in a number of ways—for example, through banning commercial trade in eggs and through the normal protocols that exist for ova donation and surgical procedures, which adequately cover informed consent. During the Senate committee hearings, several of my colleagues were incensed, as I was, at the implication that women were not capable of informed consent in such a matter. Have we forgotten that women already donate ova for ART either to someone they know or anonymously—it is quite pertinent that we were having that discussion today—and that for this to be achieved ethical consent is covered in the AHEC guidelines? It seems women may be capable of deciding to donate bone marrow or a kidney, both of which have attendant risks, but not ova. Somehow, when it comes to donating our ova, we lose our minds, but we can donate kidneys, bone marrow and other tissue.

In addition it must be noted that, during the Senate committee hearings, researchers emphasised the long-term aim of producing embryonic stem cell lines from somatic cells without the need to use ova and the need to be able to undertake basic human embryo and SCNT research to achieve this goal. I believe that the community attitude to SCNT is clear. Valid surveys show that reproductive cloning is unacceptable and the majority of the community accept that SCNT research is worthy of pursuit. Naturally, this should only occur under strict regulatory control, as proposed in this bill.

Some believe that this bill will take us into Huxley’s Brave New World. But, given the imagery of scary animal-human hybrids, rabbit-people, human cows and all the other things that have been suggested while we have been debating this bill—the sorts of scary images that people are using—maybe they would rather take us back 200 years, when similar fear tactics were used, as Senator Brown has indicated, to ridicule Edward Jenner’s cowpox vaccine against smallpox. In 1798, some tried to generate fear in the public arena that, if used, Jenner’s vaccine would cause people to grow the horns and tail of a cow. Critics warned that ‘transmitting disease from a “brute creature” to human beings was a loathsome, dangerous, and immoral act’. Far from this happening, Jenner’s vaccine proved to be one of the most effective public health instruments of our time. I wish I could be here in 40 years time so that I could look back and see what some of this research will have proved, but I do not think I am going to be able to achieve that.

Some of my colleagues are saying that we have not had enough time to consider the changes this bill proposes to the law. Let us be quite clear: we have been considering these issues since 1998. We have had five formal inquiries—and other countries have accepted the sorts of changes proposed in this bill in the meantime—and we have had the Lockhart committee report to consider for close on a year.

I would like you to remember, as you make your decision on the recommendations of the Lockhart review as reflected in this
bill, that this is not a decision about politics. It is about people. It is about hope and it is about trust. A vote against this bill will be a vote to dash the hope that is dearly held by those people watching and listening to us who have medical conditions and who expect nothing from this research for themselves but know that in their cells they have a possible key to understanding their disease which may provide a legacy for future generations of people with this or similar diseases. Why should we restrict their hopes?

A vote against this bill sends a message of no confidence to all those esteemed Australians who sit on expert committees and give their time to assist us in this place to understand complex issues and oversee regulations and protocols to keep Australians safe. Those who cast doubt on the standing of the Lockhart committee also cast doubt on all such committees and on the proper process of this place. The Lockhart committee was properly constituted as prescribed in the acts, and its members discharged their duty with integrity and sensitivity.

A vote against this bill tells young, eager, scientific minds that Australia does not trust them. Senator Fierravanti-Wells indicated that they would be in the dark of night in laboratories, doing terrible things. They can do that if there is no law. They can do that now. What we are saying is, ‘We trust you, but we think there should be boundaries around that trust.’ To say that we do not trust our young scientists gives them the message that our regulatory instruments cannot be relied upon to protect us from unethical behaviour. This bill prescribes harsh jail sentences for offenders, as well as measures for regulatory oversight to ensure accountable and transparent practices in laboratory research.

A vote against this bill sends a message to those with minority views that proper process is irrelevant and facts do not matter. It illustrates to any minority that they can get their way if they have loud enough voices, use enough scary images and can buy enough advertising space. It sends a message that we are not interested in the majority view and can be influenced by undue minority pressure. I believe that with this proposed legislation there is no threat of cloned people, rabbit-men or slippery slopes and that those who speak of hype are in fact themselves guilty of promulgating hype and hyperbole.

A vote for this bill displays trust in the robust nature of this nation’s regulatory systems to allow cautious scientific advancement for the betterment of people. It shows that we make laws based on fact, not on superstition. When—and I predict that it will be when, not if—a treatment or medication is developed using SCNT or knowledge gained from SCNT research in the US, the UK or somewhere else, who in this place, and some of you may still be here, will be the first to legislate to prevent it being used by Australians because it was based on what some—incorrectly, in my opinion—describe as repugnant, immoral research?

Would we have preferred Jenner not to have tested his cowpox vaccine because doing so was a ‘loathsome, dangerous and immoral act’, knowing what we know now—that this dreadful disease has been eradicated? In the 1970s, when for the first time insulin-producing cells were injected into a diabetic mouse, would it have been wrong to give a young type 1 diabetes patient hope that people like him or her in 30 years might be able to have insulin-producing cells from a cadaver pancreas injected which would free them from a regime of testing and needles? I think the answer is no. Is it now wrong to give a young patient with type 1 diabetes, like the children who visited us in the house last week, hope that the knowledge
gained from all types of stem cell research—adult, embryo and SCNT—may in due course provide a treatment that could free them from the grind of the insulin regime or, if they had an islet transplant, the burden of antirejection drugs for the rest of their lives? Again, I believe the answer is no. The Andrews report did not recommend legislation to prohibit SCNT research, nor did the Lockhart review, and neither should we.

Question put:
That this bill be now read a second time.

The Senate divided. [1.10 pm]
(The President—Senator the Hon. Paul Calvert)

Ayes............. 34
Noes............. 31
Majority......... 3

AYES
Adams, J. Allison, L.F.
Bartlett, A.J.J. Brown, B.J.
Brown, C.L. Carr, K.J.
Colbeck, R. Crossin, P.M.
Evans, C.V. Faulkner, J.P.
Ferguson, A.B. Ferris, J.M. *
Johnston, D. Kirk, L.
Lundy, K.A. Marshall, G.
McEwen, A. McLucas, J.E.
Moore, C. Murray, A.J.M.
Nettle, K. O’Brien, K.W.K.
Patterson, K.C. Payne, M.A.
Ray, R.F. Sherry, N.I.
Siewert, R. Stott Despoja, N.
Troeth, J.M. Trood, R.B.
Vanstone, A.E. Webber, R.
Wong, P. Wortley, D.

NOES
Abetz, E. Barnett, G.
Bernardi, C. Bishop, T.M.
Boswell, R.L.D. Calvert, P.H.
Chapman, H.G.P. Eggleston, A.
Ellison, C.M. Fielding, S.
Fierravanti-Wells, Fifield, M.P.
Heffernan, W. Hogg, J.J.
Humphries, G. Hurley, A.
Hutchins, S.P. Joyce, B.
Kemp, C.R. Ludwig, J.W.
Macdonald, J.A.L. McGauran, J.J.J.
Minchin, N.H. Parry, S. *
Polley, H. Ronaldson, M.
Santoro, S. Scullion, N.G.
Stephens, U. Sterle, G.
Watson, J.O.W.

* denotes teller

Question agreed to.
Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

Senator HOGG (Queensland) (1.15 pm)—I want to put a few comments on the record. At some stage I will get involved in my role as the Chairman of Committees, so I am grateful that you, Madam Temporary Chairman Troeth, are in the chair. I cannot speak for all my colleagues, but a couple of colleagues share my views. It is certainly not my intention, nor the intention of some of my colleagues—those around here would know who they are—to put forward any amendments to this bill. This bill has now passed its second reading and is into the committee stage. At this time it is certainly not my intention to move amendments. In my view it is very hard to make a bad bill better by moving amendments to it. As I said in my speech during the second reading debate, this bill is about the creation of a human embryonic clone. That in itself is the fundamentally objectionable part to me. Others can speak for themselves. Moving amendments, therefore, will not change the character or the nature of this legislation.

During the committee stage there may be a move by some people to remove what is considered by some people as the ‘yuk’ factor. However, simply removing the ‘yuk’ factor, or the objectionable parts—even more objectionable than human cloning—will not make the bill any more acceptable to me. I understand that a few others share similar views to mine. As I said in my speech during
the second reading debate, this bill was about crossing an ethical line. The legislation has now achieved that. It still has to go through the committee stage, and I understand that a range of amendments will be put before this chamber. However, that ethical line has been crossed. I will be awaiting the third reading of this bill, where I will be voting against it. I will not take up the time of the committee arguing about issues that might seek to vary the legislation at the margins.

Senator BARTLETT (Queensland) (1.18 pm)—Could I say at the outset that it would be helpful to get a very clear understanding of what the procedure is from here. The bill has come to the committee stage a bit earlier than people had anticipated. Initially there was a suggestion that we would be doing the second reading stage through until this evening, but obviously we have come to it early, which is fine. As we have just seen, there was a vote, 34 to 31, in favour of the second reading. I appreciate that people like Senator Hogg will vote against the legislation, regardless, at the third reading. I am not one of those. What happens at this stage of the debate will influence my final vote, so I am particularly keen that the committee process, and what amendments are being rolled out when, is made completely clear. Obviously, if only two people shift their vote from what we have just seen we can get a very different outcome.

I understand that there are some amendments before the chamber by Senator Nettle. I am quite happy to proceed with those if it is clear that they are self-contained, if you like, which they appear to be to me. But it would certainly be useful from my point of view to know what else is likely to appear before the Senate by way of proposed amendments so that we have some idea of the totality of the issues that are going to be before us. It is a difficult enough issue as it is, at least for some of us, without having piecemeal amendments rolled out here and there. I am not blaming anybody for that; I am just stating a fact. As one of those people who think the legislation as a whole has a lot of good things in it but who has concerns about one or two components, it would be unfortunate if the piecemeal approach led to greater uncertainty amongst all senators in this place, and certainly for those whose views are somewhere in the middle—between total support and total opposition. We need to be clear about what is going on, particularly as it appears we have a close and finely balanced position here. An indication from somebody about what is to come before us would be helpful. Otherwise, I suggest it may be better if we were to adjourn now and come back once things are all settled, at 4.30 or so.

Senator BOSWELL (Queensland—Leader of The Nationals in the Senate) (1.20 pm)—I am in the Senator Hogg camp—I do not believe you can make a silk purse out of a sow’s ear—and this is certainly a sow’s ear. I will not be moving any amendments. I will be voting against the third reading. I do not think you can improve this bill. You might fiddle at the margins, but it is still cloning. It is the way Dolly the sheep was made. I do not believe that you can do much about the bill other than vote it down, so I certainly will not be moving any amendments.

Senator STOTT DESPOJA (South Australia) (1.21 pm)—I want to indicate for the benefit of the committee that Senator Webber and I are moving amendments. We have five relatively minor amendments—perhaps four minor amendments and one a little less minor. They are not new. Anyone who has read the report of the Senate Standing Committee on Community Affairs will know the nature of those amendments. They do not in any way detract from the integrity of this bill—a bill which effectively encapsulates the Lockhart recommendations. Therefore, we hope
our amendments value add to the legislation. The legislation in its own right, I think, is an effective and appropriate encapsulation of the Lockhart recommendations and, therefore, should be supported. Our amendments concern just a couple of areas where there is a slight distinction between the bill and the private member’s exposure draft bill that Senator Webber, Senator Patterson and I put forward. Having said that, it achieves the same end, but with a slightly different approach. Our amendments will be circulated well in time for the committee stage after question time. I am happy to discuss them with any senators in the meantime.

I just make the point that I hope those listening to this debate understand that when people talk about this being a bad law, obviously that is their perspective on the policy. I just want to make very clear that this is a solid legislative framework. Whether people like it or not is, of course, a matter for debate; I just want members of the public to feel reassured that not only are the Lockhart recommendations effectively enshrined in this bill but this bill is a good bill. Believe me, having proposed an exposure draft, I have gone through the bill with a fine toothcomb to see if there are any problem areas in relation to the regulatory framework.

So I just want to make it very clear that if people have a problem with the policy it is incumbent on them to put forward amendments that would allow the clauses to stand as printed, or amend them. If they have a problem with the strict regulation of this technology you would think that people would put amendments forward to deal with that. The fact that people are not doing that indicates to me that the integrity of this bill cannot be attacked in terms of the regulation that is provided within the bill. I am happy to discuss the amendments in more detail as they come up, but once again I echo my strong support for the legislation.

Senator NETTLE (New South Wales) (1.24 pm)—I might help to get things rolling by moving the Australian Greens amendment (1) on sheet 5112:

18A After paragraph 21(4)(d) Insert:

(da) the capacity of any scientific advances to be delivered through the public health system and or to reduce the global disease burden;

I will explain what this amendment does. Currently, under the existing Research Involving Human Embryos Act 2002, there is a list of things that the NHMRC, the National Health and Medical Research Council, must consider when making a decision about granting licences to people who wish to do stem cell research. One of the things that they must have regard to is the likelihood of significant advancement in knowledge or improvements in technologies for treatment as a result of the use of excess ART embryos proposed in an application. What this amendment does is insert another issue which they must have consideration of.

I will read out the amendment. I think it is reasonably self-explanatory but I will talk some more to it. It says that the licensing committee of the NHMRC, when making decisions about granting applications for people to do research using stem cells, must consider ‘the capacity of any scientific advances to be delivered through the public health system and or to reduce the global disease burden’.

This proposed amendment was suggested to me by an academic—I think she is from the University of Wollongong—who I had been discussing this issue with. As senators will know, because I indicated this in my speech during the second reading debate, my concerns—concerns that my fellow Greens
senators share—relate to the privatisation and commercialisation of this research. So, in all of my approaches to this debate and in all of my amendments I have sought to inject the public domain, as much as possible, into the legislation. It is a difficult thing to do. I acknowledge and accept that it is difficult to try to ensure that the research stays in the public domain. It is not at the moment, and it is a hard thing to do.

I moved a series of amendments in 2002 around this particular issue. In 2002 I moved amendments which said that the licensing committee needed to look at the issue of public interest. That created a difficulty for some people, because people define the public interest very differently. It meant that people had all sorts of different interpretations of what I meant to include by using the term ‘public interest’. So in my deliberations this time, and in wanting to put forward amendments that would allow public concerns to be detailed, I have tried to narrow what I mean by ‘the public interest’ to be public health.

People have a whole range of views about what is in the public interest but I am talking about the issue of health and ensuring that public health is addressed and is central to the research. This goes to the issue that I have spoken of, which is that I would like to see that any benefits that come from stem cell research are able to assist in reducing the global disease burden and in delivering benefits to people through our public health system. That is the philosophy that I bring to how I would like to see this research enacted.

Some people have concerns about this research because they are wary of the profit motive driven by biotech companies that operate in this area, and what they may mean and where it may go. So perhaps these amendments, which seek to ensure that any benefits that come from this are in the public interest and relate to public health, can address some of those concerns that people have.

The way that this particular amendment tries to do that is by talking about this idea of the global disease burden. As we all know, the global disease burden is great, and there are a whole range of diseases that contribute to the global disease burden. This amendment is designed to allow the NHMRC licensing committee to prioritise research that will reduce that global disease burden and provide research benefits and possible cures for diseases that wreak havoc in developing countries—malaria, TB and other things that cause so many needless deaths in our community.

This amendment is not designed to say that the NHMRC should only grant licences to people who are proposing to focus on a particular set of diseases. It is not designed to do that at all. It is designed to give the NHMRC licensing committee the opportunity, the option, of prioritising research that is focused on that. I am not trying to say that other research should not happen at all. I am just trying to give the NHMRC a mechanism that they can use to say, ‘We think that this particular type of research should be supported, because we can see the benefits that will come to the whole of the global community by us being able to have treatment, cures or research occurring into these particular diseases.’

The other part of the amendment is about delivering scientific advances through the public health system. This comes to the equity issues. If people have concerns around technology being driven by biotech companies, I do not want to see any benefits that come out of stem cell research only being available to the wealthiest individuals for a massive amount of money. I would like to see any benefits that come from this being
able to be delivered across the board. This does not say—and perhaps it is really important that I point this out—that all benefits that derive from stem cell research should be delivered through the public health system. It does not say that. Various senators have made the comment to me that this could cost a lot of money. This amendment does not say that everything has to be delivered through the public health system. What it does is give the NHMRC the opportunity to prioritise research that can be delivered through the public health system.

I put this proposal to a number of witnesses who appeared before the Senate committee inquiry into this legislation to ask them whether or not it was feasible, whether or not it was workable. I was very pleased to hear the comments from the CEO of the NHMRC, Professor Warwick Anderson, who said that if the parliament wanted to put this kind of consideration into the legislation then the NHMRC could enact it and ensure that it was done. I have to keep stipulating that none of this is to say that the NHMRC licensing committee should only give licences to people who look at particular diseases or should only give licences to people who say they will deliver it through the public health system. That is not what it is about; it is just giving them the option to prioritise research that has the potential to deliver that.

One of the issues that people addressed—I raised this in my second reading contribution, and I will raise it again—is that, given that embryonic stem cell research is currently in its early stages, it might be quite difficult for researchers to say, ‘This is what my research is going to produce and therefore it can be delivered through the public health system.’ I accept that. I recognise that it is difficult to do. That is why I have sought to do it this way, which is not to be prescriptive and have the NHMRC licensing committee say, ‘You can only get a licence if you’re going to deliver this thing, it will be available through the public health system and it’s going to be for malaria.’ That is not my intention at all. It is about giving the licensing committee the capacity to do that. That is because I want decision makers, who play a very important role in the whole regulation of this industry and this research—and, currently, the body that does that in Australia is the NHMRC licensing committee—to be able to look at public health benefits and look at reducing the global disease burden.

That is what this provision is in there for. It requires the NHMRC to have regard to these matters. It does not require them to make all their decisions on the basis of them; it just requires them to have regard to them. They currently have to have regard to the likelihood of advances occurring. Clearly, we want the NHMRC in this and in other areas to make decisions on the basis of whether or not they think there are technology and benefits that can be delivered. I am sure we all want them to be able to support research proposals that seem to be able to go somewhere and contribute and deliver benefits. But this brings in that additional level so that, when doing so, they can also look at areas of public health, public interest and the importance that plays. It does not require them to do anything; it just allows them to prioritise and to look at these issues, because there is a range of issues that the NHMRC looks at.

It was interesting during the Senate inquiry that there were some people who were perhaps not quite clear on what the NHMRC do look at. They were asking, ‘Don’t they already look at that?’ They thought that, when the NHMRC were making decisions about which research to fund, they already looked at exactly the issues that I am trying to make sure they do look at. So there did seem to be some lack of clarity about
whether perhaps the NHMRC do already look at these issues. It was a shame that there were not more witnesses there from the NHMRC to explain that detail. What this does is stipulate that, yes, we do want the NHMRC to look at the issues of public interest and of public health.

I am very happy to talk to any and every senator about what these amendments do—what they are intended to do, what their purpose is about—and I very much hope that senators are able to support these amendments. I suppose the reason I have had to go down this path with these amendments, and indeed the amendments that I moved in 2002, is that, unfortunately, in Australia the debate now and in 2002 has been around the issue of whether or not we should go down the path of stem cell research and people’s concerns with or support for that research. That has been, understandably, so central to the debate that it has not allowed us to have the discussion that I for one think we should be having, which is: if the research goes ahead, how do we think it should go ahead? That is what I am seeking to do with these amendments. I have the view that it should be done in the public domain as much as possible, that we should ensure that public health is at the forefront of where the research is going and what people are intending to achieve. That was very central to the debate that occurred in the United Kingdom around stem cell research. As a result of that they have their national stem cell bank, which plays an important role in keeping the research in the public domain.

I think it is really great that we can have that discussion now. I have to say I am pretty disappointed that that has not been able to be central to the debate that has occurred so far. I understand there are other issues that people need to consider, and it is important for them to do so. I appreciate that people have been spending a lot of time doing that. But now, if we can have the opportunity to talk about how any research should go ahead, and what views people have about whether that should be under public control and to what degree, I think that would be really helpful for the debate.

The TEMPORARY CHAIRMAN (Senator Murray)—I bring to the attention of the committee that we are addressing amendment (1) on sheet 5512. Senator Nettle has circulated sheet 5512 revised. Senator Nettle has moved amendment (1). I do not think she needs to move the amendment again because the only difference in amendment (1) on sheet 5512 revised is on the second line with the insertion of a slash between ‘and or’.

Senator JOYCE (Queensland) (1.37 pm)—I was not going to speak to this amendment, but with regard to the NHMRC, licensing and how it affects an embryo I think it should be put on the record that the definition of an embryo in this bill was not endorsed by the NHMRC. It is a definition that comes from a draft paper and it has never been endorsed by the body to which we are putting this position. The reason it is not endorsed by the NHMRC is that it is open to a lot of manipulation. Because the definition deals with movement of an embryo to a favourable environment, if there is not movement to a favourable environment then it is not determined to be an embryo. If that is the case, you can deliberately alter the process of fertilisation so as to disable an embryo so that it will not develop its primitive streak. That is a corruption of the whole process which I believe a lot of people in this place were trying to stop. If you are trying to stand on the strength and technical validity of this bill, you should know that it is not apparent in the most fundamental definition of what we are talking about. The definition of the embryo is flawed.
It is not for me to suggest how you can fix that, but I would have thought that, with all the great forethought that has apparently been put into this process, you would have got the absolute fundamental tenet of what you are talking about correct. If this goes through, you will have a definition of an embryo which you will be referring to in relationships with the licensing agreements that can be manipulated in such a way as to create a huge extension beyond what you all perceived it to be. For a bit of a homework, you should go away and fix it.

Senator WEBBER (Western Australia) (1.39 pm)—I rise to make a brief general contribution to the amendment before us from Senate Nettle. I say at the outset that I welcome a bit more discussion as, even though I have been dealing with this issue for some time, I am still not entirely clear in my mind as to the best path to go down. There is no doubt in my mind that the mere passage of this legislation is an important first step in a public health benefit, and it must be at the forefront of all of our minds that there is a public health benefit in any medical research. For me, the thresholds to absolutely ensure the public health benefit are significant funding for the university and hospital research sector and a very well funded, efficient, effective and modern public health system that ensures that all Australians get access to the best and latest medical technology in the treatment of any diseases, injuries or other health concerns.

I agree with Senator Nettle that, beyond that, ensuring the public health benefit is something that we have all grappled with and I am not entirely sure how we achieve it. Having said on the one hand that those two things are threshold issues, I think that on the other hand there is a need to have a look at the amount of money these developments in new medical treatments and technologies cost. I would not in any way want to come up with a system that says that that must be entirely funded by the taxpayer or that there should be no private support. It is a matter of finding a balance. As I say, I am not sure how we find that balance, so I would welcome some further discussion on that.

Other issues that Senator Nettle has raised about the national stem cell bank and what have you are open for discussion. Personally, I have no problem with samples of stem cell lines being deposited in a national stem cell bank. I think that is entirely appropriate and guarantees some public good and some equity of access. How we establish a national stem cell bank is important. It is something that the government has hastened slowly on, to be polite. Whilst I support its establishment, I would not in any way want my support for this important research to be seen by the government as my wanting to harm the passage of this legislation. Those are the issues on which I am happy for there to be further open discussion. As I say, the deposit issue is a pretty straightforward one.

Senator STOTT DESPOJA (South Australia) (1.42 pm)—I want to look at the effects of Senator Nettle’s amendment in the context of the current act. My understanding is that the current act says that:

In deciding whether to issue the licence, the NHMRC Licensing Committee must have regard to the following ...

So it is prescriptive in that sense. It makes it clear that it is ‘must’; it is not ‘may’. There is a list of matters in the act, most of which those of us who have spent some time involved in this debate would be quite familiar with, and 4(e) on that list says:

- such additional matters (if any) as are prescribed by the regulations.

So there is the potential for the NHMRC Licensing Committee to take into account other matters as prescribed. The amendment before us basically inserts another criterion:
• the capacity of any scientific advances to be delivered through the public health system and/or to reduce the global disease burden.

I think there are probably some very good arguments, certainly those that Senator Nettle has already articulated, for including some of these things when determining a licence.

I think the debate we are about to have here is whether this is the most appropriate place to put such a consideration, and obviously we are trying to determine the effect of such a consideration. I am inclined to believe Senator Nettle’s point. In fact, I think she is spot-on when she talks about the economic impact. That seemed to be something that people were concerned about on the one hand, but that is not really the intent of this amendment. I can attest that Senator Nettle has talked not only in this debate but also in previous times, including in the 2002 debate, about ensuring that the public health good concept is enshrined somewhere in the legislative framework.

Like Senator Webber, we see many positives for the inclusion of such an intent, or at least such a criterion, when assessing licensing conditions. Whether or not this will be too prescriptive, it might be something on which we do seek further information from the NHMRC. Again, it is obviously our role and our prerogative as legislators to determine what they should take into account. Personally, I do not have a problem with that. If there are arguments against it, I am happy to hear them. I suspect there is one argument that I could put forward, which is: where do you stop? This feels like groundhog day, doesn’t it. Jan? Senator McLucas and I were involved deeply in such matters four years ago. But indeed that is why (e) was seen as a positive inclusion at the time. Such additional matters, if any, are prescribed by the regulations.

So, Senator Nettle, there is an argument that there is already the capacity to do it. Having said that, if this is an additional criterion that senators think is worth while, I think there is an argument for the notion of public good, especially when you are taking into account, for example, the likelihood of significant advances in knowledge or improvements in technology et cetera. I think there are arguments for it. Again, I do not want to do anything that necessarily disrupts or detracts from the integrity of this legislation. I do not necessarily think that this amendment does that. Again, there is an argument for value-adding, if you like, but I am happy to be guided on this matter by others in the chamber and, indeed, by Senator Patterson as to what impact she thinks the amendment would have on the legislation before us.

Senator McLucas (Queensland) (1.47 pm)—I just want to say that I do understand Senator Nettle’s motivation. It is the same motivation that Senator Stott Despoja, Senator Nettle and I shared in 2002. The fundamental principle is that whatever potential therapy, whatever potential cure—whatever results—ensues from this research if this legislation passes, it should be available to all Australians. I think that is a principle or a tenet that we all agree with.

The question, then, is: do these amendments, as they are framed, deliver that outcome? I am not sure that they do, but I am not sure that they do not. I suppose I am mulling, which is possibly a little naughty. If the NHMRC has to have regard to the capacity of any scientific advances to be delivered through the public health system and/or to reduce global disease burden, I am not sure that it is actually possible for the NHMRC to deliver that. Do they have the capacity to undertake that analysis? It is not the purpose for which the entity was established. It is not a normal principle that they would go
through to assess anything. So the question has to be: whilst we understand and agree with the principle, does that actually deliver the outcome we are attempting to achieve?

I now turn to the second amendment. Are we doing this cognately?

_Senator Patterson interjecting—_

_Senator McLUCAS_—Since we are doing it individually, I will leave my comments on that to a later point in time.

_Senator PATTERSON_ (Victoria) (1.49 pm)—I am sorry, Senator McLucas; I did not hear the details because I was concentrating on doing something else. I was wondering whether you would mind indicating to me again your acceptance or otherwise of those amendments.

_The TEMPORARY CHAIRMAN_ (Senator Murray)—I remind the Senate that we are dealing only with amendment (1), not all three amendments.

_Senator McLucAS_ (Queensland) (1.49 pm)—I confirmed that we were dealing only with the first amendment and therefore made a comment only around that one. My concern is that, whilst I understand the intent of the amendment, I am not sure that it is doable—whether it is possible to be undertaken—or whether it will achieve the outcome that is desired. Given the time and the fact that we are somewhat further down the track than we thought we would be in the course of this debate, I am not sure that the appropriate advices have been received from all parties about whether or not this will achieve the outcome that Senator Nettle intends and which I personally share. Does that help, Senator Patterson?

_Senator PATTERSON_ (Victoria) (1.51 pm)—Firstly, I thank Senator Nettle for her support of the bill and for her constant questioning of people who came to the committee on this issue. I admire her zeal. I suppose a bit of the gloss has gone off my zeal as I have got older, but I hope I still have a bit of zeal left in me. Putting this bill up has indicated that I have a bit of zeal; I thought I had gone into semiretirement but I needed to come out of it to do this, because I felt so strongly about it.

I can understand what Senator Nettle is saying. One of the things that absolutely stunned me when I was health minister was finding out about an enzyme deficiency disease which about 10 or 15 Australians suffer from. Scientists have developed an enzyme which acts as a replacement and these people have a significantly better quality of life. It was assessed as being efficacious through our normal procedures. I cannot remember exactly what it costs—I was going to try to find out, but I have been busy this week—but each year the health minister signs off on treatment for people with this particular enzyme deficiency; it requires ministerial approval and the minister signs a document. I think I would not be misleading the Senate to say that the cost for one person was over $200,000 for one year. Each year they get reassessed and the doctors estimate how much of this enzyme a person will need and what it will cost for the following year. It is something in the order of about $146,000 or $150,000 per person per year.

Because there are so few people across the world with this disease, all the investigation and research that goes into the production of this enzyme is built into the cost. I used to marvel as I signed these documents, for about 10 or 15 patients, at what an amazing country we live in such that someone with this sort of enzyme deficiency who required treatment could have it. People have views about pharmaceutical companies but this enzyme was discovered, put through clinical trials and is available. So we do have a system where if a procedure or treatment is efficacious then it is made available.
I see the sort of goal that Senator Nettle has in getting the NHMRC to focus, when they are approving licences, on taking these issues into account. Now, as Senator McLucas said, this has gone a little faster than we thought. We did not think we would get to the committee stage until tomorrow. I have actually asked the minister if we could get somebody from the NHMRC to comment in a technical way on the doability—if there is such a word—or otherwise of this. So if I, and others, can keep talking until we get to question time, we can actually have the opportunity of asking the NHMRC, because I think it has been approved, about the technical detail of this.

The TEMPORARY CHAIRMAN (Senator Murray)—Senator Patterson, if I can interrupt you, it is open to you or any other senator to move that this amendment be deferred to a later hour.

Senator PATTERSON—I was going to do that but then it will take us on to the next amendment and we still have to discuss that one. One of the problems is that we have these amendments. I have to say Senator Nettle indicated there were going to be amendments in the committee hearing. She showed courtesy to the chamber in that she foreshadowed these. She was the first one out of the block with amendments drafted. I had hoped that we would be able to have an answer to her as soon as we got into the committee stage, but let me just say that I hope Senator Nettle is prepared for us to actually seek advice as to the doability of this amendment because I would like to be able to address her concerns. I am sure Senator McLucas—I will not put words in her mouth—would appreciate the opportunity to do that. If Senator Nettle is prepared to defer that amendment until we seek that advice then we can have a more informed discussion and decision.

Senator STOTT DESPOJA (South Australia) (1.56 pm)—Can I suggest that, given we are about to adjourn for question time, we may actually have the time that we need. So rather than postponing that amendment for now, should we just go with the flow and see whether we have the necessary advice or information? I just want to make very clear that I am happy to support the amendment before us. I do not see it as a problematic amendment. I am happy to take advice, however, from the NHMRC. I do think it is the prerogative of the parliament to decide what criteria are used in the assessment of licences.

This is obviously a new criterion that has been suggested by Senator Nettle. I think she has spent some time appropriately refining that criterion. There were a couple of versions that were discussed previously that I was a little ‘uh-oh’ about but I think this is an agreeable amendment so I am happy to state that as my position on record. I am not sure if there is a nod there—through you, Mr Temporary Chairman—from Senator Webber but we will see what other people think. I look forward to that information but at this stage I am happy to debate any or all of the amendments and I am sure after question time I will have my own and Senator Webber’s amendments to add to that list.

Senator WEBBER (Western Australia) (1.57 pm)—As with most things on this legislation, I agree with Senator Stott Despoja. With a closer examination of the wording of Senator Nettle’s amendment—as I said before, I absolutely support the sentiments behind it—I now do not see any great problem with supporting the amendment itself. However, I do have a question for Senator Nettle or for others involved. The words themselves about ‘the capacity for the scientific advances to be delivered through the public health system and/or to reduce the global disease burden’ look fine. I am sure that is
something that we would all support. However, I would like a bit more detail about just how we define that capacity and how we look at tying that to any licence that is granted.

I would not in any way, as I say, want to have a very narrow definition of what that capacity is or what those perceived benefits in reducing the global disease burden are at any one time that would stymie any development or research into the future. We have discussed long and hard in the second reading debate in this place the fact that none of us know exactly what the future holds in any of this research. So I would not want to have too restrictive a definition of how we define advances or benefit when, as we all know, scientific research is a leap into the unknown and therefore we have to put a lot of faith in what people say is possible and probable. We have to find that balance and therefore I would not want to say that perhaps the NHMRC or others were restricted in granting licences because we could not come up with a strictly defined definition.

Progress reported.

QUESTIONS WITHOUT NOTICE
Housing Affordability

Senator CARR (2.00 pm)—My question is to Senator Minchin, the Minister representing the Treasurer. Is the minister aware that the latest HIA-Commonwealth Bank Affordability Report shows that housing affordability is now at its lowest level since December 2003? Hasn’t the HIA also said, ‘Housing affordability is at critically low levels everywhere across Australia and is suffering an additional hit in 2006 because of higher interest rates’? Given that the industry has blamed recent interest rate hikes for the ‘critically low levels’ of housing affordability, why has the Prime Minister given the green light to yet another increase in rates? Won’t another rate rise simply add to the $2,000 a month that many low- and middle-income families are already paying on their mortgages? How does adding even more money to mortgage repayments make it easier for young Australians to buy a home?

Senator MINCHIN—Before I answer that question, Mr President, may I have your indulgence to, on behalf of the government, warmly congratulate Senator Stephen Conroy and his wife, Paula, on the birth of their daughter, Isabella. They have the best wishes of everybody on the government side.

Honourable senators—Hear, hear!

Senator MINCHIN—In relation to Senator Carr’s question, he chose to quote the HIA. As I recall, the HIA has campaigned strenuously in relation to housing affordability on the basis of the negligence, and indeed the woeful behaviour, of state governments in their approach to stamp duties—their outrageous imposition of stamp duties on new and first home purchases—and their hopelessly incompetent policies with respect to land release. This has been a major campaign of the HIA, an independent housing body. Senator Carr chooses to come in here and quote the HIA. Let me quote back at him what the HIA is saying about the outrageous behaviour of state governments in penalising new homebuyers through their land release policies and their stamp duty policies. Senator Carr is a member of the Labor Party. He should talk to the six state Labor governments about those policies if he is concerned about housing affordability.

In relation to interest rates, these are independently set by the Reserve Bank in accordance with its charter to keep inflation low; it is their responsibility. It is the position of the federal government that we want interest rates to be as low as is possible, consistent with keeping inflation under control. The record of the Reserve Bank on that matter in relation to the Australian economy over the
last 10 years has been, as I said yesterday, exemplary. Inflation is half the average, over our 10 years in government, that it was under the 13 years of the former Labor government: 2.6 under us and 5.2 under Labor. That is the prerogative of the Reserve Bank. That is what is critical for new home purchasers: to keep inflation under control and to make sure that they have jobs. Unemployment is as low as it has been in 30 years, so the capacity of new home purchasers both to take on a mortgage and to service a mortgage is much better than it ever was under our predecessors.

**Senator CARR**—Mr President, I ask a supplementary question. Why does the government continue to try to blame everything and everyone but itself when it comes to rising interest rates? When will the Howard government actually do something about the crisis in housing affordability other than blame the states for it? Can the minister now confirm that the proportion of household income consumed by mortgage interest payments is 50 per cent higher than it was under former Treasurer Keating?

**Senator MINCHIN**—It is this government that introduced the First Home Owners Scheme, one of the most significant things that any federal government has ever done for first home purchasers. It is our government that has made sure the economy has grown consistently throughout the 10 years of our government. It is our government that has eliminated the $96 billion in debt that Labor left us, which was an upward force on interest rates. By eliminating that debt and returning the budget to surplus, we are doing what a federal government can to take the pressure off interest rates. *(Time expired)*

**Australian Water Summit**

**Senator BOSWELL** (2.04 pm)—My question is to Senator Minchin, the Minister representing the Prime Minister. Will the minister update the Senate on how the government is assisting rural communities to cope with the devastating drought? Will the minister also advise on the outcome of today’s Water Summit?

**Senator MINCHIN**—I thank Senator Boswell for that question, and I note that it is Senator Boswell and other Liberal and National senators who ensure that this government has a very acute understanding of the severity of this drought and its impact on rural communities. We will continue to develop policies to assist those communities to deal with what is obviously a very severe drought. On that score, on 24 October we announced additional drought assistance worth $560 million. EC assistance was extended to all eligible farmers in 44 regions across the country until 2008. Prior to that, on 16 October, we announced a $350 million extension of EC assistance, including 18 EC declared areas across four states. Together, these announcements will deliver an extra $910 million in drought support to drought-affected farmers.

A drought of this severity has, of course, a wider impact than just the farmers involved. It flows through to rural businesses and other businesses in rural towns and communities. The government has announced today that it is extending eligibility for EC income support and interest rate subsidies to farm-dependent small businesses operating in EC declared areas. Any small business that can demonstrate that 70 per cent of its total income is derived from farm business in an EC declared area and that it has experienced a significant financial downturn because of the drought will be eligible for this new package of assistance. This will provide around $210 million worth of support to rural small businesses. The states have agreed to pay 10 per cent of the interest costs of this measure, which we welcome. That brings to $2.3 billion the total amount of support we as the
Commonwealth are providing to EC affected areas.

Financial support is only part of the picture. Of course, to survive this drought and prepare for the future we need to make better use of water, especially in the Murray-Darling Basin area. That is why the Prime Minister today convened a water summit with all the key state leaders. The summit heard this morning from the Murray-Darling Basin Commission about the severity of the drought, about inflows into the basin being 90 per cent below the average, and they heard about the risk that this drought period could extend into 2007-08.

The Prime Minister and the premiers have resolved to accelerate the implementation of key aspects of the National Water Initiative, especially on water trading, over-allocation, water accounting and data sharing. We as the Commonwealth will process speedily our response to major projects under the Australian government water fund. A high-level officials group will report back in December on contingency planning to secure urban and town water supplies in 2007-08. The CSIRO will be commissioned to report progressively by the end of 2007 on sustainable yields of surface water and groundwater systems within the basin. We are encouraging the states to follow Victoria’s welcome lead in providing a 50 per cent rebate for municipal and shire rates to eligible recipients and also to waive or rebate water charges in EC declared areas where water allocations have been substantially reduced.

More generally, we are all committed to gaining a better understanding of the likely water availability over the next 18 months and to making decisions for the good of the entire Murray-Darling Basin. There will be on the part of all governments the requirement to make some fairly tough decisions over the course of this very severe drought. The collaborative approach demonstrated today does need to continue if we are to ensure that the burden of this drought is shared fairly across the community.

**Australian Water Summit**

Senator STEPHENS (2.08 pm)—I too have a question to Senator Minchin in relation to today’s water summit. Minister, can you clarify the position of the government in relation to buying back water licences? Hasn’t the Minister for Agriculture, Fisheries and Forestry ruled out the government buying back complete licences and only supports a limited buyback? Given the minister for agriculture acknowledged yesterday that ‘far too many’ licences had been granted, and supported an open market on water trading, why shouldn’t the government participate in that market and buy back water for environmental flows? Isn’t that a good way to restore the water flows to our dying inland rivers? Why should the government be restricted to only buying back water gained from efficiencies?

Senator MINCHIN—The government does not have a policy at this stage of outright purchasing of water licences. That is not current government policy. As has been correctly pointed out, we did announce that we would be running a tender to recover water through the Living Murray initiative, and water obtained through the Water Through Efficiency tender, which opened on 1 November, will be from efficiency gains, allowing agricultural production to be maintained. It is a matter we constantly keep under review. All I can say at this stage is that it is not government policy to directly enter into the direct purchase of water licences.

Senator STEPHENS—Mr President, I ask a supplementary question. I thank the minister for that response. Just last month the Prime Minister told the ABC *Four Corners* program:
I accept that climate change is a challenge. I accept the broad theory about local warming. I’m sceptical about a lot of the more gloomy climate change predictions.

Does the government now accept that climate change is contributing to the ‘gloomy’ state of the Murray-Darling Basin and that climate change is contributing to what the Murray-Darling Commission itself described as a one in a 1,000-year drought?

**Senator MINCHIN**—As the Prime Minister said, it is not really possible to accurately say whether this is a one in a 1,000-year drought, a one in 500-year drought or a one in 200-year drought. This is a very severe drought. The Prime Minister met this morning with the four relevant state premiers or their representatives to discuss how we as the federal and state governments dealing with the Murray-Darling Basin can most effectively, properly and reasonably deal with the severity of this drought and its impact on rural communities and cities like my city of Adelaide. Whether or not this particular drought is a function of the general view in relation to global warming is a matter, obviously, which everybody can have a view on. What we have to deal with is the fact of this very severe drought, and that is what today’s water summit was all about.

**Forestry**

**Senator EGGLESTON** (2.11 pm)—My question is to the Minister for Fisheries, Forestry and Conservation, Senator Abetz. Will the minister outline to the Senate how the Howard government’s support for Australia’s forestry sector is helping address global carbon dioxide levels? Is the minister aware of any alternative policies?

**Senator ABETZ**—I thank Senator Eggleston for his question and note his keen interest in this matter, especially in his role as the distinguished chair of the Senate’s environment committee. There has unfortu-nately but not unpredictably been a lot of misinformation floating around about the role our forest industry is playing in reducing CO₂. Forestry is part of the solution to climate change, not part of the problem. The simple fact is that Australian plantation and native forests are carbon sinks, absorbing 44 million tonnes of carbon dioxide each year. Our expanding plantation area—some 700,000 hectares in the past years—is increasing the rate of carbon dioxide stored by almost 20 million tonnes per year. That is equivalent to four per cent of current emissions.

But let us start with the basics. In drawing carbon dioxide out of the atmosphere and returning oxygen, trees are nature’s air cleaners whilst also supplying legitimate human needs, such as building materials, furniture and paper. Some are claiming that by harvesting trees you are increasing CO₂ emissions. This is just plain wrong. You see, once you start—

**Senator Bob Brown**—Mr President, I rise on a point of order. I have on the Notice Paper a notice of motion—it is No. 615—which seeks information about the impact of logging on climate change which, as pointed out in the Stern report, is greater than the impact of transport. I wonder if the minister might be anticipating that motion and whether he will get to the question of logging being a worse factor in greenhouse matters and climate change than all the transport systems of the world put together.

**The PRESIDENT**—There is no point of order, Senator Brown. He is not debating the motion in any event.

**Senator ABETZ**—Thank you, Mr President. The Greens never want the facts getting in the way of their propaganda. As I was saying, once you start value-adding, creating wood and paper products and using excess wood to replace other polluting energy...
sources, our forests are in fact carbon positive—vastly so, especially when you consider the CO₂ created in the production of wood alternatives such as aluminium, plastics and concrete. The Greens say that the best way to capture CO₂ is to plant trees and leave them until they die of old age. Indeed, yesterday some misinformed protesters erected a blockade in the Weld Valley in Tasmania with a silly sign saying ‘keep the carbon in our forests’. The only problem is, once a forest reaches maturity, at around 100 years of age, it is no longer storing carbon. While parts of the tree are still growing, other parts are actually dying and releasing CO₂ faster.

Senator Bob Brown—I rise on a point of order, Mr President, regarding misleading the Senate. Scientific studies show that old forests store more greenhouse gases—

The PRESIDENT—Order! There is no point of order, Senator.

Senator Bob Brown—than plantations. He must not mislead the Senate.

The PRESIDENT—There is no point of order, Senator. Resume your seat.

Senator ABETZ—Once again, Mr President, never let the facts get in the way of your propaganda. An old growth forest such as the Weld is in fact a net carbon emitter. It is not a solution to climate change, as the Greens would like us to believe.

Senator Bob Brown—On a point of order, Mr President. The minister is wrong and he must not mislead the Senate.

The PRESIDENT—Order! That is not a point of order. Resume your seat.

Senator Bob Brown—Let him produce his scientific reasoning. He is wrong.

The PRESIDENT—Senator Brown, you are bordering on frivolous points of order. If you do this again, I will have to report you to the Senate. Senator Abetz.

Senator ABETZ—Don’t get me wrong: I am in favour of limiting carbon emissions, including those from old growth forests and other sources. But compare the Weld to a vigorous young plantation forest absorbing CO₂ as it grows. An average one-hectare blue gum plantation extracts almost 30 tonnes of carbon dioxide from the atmosphere each year. For those that seek to raise funds for themselves, this is the genuine inconvenient truth, but it is a fact. And, if you want to be a friend of the environment in today’s world, you need to be a friend of forestry.

Economy: Household and Personal Debt

Senator McEWEN (2.17 pm)—My question is to Senator Minchin, the Minister representing the Treasurer. Is the minister aware of Reserve Bank figures that show credit card debt passed $37 billion in August? Doesn’t this mean that every credit card in Australia has an average $2,820 worth of debt on it? Isn’t this credit card debt now at the highest level since records began? Can the minister now explain how the Prime Minister’s decision to give the green light to another hike in interest rates this week will make it easier for families to pay off their credit card debts?

Senator MINCHIN—It is not for the Prime Minister to give the green light or otherwise to the Reserve Bank. The Reserve Bank is entirely independent and it will make its own decision on interest rates in accordance with its charter, which is to keep inflation in the band between two and three per cent over the course of the economic cycle.

Senator McEWEN—Mr President, I ask a supplementary question. Hasn’t the Reserve Bank also found that on average an extra $1,255 is being put onto every credit card in Australia every month? Won’t the amount of spending put onto credit cards increase even further in the lead-up to Christmas? How could the Prime Minister be
so out of touch as to invite another interest rate hike that will make it even harder for families to pay off their credit card debts?

Senator MINCHIN—What the Labor Party does not seem to understand is that Australians are experiencing the most substantial and favourable economic conditions they have probably ever experienced in the history of this country. We have had 16 years now of continuous economic growth. We have living standards higher than they have ever been. We have unemployment at a 30-year low. So no doubt Australians are feeling confident about their finances and about their employment and are prepared to take on greater debt than they might otherwise, especially given that household equity and household balance sheets are stronger than they have ever been.

Senator Bob Brown—I rise on a point of order, Mr President. I ask your advice, Mr President. Beyond the need to be neatly and properly addressed, is there any reason why a member of the press would not be allowed to cover question time in the Senate from the press gallery?

The PRESIDENT—Perhaps you can take that matter up with me later. I cannot give you an answer now but I will report back.

Senator Bob Brown—I am just asking whether there are any dress prohibitions on members of the press covering this question time.

The PRESIDENT—I will take that question on notice and report to you after question time.

Skilled Migration

Senator CHAPMAN (2.20 pm)—I direct my question to the Minister for Immigration and Multicultural Affairs, Senator Vanstone. Will the minister advise the Senate on the success of temporary skilled migrants in the Australian workplace and how they are contributing to the viability of Australian businesses? Has the minister considered any alternative policies?

Senator VANSTONE—I thank Senator Chapman, from my state, for that very astute question. He asks about 457 visa holders, the temporary skilled migrants to Australia, and about the contribution that they make to the economy. These are the visa holders that people on the other side seek to attack. This is the visa that they do not like, and the reason for that is that they simply do not understand that in order for Australians to get on in life and to be successful they need to have a job. Where do they get a job from? They get it from the business community. We cannot have everybody in Australia employed in the public sector. The business community has to do well, and this visa particularly allows the business community to take advantages of economic opportunities that come past and to take advantage of good economic times to bring the skills they need into their factories and their workplaces to enable them to take on more contracts, to secure more profit and to secure Australian jobs.

Nonetheless, members opposite continue to complain and continue to seek to denigrate this visa, partly because they are paranoid about our new industrial relations legislation. Why they would be, when we have created something like 1,000 jobs a day since that legislation came into being, I am at a bit of a loss to understand. There were going to be mass sackings and we are still waiting to hear about that—the mass sackings have not happened. We have had something like 1,000 jobs a day created since then. Nonetheless, Labor started on this track: ‘We’re going to attack 457 visa holders. We’re going to keep attacking this visa because we think it’s the only thing we’ve got going for us.’ Frankly, they have not really got much going for them, so I suppose they are desperate.
In one of these attempts, Mr Beazley said that we are ‘driving a wages and conditions race to the bottom’. Last time I looked, Australian wages had gone up under this government, and the only government they have gone down under that I can recall is the previous government of the other side, when average wages went down and the minimum wage went down—and what did members opposite say at the time when they were in government? ‘Oh, it’s a social wage. In other words, we take money from you so we can spend it rather than you having it in your wages.’

Let’s have a look at this allegation—I think it is worth looking at—made by the would-be Prime Minister that the 457 visa holders are driving a wages and conditions race to the bottom. I thought: let’s have a look at what the minimum salary is in Australia. I am advised that the minimum wage is currently $25,194 and it will go up to $26,616 in December this year. So that is the base rate; that is the bottom—$26,000. This visa has a minimum salary level in capital cities of $41,850. There is an exception of 10 per cent less than that for regional Australia because wages and conditions in regional Australia are not the same as in Sydney. You would not expect to get paid the same in Ivanhoe in New South Wales for pulling beer in the front bar of the RSL as you would in Double Bay.

There is quite a bit more to say on this, Senator Chapman; I thought I would let you know that. Twenty-five thousand dollars is the minimum wage and the minimum salary level is $41,000. So I thought: let’s have a look at what the average salary is of 457 visa holders. Let us be fair. Let us have a look at your allegation. The average salary of a 457 worker last year was $66,000. That was the average salary—$66,000. So I thought I had better have a look to see if there was any change. (Time expired)

Senator CHAPMAN—Mr President, I ask a supplementary question. Could the minister provide further detailed information as to the success of 457 visas in supporting Australian business?

Senator VANSTONE—I thought I had better get myself up to date; I had better get the figures for the first quarter this year, just in case I was behind the eight ball and the wages had gone down. I was shocked to find that the average salary of skilled 457 workers in the first quarter of this year has gone from $66,000 to $70,000. What is happening here? Where is this wages race to the bottom? I saw that in the mining industry the average salary for 457 visa holders went from $87,000 to $100,000, in the finance sector it went from $92,000 to $103,000, in manufacturing it went from $66,000 to $69,000 and in the health sector, predominantly used, incidentally, by the New South Wales Department of Health—because Labor federally is out of touch with the states on this visa—it has gone from $62,000 to $67,000. That is good news for doctors and nurses and good news for regional hospitals, who can now get health staff. I have not had time to look at the average wages of unions, but I will have a look at that. (Time expired)

Water

Senator SIEWERT (2.26 pm)—My question is to Senator Minchin, Minister representing the Prime Minister. Will the minister confirm a statement from a senior government source that, because it is important to look after people first, they will cut environmental flows so they can allocate more water to irrigators? How much water does the minister intend to take away from environmental flows so they can allocate more water to irrigators? How much water does the minister intend to take away from environmental flows to give to irrigators and is it true that they are considering draining wetlands to achieve this?

Senator MINCHIN—With great respect to Senator Siewert, whom I have no reason
to doubt in any way, when I hear questions quoting 'senior government sources' I do have reason to have some doubt about the nature of the question and the foundation for the question.

Senator Carr interjecting—

The PRESIDENT—Order! Senator Carr!

Senator MINCHIN—I am certainly not aware of reports or rumours from senior government sources that we are taking water from the environment to give to irrigators or that we are going to drain wetlands or whatever else the senior government sources may allude to as the damnable activities of our government, no doubt! No, I am not aware of any such plans.

I am not seeking here—through you, Mr President, to Senator Carr—to blame the states, but it should be remembered that the constitutional fact is that we do not actually issue water licences and we do not control irrigators. We seek to work with the state governments to ensure that the health of our river systems can be sustained well into the future for the sake of our generation and future generations and to ensure a cooperative approach with those sovereign governments who do have the constitutional authority over the issue of water licences and the management of water in this country. But I think I can safely deny any proposition on our part to drain wetlands or take water from the environment to give to irrigators.

Senator SIEWERT—Mr President, I ask a supplementary question. I am pleased to hear that reassurance, because the Prime Minister at lunchtime in fact did say that the task force going away to consider these issues may consider draining wetlands, so I am very pleased to hear Senator Minchin deny that that is in fact the case. Could the minister reassure us that, if they do consider draining wetlands, they will seek legal advice?

Will there be an environmental impact assessment statement?

Senator MINCHIN—I was watching the Prime Minister’s press conference with his Premier colleagues, and a very interesting press conference it was too. It is great to see the federal-state cooperation on this very significant national issue. Certainly I did not hear the Prime Minister or anybody else refer to the draining of wetlands and so I do not retract the statements I have made. But I am happy to check the record on that matter and correct anything I have said if it needs correction.

Indigenous Communities

Senator SCULLION (2.29 pm)—My question is directed to Senator Kemp, the Minister representing the Minister for Families, Community Services and Indigenous Affairs. Will the minister inform the Senate of steps being taken by the Australian government to address family violence amongst Aboriginal and Torres Strait Islanders?

Senator KEMP—Thank you to Senator Scullion—the very hardworking senator from the Northern Territory, I might say—for that important question. Last week the Minister for Families, Community Services and Indigenous Affairs noted the release of the Australian Institute of Health and Welfare report entitled Family violence among Aboriginal and Torres Strait Islander peoples. The report highlights again the extent of the problem of violence in Indigenous communities—an intolerable situation in any Australian community. The data released in the report was collected in 2003-04. It shows that Indigenous women are 35 times more likely to be hospitalised because of partner violence and are 10 times more likely to be killed by assault. It also reports that Indigenous women are 13 times more likely to seek refuge than non-Indigenous women.
This is yet another in a long list of reports on violence and child abuse, including Sue Gorton’s report in Western Australia, a report by Bonnie Robertson in Queensland and a recent report on child abuse in Indigenous communities in New South Wales. There may be some who would like to brush this issue away, but they should take heed, I believe, of the contents of this report and others like it. We should face up to the fact that many Indigenous Australians, particularly in remote communities, are at greater risk of family violence than non-Indigenous Australians and that we will not see gains in health and employment outcomes unless this issue is addressed.

The government has been working on these issues for some years with the states and territories. For example, almost $38 million was provided for the Indigenous Family Violence Partnership Program in 2004-05; in the last budget, almost $50 million was provided to expand the number of family violence prevention legal services from 13 to 31; and the Family Violence Regional Activities Program will receive $16 million over four years. This report also provides further endorsement of the outcomes of the Intergovernmental Summit on Violence and Child Abuse in Indigenous Communities. This $130 million package includes $40 million for police infrastructure in remote areas, $2.5 million for two additional sniffer-dog teams in Central Australia and, among other things, $50 million for additional drug and alcohol treatment.

A national intelligence task force has already been established, with its headquarters in Alice Springs. It includes AFP staff as well as police from other jurisdictions, with the Australian Crime Commission gathering information to pass on to authorities. An audit of police numbers in remote communities has started with the appointment of John Vallentine, who will help to identify the number of extra police required in Central Australia. I am pleased to report that negotiations are also well underway with the states to determine their contribution and reach agreement on joint strategies.

The Australian government have also taken steps to amend sentencing provisions under Commonwealth legislation. We cannot water down our sentencing for violent crimes. There is one law in Australia and that is there to protect all Australian citizens, including Indigenous women and children. I would urge the Western Australian government to give a commonsense response to the commission’s report that does not allow for customary law to be used as mitigation in sentencing for violent crimes. The Australian government, let me assure you, will work in a collaborative and positive way with any state or territory government to stamp out this sort of abuse. There is more to be done. We want to see a better future for Aboriginal children, men and women in these remote communities and we have put the money on the table to help make that a reality.

**Economy: Household and Personal Debt**

*Senator WORTLEY (2.34 pm)—* My question is directed to Senator Minchin, the Minister representing the Treasurer. Is the minister aware of the Prime Minister’s comments that the household savings ratio is a good indicator of ‘the money that people have got left over after they’ve put bread and food on the table’? Is the minister also aware that the household savings ratio deteriorated to negative 3.3 per cent in the June quarter? Doesn’t this mean that households have now been spending more than they earn for the last four years just to put food on the table? Given this unprecedented period of negative savings, how does the minister expect families to afford yet another increase in mortgage repayments—something that the Prime Minister has already given the green light to?
Senator MINCHIN—The senator raises the question of Australia’s household debt and the views of the Reserve Bank. I am happy to point out to the Senate that the Reserve Bank has recently noted:

... even though household debt has increased, the net financial position of households has improved noticeably ...

and:

... households’ financial assets have increased by substantially more than their debt ...

Growth in household debt is not surprising when you have a strong economy. Interest rates are at relatively low levels and the unemployment rate is at a 30-year low. The fact is that household balance sheets—which is what you have to look at; it is all very well for the ALP to look at one side of the ledger in their narrow way, but you always have to look at both sides of the ledger—have benefited from very strong asset growth. For every dollar of debt, households have over $6 in total assets and almost $2 in financial assets. Under our government, the nominal net worth of households has increased by around 11 per cent a year, compared with growth of around seven per cent a year over the last seven years of the previous government. The latest ABS data indicate that household net nominal wealth is now $5,217 billion, which is almost three times the level of the $1,747 billion it was when the government first took office. Inevitably, the opposition, with its narrow focus and partisan attitude, will only ever focus on one side of the balance sheet. Any sensible debate on the state of Australian households must take account of household balance sheets. The Reserve Bank has made the position abundantly clear that household balance sheets are in extremely good shape.

Senator WORTLEY—Mr President, I ask a supplementary question. Doesn’t the fact that savings are now a negative 3.3 per cent mean that families are running down the savings that they do have or are using credit just to put food on the table? If families do not have any savings, how does the minister suggest they pay for their Christmas holidays? Won’t Christmas holidays be impossible for many families as they struggle under the weight of a $146 monthly increase in mortgage payments—and since their Prime Minister told them that interest rates would not go up under his government?

Senator MINCHIN—Australian families have been better off every Christmas under our government than they ever were on the 13 Christmases under your government.

Mr David Hicks

Senator STOTT DESPOJA (2.38 pm)—My question is addressed to Senator Ellison, Minister representing the Attorney-General. Is the government aware of recent criticisms that have been made by the president of the Law Council of Australia in relation to the US Military Commissions Act 2006? The press release says:

The law allows for admission of certain types of evidence, which may have been obtained by unacceptable methods of interrogation. It also strips away habeas corpus—the centuries old right of a detainee to challenge unjust imprisonment.

... ... ...

... David Hicks may still be convicted on evidence which he is never allowed to see and which has been coerced, after prolonged interrogation, from witnesses he is never given the opportunity to cross-examine.

I ask the government if these conditions are acceptable to the Australian government and, given that David Hicks is currently being held without charge, why is the government not seeking his repatriation at this time?

Senator ELLISON—As we know, the President of the United States signed new legislation on military commissions on 17 October this year. We have engaged in
discussions with the United States administration in relation to the impact of that legislation on the Hicks case. The previous assurances which were given to the Australian government in relation to Mr Hicks stand, and of course they cover a variety of issues, such as onus of proof, standard of proof and other matters which you would normally see in a criminal trial in the United States. But I can say that the Attorney-General has had several discussions with United States Attorney-General Gonzales. Most recently, he met with him on 29 September this year, during which he emphasised Australia’s desire to see Mr Hicks dealt with as soon as possible. It has been a matter of record that, from the Prime Minister downwards, whenever we have dealt with this issue with the United States, we have made it very clear that Mr Hicks should be brought to trial as soon as possible and that he has been held for too long.

In relation to the details surrounding the reconstitution of the military commission, we understand that there are also regulations which are to be promulgated in the United States and that they have been the subject of discussions, as I said. Certainly, there are a range of issues which are under discussion. I will take Senator Stott Despoja’s question on notice in relation to the other particular issues which she has raised and take them up with the Attorney-General. But I can say that there are a range of discussions ongoing at the moment with the United States authorities. The legislation, albeit in place, has regulations which will also impact on the constitution of the military commission, and of course we are pursuing that with the United States.

In relation to the return of Mr Hicks to Australia, we have made it very clear previously that the activity which is alleged against Mr Hicks was not against the law of Australia. He was apprehended by the United States authorities, and if he were returned to Australia he would not be able to face prosecution for those alleged activities. We have always said that a military commission is appropriate to deal with those issues and that that is the course of action to take. However, we are in the process of negotiating with the United States, in view of the reconstitution of the military commission, any aspect of his sentence being served in Australia should Mr Hicks be sentenced. But of course he does have the presumption of innocence accorded to him in this matter. We are pursuing the issue of him being able to serve any sentence in Australia if he is convicted and sentenced. We had an agreement in relation to that under the previous arrangements, and we are now pursuing this to see that they apply to these new arrangements.

Senator STOTT DESPOJA—Mr President, I ask a supplementary question. I thank the minister for his answer. I understand that he is waiting to hear about the regulations, but can I get clarification: are the government currently satisfied with the legislative framework that is contained in the Military Commissions Act at this point in time? When the government mentioned the assessment of the impact of the newly reconstituted military commission process on the case of David Hicks, did the government reach a conclusion in that assessment? Did they assess that it would have a negative or a positive impact on the case? Given the comments by the minister regarding the sentencing and possible jail time in Australia or other options for David Hicks, doesn’t it concern the government that he currently is not charged with anything? There are no charges pending. Doesn’t that therefore alter the government’s perspective on whether or not Mr Hicks should be repatriated?

Senator ELLISON—I should point out that Mr Hicks was previously charged. If I recall correctly, he faced three charges. There
was the appeal—the Hamden-Rumsfeld case—which put proceedings in abeyance. A decision was handed down in relation to that. As a result of that decision, alterations had to be made to the constitution of the military commissions. As we understand it, that has been done, and the legislation I mentioned earlier reflects that. We do have ongoing discussions with the United States authorities in relation to how this impacts on the Hicks case. But I think senators should remember that Mr Hicks has previously been charged. Those charges were not continued with because of the Hamden-Rumsfeld decision, which was the subject of appeal and held matters up. But, in relation to the other matters raised by Senator Stott Despoja, I will raise them with the Attorney-General and see what I can bring back to the Senate.

Customs

Senator ROBERT RAY (2.44 pm)—I direct my question to Senator Ellison in his capacity as the Minister for Justice and Customs. Can the minister explain to the Senate why Customs allowed the importation from Iraq of goods that needed to conform to 4QA of the Customs regulations to proceed without the explicit written permission of Minister Downer or his delegate? Why has it taken more than five years to have these breaches referred to the AFP for investigation? Was any consideration given to having Commissioner Cole look at these blatant breaches? If not, why not?

Senator ELLISON—I can only assume that the goods that Senator Ray is referring to—he doesn’t name them, but I understand this—were the subject of a referral of investigation to the AFP in February this year, which was the subject of some evidence given at estimates recently. Firstly, in relation to that matter—if that is what Senator Ray is referring to—that is the subject of an investigation by the Australian Federal Police. That was referred to my office by the department of foreign affairs and referred on to the Australian Federal Police. The circumstances surrounding that importation form part of the investigation of the Australian Federal Police, and I have made it clear, as has the police commissioner, that it is inappropriate to go into those circumstances. If, however, the goods that Senator Ray refers to are something other than what I understand them to be, then perhaps he could advise us. But in relation to that referral I cannot comment on a matter which is now an ongoing investigation.

Senator ROBERT RAY—Mr President, I ask a supplementary question. I am asking process questions, not operational ones. Firstly, I ask the minister when he was first informed of a potential breach of 4QA. When did he first know? Was it in February this year or was he informed when he first came into the portfolio? These matters date back to 1999 and the year 2000. Secondly, can I have an explanation as to why his department refused an FOI request from the 7.30 Report for 15 documents in relation to this matter? Was that because you regarded those documents as infringing on operational matters or was it to prevent politically damaging disclosures?

Senator ELLISON—The decision on the FOI was a decision taken by the Australian Customs Service, and I understand that was on a public interest basis. If there is any other aspect of that which I can advise the Senate of I will. In relation to when I first became aware of the matter that Senator Ray’s question relates to, I will have to check my records to find out when I first became aware and I will advise the Senate.

Aged Care

Senator ADAMS (2.47 pm)—My question is to the Minister for Ageing, Senator Santoro. Will the minister update the Senate
on the progress of the Howard government’s policy of conducting spot checks on aged-care homes?

Senator SANTORO—I thank Senator Adams for her question and commend her on her regular and very constructive representations on behalf of the aged-care industry of her state and of Australia generally. Earlier this year the Howard government made a commitment to conduct at least one random spot check in each aged-care home every year. This was backed up in this year’s budget with an additional $8.6 million of new funding to boost the Aged Care Standards and Accreditation Agency.

Figures supplied to me late last week by the agency indicate that we are well on track to deliver on that commitment. In the first quarter of this financial year, the agency undertook a total of 1,561 visits to aged-care homes. This figure included 382 spot checks. Last week the agency advised the Senate estimates committee that accreditation activity in the September quarter was dominated by the need to conduct the full-site audits associated with the accreditation round. These visits could normally take anything up to three days to complete and cannot, by their nature, be unannounced checks. The agency further advised the estimates committee that its activities for the rest of this year will be increasingly devoted to the government’s new program of annual spot checks.

A letter that I received late last week from the agency’s director, Mark Brandon, indicated that 379—I repeat: 379—spot checks had been undertaken during October this year. This level of activity—379 spot checks in a single month—indicates the agency is on track to achieve the target of one check for each of Australia’s 3,000 aged-care homes this financial year. I wish to congratulate the agency for their exceptionally good work and for the way that they have gone about implementing that deliberate government policy.

Last month the Labor Party attempted to score some cheap political points by attempting to insert a requirement for one spot check each year into some completely unrelated legislation—and honourable senators, I am sure, will remember that.

Senator Abetz—It was just a stunt.

Senator SANTORO—I take the interjection from Senator Abetz, because it was a stunt. We the government voted against that stunt because the Labor Party amendment was poorly thought out and entirely inappropriate for what was essentially legislation governing means testing for aged care. Labor, predictably, issued a media release falsely claiming the government was opposed to the idea of one spot check a year. In the media release they stated that we were opposed to one spot check per home per year. As the figures that I have just outlined indicate, not only are we committed to the idea—and, by the way, it was our idea in the first place—we are actually doing it. Not only that, we have also funded—and we are getting on with the job of—one spot check for each of the 3,000 nursing homes in Australia per year.

While the Labor Party plays cheap politics over the security and quality of aged care, the Howard government is delivering for older Australians. I remind the Senate that this is only one of a range of measures that we have funded to the tune of $100 million of new money to help protect the aged and the frail within the government funding for nursing homes within Australia.

Nuclear Power

Senator MARSHALL (2.51 pm)—My question is to Senator Minchin, the Minister representing the Prime Minister. Given the minister’s refusal to answer the question yesterday, will he now clearly state the govern-
ment’s position on how it plans to make nuclear power viable in the next 15 to 30 years? Hasn’t the Prime Minister ruled out an emission-trading scheme that would let the market set a price on carbon? Doesn’t that just leave taxpayer funded subsidies as the only way a nuclear power plant will be viable in the next 15 to 30 years? Will the minister now rule out taxpayer funded subsidies or concessions for the nuclear industry?

**Senator MINCHIN**—The question asks how we are going to make nuclear power viable. We are not anywhere near that point. Because we are much more open-minded and practical about these matters than the opposition, which ideologically refuses to even countenance the possibility of nuclear power in this country, we have asked an expert committee, headed by Ziggy Switkowski, to report back to the government on whether nuclear power might be viable in this country and under what circumstances. There are certain reports emanating that suggest that this committee is likely to say that nuclear power could be viable in 15 years. I have not read the reports. I have had a preliminary discussion with Mr Switkowski in the course of his inquiry. But, like Senator Marshall and others, I await the committee of inquiry’s conclusive report to the government on whether or not, in its view, nuclear power could be viable in this country and under what circumstances.

I think I said yesterday that my prima facie inclination is the one that the Treasurer has expressed publicly, which is that if nuclear power is to become a reality in this country it should be on a commercial basis, not on the basis of commercial subsidies. What I have said is that Australia is blessed with some of the cheapest electricity available in the Western world, based on our abundant supplies of coal and gas, and that would on the face of it make it difficult for nuclear power to be viable in the near to medium term—unless this country is stupid enough to unilaterally impose a tax on carbon. And that seems to be the position of the Labor Party, which does seem to want to tax universally, by way of either a direct tax or an emissions trading scheme, the energy produced in this country. That will, of course, cost Australian households substantially extra in their electricity bills, make energy-intensive industries in this country far less competitive and be likely to drive those industries offshore to other countries that are not imposing carbon taxes on their industries—thus making absolutely no contribution whatsoever to any international effort to reduce greenhouse gas emissions but simply causing unemployment and disinvestment in this country.

So that is the position. We await the view of the Switkowski report as to whether or not nuclear power can be viable, in what time frame and under what circumstances. I repeat my view that, on the basis of the extraordinary efficiency of our energy industry and our abundance of coal and gas, it is difficult to foresee in the near to medium term that nuclear power could be commercially viable. But I await like everybody else the report of the Switkowski committee.

**Senator MARSHALL**—Mr President, I ask a supplementary question. Given his response, is the minister aware that Mr Warwick McKibbin, a member of the Prime Minister’s hand-picked nuclear task force, has said that, without a price on carbon emissions, nuclear power will not be viable in Australia because of our cheap gas and coal? Minister, how can the Prime Minister continue to talk up the prospects of nuclear power as a viable way of reducing carbon emissions in this country when the government cannot explain how the industry will be commercially viable next to gas and coal?
Senator MINCHIN—The Prime Minister is quite properly saying that it is ridiculous for this government not to contemplate the possibility of nuclear power as part of this country’s future energy production. Particularly if you accept that the emission of greenhouse gases is contributing to global warming—which seems to be the Labor Party’s position—how on earth can you simply discount entirely, forever and a day, the possibility that nuclear power may have some role in this country’s future?

Senator Chris Evans interjecting—

Senator MINCHIN—Senator Evans says we have ideological obsessions with nuclear power. The Labor Party is the one with the ideological obsession against any form of nuclear power in this country. It is utterly ridiculous. You are not even prepared to contemplate the possibility that, one day, nuclear power could be viable in this country.

Senator Chris Evans interjecting—

The PRESIDENT—Senator Evans will come to order!

Senator MINCHIN—They are the ones with their heads in the sand, not the government.

Customs

Senator LIGHTFOOT (2.56 pm)—My question is addressed to the Minister for Justice and Customs. Will the minister inform senators of recent successes in the Australian government’s fight against illicit drugs?

Senator ELLISON—This is an important question relating to a recent successful operation in which New Zealand Customs seized 27 kilograms of cocaine from the MV Tampa and its sister ship the MV Taronga. What this and recent attempts to bring cocaine into this country demonstrate is the extraordinary lengths to which organised crime will go to bring illicit drugs into Australia. It is alleged that this cocaine originated in South America. The extraordinary aspect of the allegations in this matter is that the drug was secreted on the hulls of the two vessels—and, of course, an organised syndicate was involved in the attempted importation of this drug.

The MV Tampa came under the surveillance of Australian authorities when it visited the ports of Brisbane, Sydney, Melbourne and Fremantle. The drug was seized by New Zealand Customs whilst that vessel was in a New Zealand port, and subsequently, in September, its sister ship the MV Taronga was the subject of a similar operation when New Zealand Customs officers seized the drug concerned.

Two people have been arrested in New South Wales. This has been an outstanding success, involving the Australian Federal Police, the Australian Customs Service, New Zealand law enforcement agencies, Victoria Police, Queensland Police, New South Wales Police and the Western Australia Police, demonstrating yet again the importance of having a whole-of-government approach in the fight against organised criminal activity which is attempting to bring illicit drugs into this country.

I will be meeting my New Zealand counterpart, the Minister of Customs, the Hon. Nanaia Mahuta, on 22 November. We will be discussing a range of cooperative measures between New Zealand and Australia. This matter, of course, will be a key part of that, demonstrating the successful cooperation we have with New Zealand Police, New Zealand Customs and other agencies working in New Zealand. We are in a region where we have the targeting of organised crime with drugs such as cocaine and amphetamine type stimulants, and it is essential that we work together in this regard.

It also is the first attempt we have seen to bring illicit drugs into this country in this
manner, and I think it demonstrates yet again that we cannot be complacent in the fight against illicit drugs. It certainly demonstrates the very good work that has been done by the Australian Customs Service and the Australian Federal Police, and it demonstrates that continued cooperation is essential with New Zealand.

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

PRESS GALLERY DRESS RULES

The President (3.00 pm)—I will not hold you long. You can thank Senator Brown for this: he did ask me a question about dress rules in the press gallery. I am pleased to tell Senator Brown that, by continuing resolution of the Senate passed in 2002, media representatives are not required to wear coats when in the press gallery. An officer inquiring of a press gallery member whether he was displaying the required photographic pass mistakenly told him that he should wear a jacket when in the gallery. The misunderstanding is regretted. As President, all that I require from people in the gallery is that people be neatly dressed.

QUESTIONS WITHOUT NOTICE: TAKE NOTE OF ANSWERS

Customs

Senator Ludwig (Queensland) (3.00 pm)—I move:

That the Senate take note of the answer given by the Minister for Justice and Customs (Senator Ellison) to a question without notice asked by Senator Ray today relating to customs and the importation of goods from Iraq.

I have no intention of jeopardising any ongoing investigation, as Senator Ellison responded, but there are serious process issues that do require an answer.

It is incumbent on this government and it is the duty of this government to ensure that its actions or inactions are fully explained to the public in respect of this matter. At estimates, which allows us to examine these matters, the government’s response was, ‘It’s under the oil for food program and, therefore, public servants are not allowed to respond,’ irrespective of whether it was outside the terms of reference or not. Even if it was not able to be examined by Commissioner Cole, this government’s response was, ‘We won’t answer it because it’s part of the oil for food program.’ It does require an answer. It does require this government to come clean and say what happened, in a broad sense, in terms of process. Otherwise this government is going to be labelled as being truly rotten to the core in this area. It is not only a government that is becoming tired and arrogant but it is a government that is becoming morally and ethically bankrupt over the handling of the AWB oil for food program and the whole of the oil for food program itself.

The Hawke government in 1990 made amendments to several statutory instruments in order to comply with the UN obligations to implement security resolution 661—the resolution condemning Saddam Hussein’s invasion of Kuwait. Those amendments were made to the Customs (Prohibited Exports) Regulations 1958 and the Customs (Prohibited Imports) Regulations 1958. The amendment regulations, prior to repeal, provided a prohibition against the import of goods from Iraq or Kuwait and the exportation of goods from Australia to Iraq or Kuwait without written permission from the minister of foreign affairs and trade. Under these regulations, the minister had the ability to place conditions upon the companies to obtain written permission from the minister of foreign affairs and trade. Under these regulations, the minister had the ability to place conditions upon the companies to obtain permission to import commodities to or export commodities from Iraq. Throughout the first Gulf War and immediately prior to the ill-fated adventurism of the Howard government, these sanctions stood as a bulwark against the former Hussein regime.
These prohibitions were enforced by a competent Labor government but, since the Howard government took over in 1996, we find that $300 million in funds were illegally channelled to that regime. That is the AWB scandal that this government has not been fully able to explain. We find that funding of a torturer, the wilful dereliction of this government, is put sideways with it because this government has been unable to separate itself from the issue. It has sent it off to the Cole royal commission, but only in a limited and narrow way. It did not allow the broader issue to be ventilated.

Last week we saw the culmination of that in the Senate when we heard for the first time that the AFP were investigating not one, not two, not three but seven instances of illegal importation of goods subject to an embargo under the UN oil for food program. Not only are there export rorts of the oil for food program but there are now import rorts. The Howard government’s support and beneficence to its comrades in arms, the Hussein government, seems to know no bounds.

Firstly, the international binding sanction regime, as outlined in paragraph 4, provided for the outcome. It required in part that states:

shall prevent their nationals and any persons within their territories ... from remitting any other funds to persons or bodies within Iraq or Kuwait except payments exclusively for strictly medical or humanitarian purposes and, in humanitarian circumstances, foodstuffs.

And the Australian government failed to prevent the corrupt transfer of some $US320 million of aid money from the UN escrow account for non-humanitarian purposes.

The collaboration of AWB is in itself prima facie evidence that the Australian government did not fulfil its obligations. We are now aware of seven other instances of the Howard government failure to act and to enforce laws that are seemingly not in the best interests of the sick former regime. Why did the Howard government not fulfil its obligations? Those matters do require clear answers from this government. (**Time expired**)

Senator LIGHTFOOT (Western Australia) (3.05 pm)—I am limited in what I believe I can say here this afternoon with respect to the AWB because of the ongoing Cole inquiry or at least the fact that the Cole inquiry determinations have yet to reach this parliament. But what I want to do is rebut some of those things that Senator Ludwig said or inferred. I have seen no evidence—and I have followed the AWB inquiry assiduously over the months that it has been running—that the Howard government is involved. I have seen no evidence that ministers of the Howard government are involved in these allegations. And I remind Senator Ludwig, and perhaps the Senate as well, that there are times when one feels like saying something about the perception or the actuality of rorts that happen from time to time—and in which governments are sometimes involved—but this is not that occasion.

I think the occasion should arise when we can continue to criticise the AWB and those things that happened. I am one of the critics of the AWB, even on the allegations that they have undertaken serious rorts in the Middle East. But I have held my tongue over the past few months and have said practically nothing about it. What I do know is this: there is undoubtedly wide concern about serious money, hundreds of millions of dollars, that was without doubt paid by way of devious means to Saddam Hussein’s regime in Iraq.

Having been to Iraq on several occasions, I know how some of these things work in the Middle East. I am sure other senators here are aware of how one does business in the
Middle East. Generally speaking, you do not do business in the Middle East in the way that you do it in the Western world. There are times when—and this in no way an excuse for what AWB has done or is accused of doing—if you want to deal in the Middle East, you conform to that tradition of doing deals the way they have done there for generations. I am not saying that that is acceptable. You can read into that what you like.

What I do know is this: in February 2006 the Minister for Justice and Customs, Senator Ellison, referred material relating to possible breaches of Australian law by certain Australian companies to the Australian Federal Police to investigate. We know that. The referral was made following the matters being raised by the Secretary of the Department of Foreign Affairs and Trade. They are both government arms. This was done in accordance with the guidelines that have been handed down and properly followed for the handling of such referrals. The referral was made to ensure full investigation of material concerning compliance issues which came to the attention of DFAT in the context of the Volcker report—that is, the American report—and the Cole inquiry. This material covered matters not covered by the Volcker or the Cole reports.

As a result of its inquiry, the AFP identified seven companies for investigation. These investigations relate to possible breaches of customs regulations and they are ongoing. A breach of those regulations could attract criminal penalties. While I am aware of speculation regarding the investigation, it is not appropriate for me to state today what I believe. I believe there is some concern otherwise these inquiries would not have been launched by the government. The inquiries were not launched by the opposition. The opposition did not approach the AFP; the government approached the AFP, through the proper channels. This is the proper course to take. Is anyone on the other side suggesting that the government has not followed the correct procedures?

Senator Ludwig—Yes, that is exactly what we are saying.

Senator LIGHTFOOT—Of course the government has followed the correct procedures.

Senator Ludwig interjecting—

The DEPUTY PRESIDENT—Order! Senator Ludwig.

Senator LIGHTFOOT—You cannot say that truthfully. I have just told you what the procedure was. We have followed due process. The government has followed due process.

The DEPUTY PRESIDENT—Senator Lightfoot, you should address your comments through the chair.

Senator LIGHTFOOT—I am saying, Mr Deputy President, that the government has followed due process. How could you possibly say that this government has not followed those rules, which not only this government but also the preceding government set? It would be one thing to accuse the government of doing something like Khemlani did back in the seventies where the government of the day borrowed billions of dollars to try to circumvent parliament and circumvent due process. That is not the case here. (Time expired)

Senator ROBERT RAY (Victoria) (3.10 pm)—Once again today we have seen a government minister claim that we are asking questions on operational matters when we have asked about matters of process. This pathetic excuse is trotted out. Have we ever had a record on this side of the chamber of asking about operational matters? The answer is never. What we are pursuing is whether government ministers fulfilled their duties as a minister with full diligence. These
questions refer to events that occurred six or seven years ago. We are entitled to ask why—when these infractions were known, at least to DFAT and almost certainly to Customs—they were not referred for investigation six or seven years ago. Why did it only happen in February this year as the opposition was sniffing around on the issue? We are entitled to an answer on that, and we have got nothing.

That is nothing compared to what happened at estimates last Thursday. Already we have had evidence from a previous estimates committee that this matter is not before Cole and is outside the terms of reference. So we asked officials at the table for details on this. What answer did we get? ‘Yes, the matter is not before Cole and is not within Cole’s terms of reference; however, the broad subject matter is before Cole—that is, oil exports—therefore we cannot answer any questions.’ What a miserable, invented excuse—primarily given carriage this time by public servants wanting to avoid their duty to answer questions truthfully before an estimates committee. How pathetic we have become when we get to that situation.

This question was raised last Monday with Mr Downer, the foreign minister. He assured everyone that everything was okay. Then six hours later, under the cover of darkness, what did we get? We got a qualifying statement that, yes, certain matters had gone to the Federal Police and are under investigation. There was no explanation given as to why it went six or seven years. The one thing we do know is that BP behaved properly in one sense. When their audit discovered they did not have proper authorisation, they wrote to DFAT seeking retrospective approval. They never got a response. Can you imagine the flap over at the RG Casey Building when this letter arrived—when they found that the foreign minister or his delegate, who should have given written authorisation for the import of this material, had not done so.

It is bad enough that we forked out $290 million to fund this despicable regime of Saddam Hussein; what we do not know is how much they paid for sending materials to Australia that were not properly authorised. Why was this not sent to Cole? Surely, having referred the extra issues of Tigris Petroleum and BHP to Cole, this matter would have gone to them. But, no, under the cloak of secrecy they slipped it off without announcement to the AFP. Do not send it to Cole where there will be the full glare of publicity on yet another bungle over Iraq by the Australian government. No, do not do that at all. Slide it off to the Federal Police and hope that no-one gets to hear about it. But our shadow minister in the other place, Mr Kelvin Thomson, certainly heard about it and started asking questions. So too did The 7.30 Report. There have been 15 documents identified as being relevant to this in Customs. They were refused disclosure on the basis that it was not in the public interest.

Why is it not in the public interest to expose the incompetence of this government? Why is it not in the public interest for us to know why this matter was sat on for six or seven years? I am not saying that Senator Ellison sat on it for six or seven years; from memory, he has been in the portfolio for four or five years. But who preceded him? It was the great proselyte, the great lecturer, the great moraliser of the Senator, Senate Vanstone. I want to know what role she played back in those days after she was demoted into the position of Minister for Justice and Customs. I want to know why she did not refer it to the Federal Police.

I thought it was bad enough that we paid bribes to Saddam to send stuff over there. Now we find that he has been sending stuff here without proper authorisation. Of course,
that was outside the Cole terms of reference and outside the Volcker terms of reference and they thought they could get away with it. But do not come in here today and say that this is an operational matter. We know what parts of it are an operational matter and we know what parts of it are a political matter. 

(Time expired)

Senator BERNARDI (South Australia) (3.16 pm)—I also rise to take note of the answer given by Senator Ellison in question time today. In doing so I understand fully why the Labor opposition may be suffering from a case of the Delta Blues—for the record, that is the name of the horse that won the Melbourne Cup. They are trying to confect some outrage about this government in circumstances where it only followed due and proper procedure once these matters were brought to its attention.

I am very pleased to hear Senator Ray state that he is not blaming Senator Ellison, because Senator Ellison responded entirely appropriately to the information provided to him by the Department of Foreign Affairs and Trade this year on 9 February, received by him on 10 February. It concerned the prospect that companies other than those that were subject to the Cole inquiry had possibly committed offences under Australian law by breaching trade sanctions associated with the United Nations oil for food program. The Department of Foreign Affairs and Trade requested that this matter be referred to the Australian Federal Police for investigation. That was done. Correspondence was forwarded to the Australian Federal Police on Monday, 13 February—the next business day. This, might I say, is a very good turnaround for a matter that is quite significant. The Australian Federal Police acted promptly as well. Just three days later they requested additional material in support of the allegations that were made in the original correspondence. The Department of Foreign Affairs and Trade supplied this additional information, relating to 10 Australian companies that were under suspicion of breaching these guidelines.

All of this is entirely appropriate and all of this, according to the information that I have, is entirely factual. I think we need to stick to the facts. We need to dismiss some of the confected outrage, because this government has been entirely appropriate in following established guidelines when issues of malfeasance are made. I want to stick to the facts of this investigation.

Senator Ray also raised the issue of why these matters were referred to the Australian Federal Police rather than to the Cole inquiry itself. I remind the Senate that the Cole inquiry was established in response to a request from the United Nations Secretary-General, who asked for member states to take action where appropriate against those companies within their jurisdiction that were named in the Volcker report. The matters that have been raised today regarding the investigation into the allegations by these seven companies of inappropriate activity are not related to that request from the Secretary-General. The Australian Federal Police is the appropriate agency to investigate these alleged breaches of Commonwealth law. It has the resources, the powers and the expertise entirely appropriate to undertake such investigations.

The Australian Federal Police have been particularly diligent in following this matter. They have full jurisdiction and they have the powers to investigate these matters appropriately. They are not subject to any limitations as to whom or what they investigate. That includes the government and ministers. This is important for maintaining the accountability of this chamber and of any government. By allowing a full and thorough investigation, sparing no-one, we will ensure that we
are going to have an appropriate, considered and accurate report in response to these inquiries.

I understand the Australian Federal Police have advised that their investigations relate directly to companies and that, indeed, no government ministers are under investigation. I think this is important because had it been referred to the Cole inquiry there would have been more allegations and more con- jected outrage about the limitations on this investigation. Quite simply, we have had a full and thorough investigation that has cleared any minister of any inappropriate behaviour. That is a very important point that we should bear in mind with respect to why it was appropriate that this matter went to the Federal Police. (Time expired)

Senator FAULKNER (New South Wales) (3.13 pm)—It is all very well for a government senator to stand up, in the hope of getting some cheap publicity, and tell the Senate which horse has won the Melbourne Cup, when frankly what we are debating here is the fact that this government is run like the Geebung Polo Club. What we know about this issue is this. We know that the AFP received a written referral from the Department of Foreign Affairs and Trade dated 23 February 2006 in relation to certain Australian companies and alleged breaches of trade sanctions. We know that the AFP said that these matters related to possible breaches of sanctions imposed under the oil for food program but that fell outside the Cole inquiry’s terms of reference. We know that the allegations related to the import into Australia of goods from Iraq. We know that one of the matters related to oil. We know that during question time on Monday last week Mr Downer initially said he had no reason to believe that the importation of Iraqi oil into Australia breached UN sanctions. We know that later that day he added to his misleading answer and said:

… the Australian Federal Police is investigating a possible breach in relation to one shipment of oil. On Thursday, the Department of Foreign Affairs and Trade told estimates hearings that they would not answer questions on this as the oil for food program was a matter for the Cole inquiry. However, they also admitted that they had decided not to refer the matter to the Cole inquiry but to the Australian Federal Police. On Thursday last week, when Mr Downer was asked another question in question time in the House about the matter, he referred the House to the non-answers of his own officials in estimates committees.

No-one has answered the key question: why was there such a huge delay between the oil tanker Poul Spirit landing in Fremantle in October 2000, without proper approval, and the referral to the AFP for investigation of these matters only in February this year? We know that BP Australia also wrote to the Department of Foreign Affairs and Trade to request retrospective approval in early 2001. But why did it take five years to finally refer this matter to the Australian Federal Police? We still have no answers as to why these matters were not also referred to the Cole royal commission. After all, its terms of reference were amended and extended on five occasions. Why is the Australian oil for food investigation into AWB open and public, while these seven other Australian oil for food investigations remain secret? Do we even know whether the Cole commission knew about those seven other investigations? Do we know whether the United Nations has been informed about these AFP investigations? I want to know whether the Department of Foreign Affairs and Trade received high-level United Nations’ warnings, or a warning, about sanction-breaking shipments in late 2000. It is crucial information, and we are entitled to an answer. For the first time, how about the Howard government telling Australians and the Australian parliament the
truth about the oil for food program? That really would be news.

Question agreed to.

Water

Senator SIEWERT (Western Australia) (3.26 pm)—I move:

That the Senate take note of the answer given by the Minister for Finance and Administration (Senator Minchin) to a question without notice asked by Senator Siewert today relating to water resources.

Scientists have estimated that, for there to be a good chance of recovery for the Murray River, 3,500 gigalitres of water is needed. The compromise that was reached by state and federal governments was 500 gigalitres, and that only provided a chance halfway between moderate and poor of saving the Murray River. At the moment, all that has been identified is 310 gigalitres, which is a long way off—500 gigalitres and a very long way off—in fact, less than a tenth—of what is needed for a good chance of recovery for the Murray River. Today we had the water summit and what we had was more of a talk-fest: ‘We’re going to’—supposedly—‘speed-up the National Water Initiative and a group will come back with some suggestions by the end of the year,’ one of which may be to drain wetlands.

I would have thought that if we are trying to save the Murray, the essential thing we need to be doing is save the environmental flows of the Murray and save its environmental characteristics, which are our wetlands. Already, the Gwydir Wetlands are receiving around 75 per cent less water than they should be receiving. In fact, an article in the paper—yes, I am reading the paper and taking advice from the paper—said, ‘The farmers of the Gwydir are asking the federal government to take it off the Ramsar List of Wetlands of International Importance because it no longer has values.’ That is an absolute tragedy. Further, the World Wildlife Fund for Nature will be taking up this matter with the Ramsar secretariat. They believe it is unprecedented that a group of landowners would ask for a wetland to be removed from the Ramsar list because it is not being managed properly. I am very pleased to hear that the government will not be considering draining wetlands, but I would also like to hear—

Senator Heffernan—What are you talking about? Are we—

Senator SIEWERT—Which one?

The DEPUTY PRESIDENT—Senator Siewert, address your comments through the chair.

Senator SIEWERT—Mr Deputy President, I will keep addressing my point. The issue that we need to be addressing to save the Murray is overallocation. We have been hearing, ad infinitum, an acknowledgement of overallocation, but we are not hearing that a lot is being done about it. We cannot address the issue of overallocation by taking water away from environmental flows. When everybody acknowledges that the Murray is not getting sufficient water, what are we doing? We are considering taking water away from environmental flows to give to irrigators when we are irrigating crops in this country which, quite frankly, we can no longer afford to irrigate if we are to have any chance of protecting the Murray River. To be irrigating things such as cotton and rice in the 21st century is not appropriate.

We should not be relying on the market system to fix this crisis. Trading in water may be appropriate while we are trying to address some of the agricultural issues, but it does not and cannot address environmental flows. You would think the experience over the last couple of years of state and federal governments collectively being able to identify only 312 gigalitres would send a very
clear message that it is not possible to tinker
around the edges. We need to make some of
the hard decisions. Just when are we going to
be facing these hard decisions? The govern-
ments collectively are trying to put it off as
long as possible.

The Murray-Darling Basin Commission
has been issuing warnings for months and
months about the decreased rainfall and de-
creased flows into our storage in the Murray-
Darling Basin. We have been in drought for
six years, yet only last Friday the Prime Min-
ister called the Water Summit to drag the
Premiers to Canberra for three hours to talk
about a crisis that has been building for
years, and then they still do not come up
with any hard decisions. When did they sud-
denly decide there was a crisis? In October
the head of the Murray-Darling Basin Com-
mission highlighted at a Senate committee
hearing that our storage will be empty by
April or May next year. That was four or five
weeks ago. The Prime Minister got out of
bed on Friday and decided there was a crisis
so he called a meeting for three hours on
Melbourne Cup Day! Was that so that he
could bury it? It is ridiculous.

The government needs to be looking seri-
ously at the impact that climate change is
having on the Murray-Darling system. We
need to be taking allocations out of the sys-
tem and we need to be doing that now. When
are they going to do it? Next year? The year
after? The one in 1,000-year drought? It is
going to be every year from now on. (Time
expired)

Question agreed to.

CONDOLENCES

Hon. Sir Allen Fairhall, KBE

The DEPUTY PRESIDENT (3.31
pm)—It is with deep regret that I inform the
Senate of the death, on 3 November 2006, of
the Honourable Sir Allen Fairhall, a former
minister and member of the House of Repre-
sentatives for the division of Paterson, New
South Wales, from 1949 to 1969.

Senator MINCHIN (South Australia—
Leader of the Government in the Senate)
(3.31 pm)—by leave—I move:

That the Senate records its deep regret at the
death on 3 November 2006 of The Honourable
Sir Allen Fairhall KBE, former Federal Minister
and Member for Paterson, New South Wales, and
that the Senate places on record its appreciation
of his long and meritorious public service and
tenders its profound sympathy to his family in
their bereavement.

Allen Fairhall was born on 24 November
1909 at Morpeth, near Maitland, in the lower
Hunter Valley, New South Wales. He was the
third son of Charles and Maud Fairhall. Al-
len was educated at the East Maitland Boys
High School and later at the Newcastle
Technical College. He served an apprentice-
ship as an electrical fitter at the Walsh Island
Dockyard, Newcastle, becoming a qualified
tradesman in the field. While at school Allen
became interested in radio, and he began
broadcasting music on Sunday mornings
from his family home, using a gramophone
and borrowed records. In 1931, when he was
only 22, he founded the commercial broad-
casting station 2KO Newcastle, operating
with a 13-metre timber mast in his backyard.
Radio 2KO grew to be one of Australia’s
leading provincial radio stations. In 1942, he
became President of the Australian Federa-
tion of Commercial Broadcasting Stations.

From 1941 to 1944, Allen Fairhall was an
alderman of Newcastle City Council, and
served the city as a wartime warden in the
Civil Emergency Services. During World
War II, Allen was also coopted by the Minis-
try of Munitions to become supervising en-
gineer of the Radio and Signals Supply Sec-
tion in New South Wales. He was responsi-
ble for the production of wireless, signals
and radar equipment for the armed services.
In 1947, he sold his broadcasting interests and took up dairy farming at Trevallyn, on the Paterson River. Sir Allen entered federal parliament as the member for Paterson in 1949, and he held that seat for the Liberal Party until his retirement on 12 November 1969. Sir Allen Fairhall was one of the famous ‘forty-niners’, that special group of parliamentarians who were elected in the 1949 poll that ushered in more than 20 years of Liberal and National party government.

Early in his parliamentary career, Allen attended the 10th General Assembly of the United Nations in New York in 1954 as a member of the Australian delegation, and was the first backbench member of the federal parliament to be included in the Australian mission.

Sir Allen was appointed Minister for the Interior and Minister for Works in 1956 by Prime Minister Menzies and was Chairman of the Parliamentary Public Works Committee between 1958 and 1961. He was appointed as the Minister for Supply in December 1961, and was reappointed to that portfolio within the cabinet after the election in 1963. He was a senior member of the cabinet from that time on. When the Holt government was formed in January 1966, Allen Fairhall was appointed Minister for Defence, a position he held until his retirement.

Throughout his career he spoke of the evils of socialism, saying that ‘socialism denies the opportunity to a fellow to succeed on his merits’. Many people saw Allen Fairhall as a possible candidate for the leadership of the Liberal Party, and therefore the prime ministership, after Harold Holt’s death in 1967, but he declined to be nominated. Causing a stir at the time was an advertisement published in the Australian newspaper in July 1968 by a group describing themselves as ‘Businessmen for a Democratic Governing’ which called for people to write to their local Liberal MP, calling for Allen Fairhall to be Prime Minister.

In 1966 he was chosen by the Institution of Production Engineers to receive the James N Kirby Medal for his role in the development of defence production industries. After 20 years in parliament, including 11 years as a minister, Sir Allen retired in 1969. Media commentators were very complimentary about the contribution of this talented front-bencher to political life. Upon the announcement of his retirement, the Daily Telegraph stated:

Mr Fairhall’s retirement will be a great loss not only to Parliament, but to the whole of Australia. He has shown qualities of drive and common-sense. He represents all that is best in politics and he leaves his office with the knowledge that he has his country’s thanks and respect.

In 1970, Allen Fairhall’s years of public service were recognised by his appointment as a Knight Commander of the Order of the British Empire. In later life he returned to private enterprise, as well as writing several books. Sir Allen died just shy of his 97th birthday—a wonderful achievement.

On behalf of the government, I offer my condolences to his wife, Lady Monica Fairhall, his son, Allen, and his extended family, and wish them all the very best.

Senator CHRIS EVANS (Western Australia—Leader of the Opposition in the Senate) (3.36 pm)—On behalf of the opposition, I would like to join with Senator Minchin and support the motion of condolence following the death of the Hon. Sir Allen Fairhall. Sir Allen served for 20 years in the House of Representatives in various ministerial posts, including that of Minister for Defence. He was clearly a very distinguished parliamentarian. I extend our sincere condolences to his family and friends at this time.
He was born in New South Wales in 1909 and was educated at East Maitland High School. By 1929, at the start of the Great Depression, he had completed his apprenticeship as an electrical fitter and engineer. He was a lifelong radio enthusiast. In the same year he began making Sunday morning radio broadcasts from the family home using a gramophone and borrowed records. In 1931 he founded radio station 2KO in Newcastle, the second commercial broadcasting station in that city.

From 1942 until the end of the Second World War he was the supervising engineer of the Radio and Signals Section of the Ministry of Munitions, a role he played in a voluntary capacity. Sir Allen also served as an alderman of the City of Newcastle from 1941 to 1944. He entered parliament in 1949 as the member for Paterson and was re-elected on seven occasions, holding the seat for 20 years until his retirement from parliament. For a conservative member to have such a long run from what is pretty good Labor heartland means he was obviously a very able politician.

In 1954 Sir Allen was a member of the Australian delegation to the General Assembly of the United Nations. His ministerial career began in 1956 with his appointment as Minister for the Interior and Minister for Works. He served as Chairman of the Parliamentary Standing Committee on Public Works from 1959 until 1961. He was then appointed the Minister for Supply and held that post for a little over four years. In January 1966 he was appointed to the senior role of Minister for Defence in the Holt government and remained in that position until his retirement some 3½ years later. An editorial in the *Sydney Morning Herald* described him as:

... a hard liner, a firm anti-communist, an advocate of forward defence and rearmament.

As Minister for Defence, Sir Allen spent considerable time and energy responding to controversy over cost overruns, testing and delivery time frames of the F111 aircraft, ordered by the Menzies government in 1963. He would no doubt have enjoyed the current debate on the Joint Strike Fighter—the more things change, the more they stay the same. In 1968, along with Paul Hasluck, he successfully fomented backbench revolt against Prime Minister Gorton’s 1968 ‘Strategic basis of Australian defence policy’. During his parliamentary career he was also spoken of as a potential future Liberal leader. However, he retired from politics in 1969, saying that he found it:

... increasingly difficult to take the long hours and constant travelling inseparable from parliamentary office.

In the valedictory debate in September 1969, deputy opposition leader and shadow minister for defence, Lance Barnard, with whom he had done battle over the F111 contract, said that he had made:

... a tremendous contribution as a member and as a responsible Minister in this Parliament.

Sir Allen was also the author of a book, *Towards a New Society*, published in 1997, when I think he must have been about 88. In that work he argued for the abolition of the current taxation regime and for its replacement with a uniform tax on the unimproved capital value of land. The preface of the book said:

... society has struggled, with little success, to deal with the miseries which have overwhelmed untold millions of people throughout the world—miseries directly attributable to the private monopoly of land.

I am not sure that that is in total accord with current Liberal Party policy. Clearly Sir Allen was a man of independent thought and he retained a keen interest in important issues in our society well into his retirement. He was also the writer of *Newcastle: Symphony of a*
City, published in 2001. Sir Allen was a person who made a significant contribution to public life and to government in Australia. Once again, on behalf of the opposition, I pass on our sincere condolences to his family and friends at this time.

Question agreed to, honourable senators standing in their places.

PETITIONS

The Clerk—A petition has 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 Senator Conroy (from 59 citizens).

Petition received.

NOTICES

Withdrawal

Senator WATSON (Tasmania) (3.42 pm)—Pursuant to notice given on the last day of sitting, I now withdraw business of the Senate notices of motion numbers Nos 1 and 2 standing in my name for two sitting days after today and business of the Senate notice of motion No. 1 standing in my name for seven sitting days after today. I thank the Senate.

Presentation

Senator Joyce to move on the next day of sitting:

That the Senate notes:

(a) that on 28 September 2006 the United States Congress passed the Military Commission Act 2006;

(b) that on 17 October 2006 President George W Bush signed the Act into law;

(c) that the Act provides a congressional basis for trial by military commission;

(d) that the Act incorporates a number of procedural safeguards including:

(i) the presumption of innocence,

(ii) a right to be present throughout the trial,

(iii) a right to cross-examine prosecution witnesses,

(iv) a ban on evidence obtained by torture,

(v) access to evidence the prosecution intends to adduce at trial,

(vi) the provision of military defence counsel,

(vii) the ability to retain civilian defence counsel,

(viii) the option to remain silent or testify at trial,

(ix) standard of proof beyond reasonable doubt, and

(x) an extensive appeals process;

(e) that Mr David Hicks is yet to be charged under the Act; and...
(f) that the Government continues to press the United States for Mr Hicks’ case to be dealt with expeditiously and fairly.

Senator Siewert to move on the next day of sitting:

That the Senate—

(a) notes that:

(i) there have been calls by land owners in the Gwydir Ramsar-listed wetland for it to be de-listed as a Ramsar site because the federal and New South Wales governments have let it die,

(ii) the World Wide Fund for Nature intends to raise this issue at the Standing Committee of the Ramsar Convention when it meets in February 2007,

(iii) the Gwydir wetlands have received little water in 10 years despite promises from state and federal governments to provide water to retain the site’s value, and

(iv) water to the Gwydir wetland has been reduced by up to 75 per cent; and

(b) calls on state and federal governments to protect this important wetland site.

LEAVE OF ABSENCE

Senator FERRIS (South Australia) (3.43 pm)—by leave—I move:

That leave of absence be granted to the following senators:

(a) Senator Brandis from 6 November to 10 November 2006, on account of parliamentary business overseas;

(b) Senator Ian Campbell from 6 November to 8 November, and on 10 November 2006 for family matters; and

(c) Senator Coonan from 6 November to 10 November 2006 on account of ministerial business overseas.

Question agreed to.

COMMITTEES

Foreign Affairs, Defence and Trade Committee

Extension of Time

Senator FERRIS (South Australia) (3.44 pm)—by leave—On behalf of Senator Johnston, the Chair of the Foreign Affairs, Defence and Trade Committee, I move:

That the time for the presentation of the report of the Foreign Affairs, Defence and Trade Committee on the provisions of the Australian Participants in British Nuclear Tests (Treatment) Bill 2006 and a related bill be extended to 8 November 2006.

Question agreed to.

NOTICES

Postponement

The following items of business were postponed:

Business of the Senate notice of motion no. 1 standing in the name of Senator Siewert for today, proposing the reference of matters to the Rural and Regional Affairs and Transport Committee, postponed till 8 November 2006.

Business of the Senate notice of motion no. 2 standing in the name of the Chair of the Foreign Affairs, Defence and Trade Committee (Senator Johnston) for today, proposing the reference of a matter to the Foreign Affairs, Defence and Trade Committee, postponed till 8 November 2006.

Business of the Senate notice of motion no. 4 standing in the name of Senator O’Brien for today, proposing the reference of a matter to the Rural and Regional Affairs and Transport Committee, postponed till 8 November 2006.

General business notice of motion no. 606 standing in the name of Senator Bartlett for today, relating to duck hunting, postponed till 8 November 2006.

General business notice of motion no. 608 standing in the name of Senator Nettle for today, relating to water resources of the
Murray-Darling Basin, postponed till 8 November 2006.

General business notice of motion no. 612 standing in the name of Senator Stott Despoja for today, relating to Mr David Hicks, postponed till 8 November 2006.

COMMITTEES

Foreign Affairs, Defence and Trade Committee

Reference

Senator FERRIS (South Australia) (3.45 pm)—At the request of Senator Johnston, I move:

That the following matter be referred to the Foreign Affairs, Defence and Trade Committee for inquiry and report by 29 March 2007:

The nature and conduct of Australia’s public diplomacy, with particular reference to:

(a) the extent and effectiveness of current public diplomacy programs and activities in achieving the objectives of the Australian Government;

(b) the opportunities for enhancing public diplomacy both in Australia and overseas;

(c) the effectiveness of and possible need to reform administrative arrangements relating to the conduct of public diplomacy within and between Commonwealth agencies and where relevant, the agencies of state governments; and

(d) the need, and opportunities for expanding levels of funding for Australia’s public diplomacy programs, including opportunities for funding within the private sector.

Question agreed to.

Legal and Constitutional Affairs Committee

Meeting

Senator FERRIS (South Australia) (3.46 pm)—At the request of Senator Payne, I move:

That the Legal and Constitutional Affairs Committee be authorised to hold a public meeting during the sitting of the Senate on Friday, 10 November 2006, from 9 am, to take evidence for the committee’s inquiry into the provisions of the Families, Community Services and Indigenous Affairs and Veterans’ Affairs Legislation Amendment (2006 Budget Measures) Bill 2006.

Question agreed to.

ENVIRONMENT FUNDING

Senator WATSON (Tasmania) (3.46 pm)—I ask that general business of motion No. 618, relating to government funding for the Australian environment, be taken as a formal motion.

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

Senator Bob Brown—Before that is taken as formal, I seek leave to move an amendment to that motion.

The DEPUTY PRESIDENT—Is there any objection to this motion being taken as formal? Senator Watson has not moved it yet. There is no objection to the motion being taken as formal.

Senator WATSON (Tasmania) (3.46 pm)—I move:

That the Senate—

(a) notes that:

(i) the Howard Government has placed a high priority on caring for the Australian environment and has shown this by providing funding based on good science that has helped to protect more than 8 million hectares of wetlands, treat 400,000 hectares of land for salinity and erosion, and helps some 800,000 volunteers get involved in on-ground work, and

(ii) the recently announced $13.4 million New South Wales Wetland Recovery Plan will include projects designed to improve knowledge of wetland and environmental water management, improve water flows, and address noxious weeds in the Macquarie Marshes and Gwydir Wetlands regions; and
(b) congratulates the Howard Government on its initiatives in this area.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (3.47 pm)—Thank you for your guidance, Mr Deputy President. I seek leave to move an amendment to the motion.

The DEPUTY PRESIDENT—The motion has been circulated, I understand.

Senator BOB BROWN—That is an amendment to the next motion?

The DEPUTY PRESIDENT—It is a different one?

Senator BOB BROWN—Yes.

The DEPUTY PRESIDENT—Is leave granted for Senator Brown to move an amendment to Senator Watson’s motion?

Leave not granted.

The DEPUTY PRESIDENT—The question therefore is that the motion moved by Senator Watson be agreed to.

The Senate divided. [3.52 pm]

(The President—Senator the Hon. Paul Calvert)

Ayes…………… 33
Noes…………… 29
Majority……… 4

AYES
Abetz, E. Adams, J.
Barnett, G. Bernardi, C.
Boswell, R.L.D. Calvert, P.H.
Chapman, H.G.P. Colbeck, R.
Eggleston, A. Ellison, C.M.
Ferguson, A.B. Ferris, J.M. *
Fierravanti-Wells, C. Fifield, M.P.
Heffernan, W. Humphries, G.
Johnston, D. Joyce, B.
Kemp, C.R. Lightfoot, P.R.
Macdonald, I. 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.
Troeth, J.M.
Watson, J.O.W.

NOES
Allison, L.F. Bartlett, A.J.J.
Bishop, T.M. Brown, B.J.
Brown, C.L. Carr, K.J.
Crossin, P.M. Evans, C.V.
Hogg, J.J. Hurley, A.
Kirk, L. Ludwig, J.W.
Lundy, K.A. Marshall, G.
McEwen, A. McLucas, J.E.
Moore, C. Nettle, K.
O’Brien, K.W.K. Polley, H.
Ray, R.F. Sherry, N.J.
Siewert, R. Stephens, U.
Sterle, G. Stott Despoja, N.
Webber, R. * Wong, P.
Wortley, D.

PAIRS
Brandis, G.H. Conroy, S.M.
Campbell, I.G. Campbell, G.
Cooman, H.L. Forshaw, M.G.
Mason, B.J. Milne, C.
Minchin, N.H. Faulkner, J.P.
Vanstone, A.E. Hutchins, S.P.

* denotes teller

Question agreed to.

GREENHOUSE GAS EMISSIONS

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (3.54 pm)—I move:

That the Senate calls on the Minister for Fisheries, Forestry and Conservation (Senator Abetz) to report, before the Senate rises in 2006, on:

(a) the relevance in Australia of the Stern report’s conclusion that globally, destruction of forests creates more greenhouse gases than transport;

(b) the quantity of greenhouse gases currently released by:

(i) commercial logging of native forests, and

(ii) other clearance of native vegetation in Australia;

(c) the reliability of information available on and any measure being implemented to
improve knowledge on paragraphs (a) and (b); and
(d) any measures being undertaken by the Government to halt greenhouse gas emissions from the forests in our region and globally.

Question put.

The Senate divided. [3.56 pm]
(The President—Senator the Hon. Paul Calvert)

**The President**—While the count is taking place, I welcome the Premier of South Australia to the gallery. I hope that your visit to Canberra today has been successful.

**Ay es**

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**Noes**

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**Majority**

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<td>Stott Despoja, N.</td>
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**AY ES**

**NOES**

* denotes teller

Question negatived.

**CLIMATE CHANGE**

**Senator BOB BROWN** (Tasmania—Leader of the Australian Greens) (3.59 pm)—by leave—I move the motion as amended:

That the Senate—

(a) agrees that:

(i) scientific evidence supports a link between human activity and climate change, and

(ii) urgent action is required to reduce greenhouse gas emissions globally; and

(b) notes that the Stern report suggests the costs to the economy and to the environment of inaction are significantly greater than the short-term cost of action.

Question agreed to.

**MR WALLY FOREMAN**

**Senator WEBBER** (Western Australia) (4.00 pm)—I, and also on behalf of Senators Webber, Evans, Ian Campbell, Bishop, Ellison, Siewert, Murray, Eggleston, Sterle, Adams, Johnston and Lightfoot, move:

That the Senate—

(a) notes:

(i) with great sadness the passing of Mr Wally Foreman,

(ii) that Mr Foreman will be remembered as a champion for Western Australian athletes in their efforts to gain national representation,

(iii) that Mr Foreman was the inaugural director of the Western Australian Institute of Sport (WAIS), and an early pioneer in developing a more professional and supportive training environment for Western Australia’s high performance athletes,
(iv) that the WAIS was the first state-based institute in Australia, and a national leader in its field under Mr Foreman’s guidance, and

(v) that Mr Foreman will also be remembered for his informative and incisive sports commentary during his 30 year career, covering four Olympic Games, five Commonwealth Games, and international cricket, tennis, hockey and athletics tournaments; and

(b) extends its deepest sympathies to Mr Foreman’s family, especially his wife Lyn and their sons, Mark and Glen.

Question agreed to.

PALESTINE AND ISRAEL

Senator ALLISON (Victoria—Leader of the Australian Democrats) (4.01 pm)—I move:

That the Senate—

(a) notes that:

(i) the wall Israel is constructing in the West Bank is 10 times the length of the Berlin Wall and three times as high,

(ii) the length of the ‘Green Line’, the border between Israel and the West Bank, is 315 kilometres and the path of the wall is 670 kilometres long,

(iii) Israeli settlements with their bypass roads and security zones occupy 42 per cent of the West Bank,

(iv) there are now more than 200 Jewish-only settlements in the West Bank,

(v) 78 per cent of the Israeli settlement population comes from Europe and North America,

(vi) Israeli settlers in the West Bank consume five times more water than Palestinians, water that is taken from Palestinian water sources,

(vii) Palestinian travel is restricted or entirely prohibited on 41 roads and sections of roads throughout the West Bank, covering a total of more than 700 kilometres of roadway, however Israeli settlers can travel freely on these roads, and

(viii) there are now more Jewish settlers in Palestinian East Jerusalem than Palestinians; and

(b) urges the Government to consider these facts in its efforts to assist with a peaceful two-state solution in Palestine and Israel.

Question negatived.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (4.01 pm)—I indicate the Greens support for that motion.

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

In Committee

Consideration resumed.

The TEMPORARY CHAIRMAN (Senator Watson)—The committee is considering amendment (1) on sheet 5112 revised, moved by Senator Nettle.

Senator PATTERSON (Victoria) (4.03 pm)—During the break—what break there was—we had time to have some conversation, and I understand the intent of and motive for what Senator Nettle is trying to achieve. But I have to express my concern that there is difficulty for the licensing committee, when approving very basic research projects, to be able to predict what will happen in the long-term future. I understand the intent of Senator Nettle’s amendment, but I do not think this is necessarily the best way to achieve it. However, I give her credit for attempting to make the research more available and focused on public health.

Senator NETTLE (New South Wales) (4.04 pm)—I would like to thank the various senators who have spoken on this motion and supported what I am trying to achieve with this public interest objective. In putting for-
ward this amendment, I recognise that this is a very difficult thing to achieve and it can be achieved in a range of different ways. I did not put forward my amendment to say that this is the best and only way to do it. I recognise that there are many ways, including regulations within the NHMRC, requirements being put into a licence application and discussion around this issue. You can do it in a range of different ways. I simply put forward this amendment because, for me, looking at the legislation, that seems to be the appropriate way to do it. But I acknowledge that there are difficulties with it. I thank senators for their contributions and their support for what I am trying to achieve. I am quite happy to proceed with the amendment and I commend it to the Senate.

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

The committee divided. [4.09 pm]

(The Temporary Chairman—Senator JOW Watson)

Ayes…………… 9
Noes…………… 50
Majority……… 41

AYES

Allison, L.F. Bartlett, A.J.J.
Brown, B.J. Brown, C.L.
Hutchins, S.P. Murray, A.J.M.
Nettle, K. Siewert, R. *
Stott Despoja, N.

NOES

Abetz, E. Adams, J.
Barnett, G. Bernardi, C.
Bishop, T.M. Carr, K.J.
Chapman, H.G.P. Colbeck, R.
Crossin, P.M. Eggleston, A.
Ellison, C.M. Evans, C.V.
Faulkner, J.P. Ferguson, A.B.
Ferris, J.M. Fielding, S.
Fierravanti-Wells, C. Fifield, M.P.
Hogg, J.J. Humphries, G.

Hurley, A. Johnston, D.
Joyce, B. Kirk, L.
Lightfoot, P.R. Ludwig, J.W.
Lundy, K.A. Macdonald, J.A.L.
Marshall, G. McEwen, A.
McGauran, J.J.J. McLucas, J.E.
Moore, C. O’Brien, K.W.K.
Parry, S. * Polley, H.
Payne, M.A. Patterson, K.C.
Ronaldson, M. Scullion, N.G.
Sherry, N.J. Stephens, U.
Sterle, G. Troeth, J.M.
Trood, R.B. Vanstone, A.E.
Watson, J.O.W. Webber, R.
Wong, P. Wortley, D.

* denotes teller

Question negatived.

The TEMPORARY CHAIRMAN (Senator Watson)—I understand that there is the possibility of some other amendments but that these have not yet been circulated. So the committee shall now consider the amendments to be moved by Senator Colbeck.

Senator COLBECK (Tasmania—Parliamentary Secretary to the Minister for Finance and Administration) (4.13 pm)—As I indicated in my speech on the second reading, I proposed to move two amendments to provide the parliament with some oversight of the regulatory process. Unfortunately, the amendments as they have been prepared do not permit some practices that are currently allowed to go ahead. That is not what I was looking to see occur as part of this process. I have looked at modifying my amendments to see whether they can relate specifically to the changes to the existing legislation that are proposed by this bill, but even that appears to be quite problematic.

It is not my desire to remove current practices that are permitted by existing legislation, regulation or in fact guidelines. So in that context it is my intention to request the permission of the chamber to withdraw my amendments. But I am having conversations
at the moment in relation to the conduct of an inquiry into the regulations that oversee these practices nationally with a view to having a further look at how these can be brought together. As I said in my second reading speech, how these practices are regulated and legislated across the states is inconsistent. It is my view, as I said in that speech, that there is a desire to see an overarching national regulatory approach to this. It has already been indicated by two states that if this legislation is not passed they are prepared to go ahead with it on their own. In my view, a national approach to this is much more favourable than an ad hoc approach by different states. We have seen even in the last 24 hours the different approaches that can be taken on HRT, including Steve Conroy and the terrific outcome from surrogacy, and there is a whole range of issues that I think can be dealt with. It is illegal in one state but it is legal in another. So there is a whole range of issues that can be dealt with across the board. So I will not be proceeding with my amendments but I will be looking to see a committee of inquiry put in place that deals with the broader range of overarching national regulatory approach.

The TEMPORARY CHAIRMAN (Senator Watson)—So, Senator Colbeck, you will not be proceeding with your two amendments?

Senator COLBECK—That is correct, Mr Temporary Chairman.

Senator WEBBER (Western Australia) (4.17 pm)—I want to briefly place on record my appreciation of Senator Colbeck’s commitment to that. I think he raised a legitimate point in the debate and, obviously, the events of today as to Senator Conroy and his partner really bring that point to the fore. I would like to thank him for his sensitivity in handling this. I support a move to perhaps having a Senate inquiry to further consider this matter and bring it back.

Senator PATTERSON (Victoria) (4.17 pm)—Senator Colbeck and I have been discussing this for some time, and we have looked at various ways of trying to achieve what he wants to achieve. I am not sure that a Senate inquiry is really his goal. I think he wants an independent committee to look at tissue donation, in particular that of ova and sperm, and I have to agree with him. When you look at it, you have guidelines here and there that have developed as a result of legislation growing over time. If Senator Colbeck were to come forward with a motion calling on the government to set up an independent inquiry in conjunction with the states, I think COAG as well would need to look at it. Regulation really does need to be more uniform. It is quite difficult for either people doing research or people donating gametes or embryos to find their way around it. It should be clearer and more transparent. I agree with Senator Colbeck, and I am sure that those of us who are supporting the bill will support him in a move to ensure that. I suspect that others who are not supporting the bill would expect that we make sure that even the guidelines for ART are as crystal clear as possible. While I think Senator Colbeck has raised a very important issue, it is quite difficult—in fact, I think he has realised this—to try to address it through this bill, but there are other means of achieving the same goal.

Senator STOTT DESPOJA (South Australia) (4.19 pm)—I join colleagues in commending Senator Colbeck for the intention of his amendments. Having said that, I do think that sometimes there are good reasons, specifically in the acts that we have been dealing with, for doing things in and putting information in guidelines, while on other occasions there is a very strong argument for delegated legislation through regulations. I
understand from Senator Colbeck, from our chats and from what he said then, that the idea of providing some level of accountability throughout the regulatory process was one of the intentions behind the amendments. I had concerns about the workability of the amendments that were before us—and I do not think anyone doubted that—in terms of how you would achieve that. Even if you target only the changes that are made through the legislation that is before us, I still think that throws up problems as well, because you have got to look at what other guidelines are already in place. To be quite frank, not a lot in the guidelines would be changed as a consequence of this new bill, even though it would allow some different processes or some procedures that are currently not allowed.

Can I suggest—as I have done in previous debates—that, if we are talking about not a Senate inquiry but an independent inquiry, we should give serious consideration to the Australian Law Reform Commission. I know that during the 2002 debate, when, for example, the issue of patenting came up and people were not sure how to handle that, one of the amendments that I made was a reference of that particular issue to the ALRC. As you would know, that inquiry into patents has taken place and has since reported. So I am a great believer in the ALRC’s work if we are looking at an independent national body that can take into account some of the inconsistencies between the states and territories and, indeed, between them and the Commonwealth. That might be one option to pursue. In the meantime perhaps it is a good idea to withdraw the amendments and continue talking. I acknowledge Senator Colbeck’s intention and I really appreciate him playing a constructive role in this debate. Without wanting to reflect on a decision of the Senate in committee, Mr Temporary Chairman, I am still a little puzzled by the debate and vote that we just had on the commercialisation provision. It was interesting.

Amendments withdrawn.

Senator NETTLE (New South Wales) (4.21 pm)—I move Greens amendment (2) on sheet 5112 revised.

(2) Schedule 2, item 19, page 20 (after line 3), at the end of subsection 24(1), add:

; (c) the licence holder must agree to deposit in any Australian national stem cell repository, a sample of any stem cell line derived specifically for research.

I was going to move my amendments together but, after some discussion, I have decided to move them separately—but I will talk about them together. Both of these amendments are about establishing a national stem cell bank. This is a debate we have had in this chamber before, in 2002. A national stem cell bank exists in the United Kingdom. One of the provisions about the way it operates is that everyone who gets a licence to do stem cell research must deposit a stem cell line into the bank. In the United Kingdom, commercial operators—or people who have done the research on the basis of private funding—also still deposit a stem cell line into the bank, so it is in the public domain. That does not stop people from being able to do commercial or private research, but it ensures that the information is held in the public domain and therefore can provide public benefit or be used by a variety of different researchers. It means that people who are doing public sector research can have access to the stem cell lines and are not impeded by intellectual property or patent law.

A similar model operates, in some respects, through the Australian Stem Cell Centre, but it is a private company, not a public institution. These amendments do not say that it has to be a public institution. I happen to be of the view that it would be
best if it were a public institution, but these amendments do not say that; they just say that we should have a national stem cell bank. The first amendment says that everyone who gets a licence to do stem cell research will be required, as a condition of their licence, to put a stem cell line into the bank.

I will explain why I am working from the revised sheet rather than the first sheet. I changed it so that it is clear that it means a stem cell designed specifically for research. I have done that because I have had some representations from a director of an IVF company who said that we want to make sure that we are not putting into the stem cell bank the stem cell lines—the genetic information—of private individuals who choose to access IVF. I have changed the wording in the revised version to ensure it is clear that it is not my intention that everyone who has IVF should have to have their genetic information put into a national stem cell bank in the public domain. It is about the research that is being done. That is why I have moved to this wording.

I could have moved both of these amendments together—because the first one says that the licence requires you to deposit the stem cell line in the stem cell bank—but I am moving them separately. That has the potential to create some difficulty, because, if we do not have a stem cell bank, how can we require people who want to get a licence to put a stem cell line into it? Because I have had a request to move these amendments separately, I will also seek leave to amend this motion so that it reads: ‘The licence holder must agree to deposit in any Australian national stem cell repository a sample of any stem cell line derived specifically for research.’ I am replacing ‘the’ with ‘any’ and inserting ‘Australian’. I am also ensuring that ‘national’ is no longer capitalised, because I am not talking about a particular entity. I commend the amended amendment to the Senate.

I am moving the amendments separately because, if a stem cell bank does not exist, you cannot say, ‘put it in the stem cell bank’. I am going to seek leave to amend that to say ‘any Australian national stem cell repository’ so that the intention is clear without using a term or phraseology that does not exist. I might now seek leave to amend that motion.

The TEMPORARY CHAIRMAN—I suggest that you move the amendment in its amended form.

Senator NETTLE—Yes, okay. I will read out once more what I am proposing to amend. It would read: ‘The licence holder must agree to deposit in any Australian national stem cell repository a sample of any stem cell line derived specifically for research.’ I am replacing ‘the’ with ‘any’ and inserting ‘Australian’. I am also ensuring that ‘national’ is no longer capitalised, because I am not talking about a particular entity. I commend the amended amendment to the Senate.

Senator STOTT DESPOJA (South Australia) (4.27 pm)—Inevitably, there is a bit of overlap in these amendments, so I understand why we are dealing with them separately. Obviously, some people who may, for example, support the establishment of a stem cell bank may at the same time have different views on the prescriptive nature of the second amendment in terms of whether or not you are required to deposit a stem cell line in that particular bank.

Senator Nettle is right in that some of us have dealt with aspects of this issue before. I think it was the Greens who, as a consequence of the 2002 acts, sought to establish, pretty much effective immediately, a national stem cell bank. Senator McLucas—who is in the chamber—and I moved an amendment adding the examination of the applicability of a stem cell bank to the terms of reference for the independent inquiry that was to come about after three years of the operation of both acts. Obviously, that is the Lockhart review. One of the recommendations con-
tained in the Lockhart review did indeed relate to a stem cell bank, affirming the notion that there should be one in Australia.

In the exposure draft—the private members’ bill—that Senator Webber and I put forward, we did not actually legislate for a stem cell bank. There are a couple of reasons for that. First of all, we thought it might be appropriate for the Attorney-General’s Department and the other relevant department—the Department of Health and Ageing—to examine, in much more detail than the Lockhart review did, the details for a national stem cell bank. When I initially looked at this issue I thought, ‘If we implement the Lockhart recommendation in relation to this, how do we go about it?’ First of all, you do not need a legislative framework if you do not want one. People would be aware that the stem cell bank in the United Kingdom is not based on legislation; it is not enshrined in law in that way. So, first of all, it is not necessary. Part of me thinks it is always good to have something enshrined in law, as opposed to operating in a different framework—and I suspect that I am again echoing Senator Colbeck’s thoughts in this area. If you do decide to go down that path, you have a lot of factors to take into account. It is not just the scientific, ethical, health and other issues you have to deal with; there is also the intellectual property debate in relation to such a bank, which, of course, is huge—hence, the decision in the exposure draft to essentially allow a feasibility study by the relevant departments that we named.

I am not opposed to a national stem cell bank; in fact, the more I hear about it, the more excited I get. I think there are other issues that need to be examined: is it appropriate to have just one? It does not necessarily have to be in one place, though. There are other ways of it being a repository for those lines. Through you, Chair, to Senator Nettle, I support the intent of both the amendments that we are dealing with. Excuse me for speaking to the second amendment, but I guess it is inevitable. The time frame that Senator Nettle has allowed—which, as I understand it, is two years for the minister to provide legislation—is a pretty reasonable time frame. In terms of the bill before us, however, Senator Patterson is looking at a six-month time frame for the minister to report to parliament regarding the establishment of a national stem cell bank. Among the three of us—four of us, with Senator Webber—there is some compromise that can be reached here.

I am going to support the two amendments before us, perhaps as a way of sending a message to the government of the day, whether it is this one or another one in two years time, to provide legislation and to tackle some of those issues. Having said that, it is probably understandable that I am a little biased and I still think the option that Senator Webber and I pursued was probably the more detailed one in terms of the Attorney-General’s Department and the Department of Health and Ageing examining the feasibility, coming up with whether you want legislation and, if you do, explaining to us how you deal with the intellectual property requirements. That would be one requirement that I think you would have to satisfy before you implement amendment (2) that Senator Nettle is putting forward.

It is one thing to demand that stem cell lines are deposited in a bank, but you need to have some understanding of the intellectual property arrangements—even if they are, as I am sure Senator Nettle would like, to ensure public good and public access and that researchers can work on them regardless of whether they are undertaking private or public research. So we will support the amendments, but I just want to draw the Senate’s attention to the fact that there are a number of options that have been considered in rela-
tion to this issue. The notion of a stem cell bank is one that was recommended in the Lockhart review so, if we are being faithful to that review, there should not be a problem with supporting some of the mechanisms put forward.

Senator WEBBER (Western Australia) (4.32 pm)—I am sure it will come as no great surprise to people, as this debate goes on, that I agree with the contribution of Senator Stott Despoja. I, too, certainly support amendment (2) but I want to note, to perhaps facilitate the process, that I also support amendment (3) standing in Senator Nettle’s name. I see amendment (2), as has been outlined, as a step towards trying to achieve those public health benefit outcomes and accountability. Perhaps we are finally getting there on this one—we did not quite get there on the last one—but, over the last four years, we are getting better at this and we are coming to some understanding.

I think if you support amendment (2) it is pretty hard not to support amendment (3) because, if you are saying that you support a deposit in a national stem cell bank, then, really, you do need to actually establish one. These two are quite consequential, so it is a bit difficult to discuss them separately. I am assured by some that the government and the Prime Minister are committed to the establishment of a national stem cell bank, and I therefore do not see the harm in saying that we should actually have a time frame within which that should be achieved. With that, I support both the amendments.

Senator McLUCAS (Queensland) (4.34 pm)—I want to indicate that I will be supporting both amendments (2) and (3) when they appear, but I thank Senator Nettle for separating them and I think she has enunciated quite clearly why it was important to do so. I am also appreciative of Senator Nettle’s amendment to the amendment as printed. I think that will be useful as well.

In 2002 we moved an amendment to the legislation we dealt with then in order to start this train along the track. As a result of the amendment that Senator Stott Despoja and I moved, Lockhart reviewed the usefulness of having a national stem cell bank in Australia. If you look at Lockhart’s commentary on the question of stem cells, it is pretty evident that he was of the view that there was real potential for their use in Australia. He particularly cited the United Kingdom model. I do not think that he or his committee was clear about how it might be achieved, and I think that is why the wording of his recommendation—a very bald recommendation, just recommending that we have a national stem cell bank—is framed in that way.

We are now four years down the track, and I think it is timely to start putting some time frames around it. The time frame that the legislation currently identifies is that, within six months, the minister will report to the parliament. I think that is another step down the road of achieving this outcome. Then there is a two-year requirement—that a minister should bring legislation to the parliament within two years—and I think that is quite achievable. There are a lot of issues in the establishment of a stem cell bank that we have to go through. We have to go through the question of public and private. There is a question of intellectual property but also of personal genetic information that needs to be ensured. I think you have covered off most of it in your amendment, but let us make sure that we ensure that people’s personal, private information is kept that way.

Senator Stott Despoja interjecting—

Senator McLUCAS—I have heard that from you before. It probably will end up being the National Stem Cell Centre. That is what the Lockhart review acknowledged as
well. These amendments do not absolutely direct that that is where it will be. So I will be supporting both of those amendments from Senator Nettle, recognising though that some people might not support both.

Senator HUMPHRIES (Australian Capital Territory) (4.37 pm)—I want to indicate that I will not be supporting the amendments of Senator Nettle, or indeed any other amendments to this legislation, and I just want to put on the record why. Obviously I am disappointed that the Senate has seen fit to read this bill a second time. Clearly the Senate is now contemplating how it might enact legislation of this kind. That, as is clear from my remarks earlier in this debate, is profoundly disappointing. I also have to say that I think there are real problems with both the nature of a number of the amendments which are being put forward in this debate and the fact that we are amending legislation of this magnitude in this time frame. It seems that the importance associated with these amendments is being contradicted by the relatively short time frame that is available to consider these matters.

I think that we have here significant issues being proposed about which there has not been enough time to properly consider the implications. I see that there is just now being circulated in the chamber a further list of amendments—a running sheet of amendments that are proposed. Some of those amendments have not yet, as far as I am aware, been circulated in the chamber or are only just now being circulated in the chamber. If this were a piece of legislation dealing with maritime safety, the Egg Marketing Board—excuse the pun there—or something of that kind, I could well understand why we would need to consider these matters of a mechanical nature; but these issues are far more important than that. These issues are fundamentally important and amount to last-minute changes to a piece of legislation that will have implications for the nature of scientific research and policy for decades to come.

We have today, in making the decision to read this bill a second time, crossed a very significant and fundamental line, as many senators have already said. It alarms me greatly that we are attempting to patch up aspects of this legislation with amendments in this way at this late stage in the process. I will be opposing all of these amendments because I do not believe it is possible to remedy the defect that we have already put in place by proceeding to this stage in the consideration of this bill. I think this needs to be reconsidered. It would be unfortunate if we had to return at some point in the future after this policy was in place—after human embryos were being experimented upon and destroyed under this process—to fix up problems which were the result of the rush job that we undertake today in respect of this extremely important matter.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (4.41 pm)—I would like to briefly respond to that. The government has actually guillotined legislation in just the last few weeks with major amendments, including those from the government to its own legislation.

Senator Humphries—Do two wrongs make a right?

Senator BOB BROWN—The senator says that the government was wrong to do that, but he voted for it at the time. There has been a second reading vote which has passed the chamber. This is the proper time for members to bring forward amendments. It is legion the number of times in which amendments have been moved in committee to all forms of legislation. This is private member’s legislation. What I do suggest is that the member is quite right; if he cannot deal with the amendments then he should vote
against them. Opportunities will come later down the line, but for those members who want to move amendments, this is the proper time to do it.

When it comes to Senator Nettle’s amendments, which have been before the chamber for the whole day, they are simply putting conditions upon a component of the bill which had its second reading passed here an hour or two ago. They simply qualify that. They put a time line on it and a condition on the National Stem Cell Bank. There is a time line of six months for the minister to report to the parliament. We have voted for that. Senator Nettle is saying, ‘Let’s have legislation within two years,’ as another condition. That is not difficult to get one’s mind around, but if Senator Humphries has trouble with the process then the proper thing to do is to vote against the amendment. Likewise, it is the right of everybody who can deal with these amendments to determine whether or not they will vote for the amendments on their merits. I will be supporting these amendments from Senator Nettle.

Senator BARTLETT (Queensland) (4.43 pm)—Partly in response to those comments, and also as a wider comment on the debate we are having—and it was probably my amendment that Senator Humphries was reacting to; I think it was being circulated in the chamber just as he was speaking—I can understand people’s desire to have as much time as possible to consider amendments. I was certainly trying to establish, as late as when the second reading vote actually happened, whether amendments would be coming from other senators. It is worth reinforcing the point that it was expected that the second reading debate on this legislation would go at least until dinner time if not right through to the end of tonight. It is also worth saying, speaking as someone who is somewhere in the middle on this legislation—I am not sure that there are many others, but I am someone in the middle—that I am quite happy to have as much time as possible to deal with this.

Frankly I would prefer to have more time to deal with this. If people are still genuinely inquiring about issues to do with this legislation then I would certainly support adjourning debate so we can get it right. However I would add that Senator Humphries said himself that he does not think the legislation can be fixed. He said that it is beyond redemption and that he is going to vote against it. That is fine. Of course he is entitled to that view. But in that context it probably does not matter terribly much how much notice he has of particular amendments because he is going to vote against the whole bill anyway. I am in a different position, and I certainly would appreciate lots of time to consider amendments—because it seems there are not going to be terribly many more other than those that we have already, as far as I am aware.

The concerns that have been raised go to what has been a bit of a wider problem with the parliamentary side of this process. For all the criticism that was laid on the Lockhart committee—only taking six months, only having all of those hearings all around the country, only reading half of the papers that have ever been published in the known universe instead of all of them—if you compare that to the process we have had, of three very rushed public hearings, an extremely short time frame for people to put in submissions, a very short time frame for putting together the committee report, and rushing straight into Senate debate, frankly I do not think we have much ground on which to criticise the Lockhart committee for the adequacy of their process. Ours has clearly been poorer. I would agree with any expression of view, coming from whichever perspective on the legislation itself, that that is less than ideal.
Again as someone who has not taken a fixed, black-and-white view of this legislation, I also found the way the Lockhart review and the legislation was dealt with through the Senate committee process very frustrating. As I have already mentioned, there was only a small number of hearings and a limited amount of time for each witness. I could not get along to some of the hearings, because I was already stuck in hearings for other legislation that this government is railroading through the parliament. If there is a genuine concern from anyone on the government benches about inadequate time to consider legislation, I would love them to support an amendment the next time we move one to allow proper time for consideration of a range of equally important pieces of legislation that are currently being railroaded through the parliament.

Because there are many other important inquiries under way into other legislation and other matters, I could not get to the cloning bill hearings. But, frankly, on the day that I could, I decided it really was not worth my time. There was a short time frame for each witness, often with three, four or five witnesses appearing at once. The time frame was divided precisely between those who were already totally in favour of the legislation and those who were already totally against it, with people in the for and the anti camps pretty much sitting on either side of the chair. That is fine as well, but it really demonstrates that, for those of us who were hoping the committee process might be a genuine process of inquiry into the issues rather than a mechanism to gather the evidence that suited your predetermined view, it fell short of what it could have delivered; I think that would be the best thing to say. It is not the only Senate inquiry in history that has done that, but with this particular legislation and the context surrounding it I think it was unfortunate that that was the case. If there had been much more time for genuine exploration of the issues, I think it would have been better for everybody.

One of the other problems that I see with the issue is that, understandably, a lot of the focus has been on the issue of cloning and whether that is desirable or not—creating embryos through cloning techniques for the purposes of research. But that is only one part of the Lockhart review. The Lockhart review contained I think 54 recommendations covering nine broad areas. There were only seven recommendations that actually went to the area of allowing so-called therapeutic cloning and other currently prohibited techniques. There are other recommendations that go to other matters.

I think it was unfortunate that the committee process was not able to be thorough enough. I am not blaming anybody in particular for that; I am just blaming the processes we force upon ourselves. That meant that some of the more specific issues and some of the technical issues about the legislation and about some of the findings of the review were not able to be properly examined. I think that is unfortunate. Rather than attend all of those three hearings, I read the Hansard of all three hearings. I am not sure whether that is more painful than attending or not—probably not. It is probably better to just read it when you can. I am not saying there was no useful information there—there certainly was, from a number of witnesses on both sides of the debate. But it was not a thorough examination of the detail of the legislation. It was really each side hammering away, trying to get evidence to back their case and to discredit the other side. I do not criticise people for doing that; that is a perfectly legitimate approach to take. But for those of us who were trying to examine the detail and the issues by taking a much broader—perhaps impartial or undecided—approach, it was inadequate, certainly from
my perspective. I guess I can only speak personally. I wanted to make those broader comments in relation to the process we are going through now as well as in response to Senator Humphries’s comments.

Quite frankly, if anybody in this chamber does feel they need more time to examine an amendment, to examine the issues, then I certainly would support moving to adjourn the debate. We have a very long list of legislation, as every senator here knows, that can be brought on as a back-up and that has been set aside specifically in case we finish this debate earlier than expected or in case we need to adjourn the debate because of the need to work through some detail. So we do have that option. For anybody who wants to say in the future, ‘I do not have time to understand this; it is all too rushed; it is piece-meal,’ we have got that option and we should take it. We should adjourn the debate and get on with other legislation until we are clear on what we are doing.

The last thing we want to do, particularly if the numbers are as finely balanced as it might appear, is to have a shoddy process at the absolute pointy end of it all. I think we owe more than that to the many thousands of people who have participated in all the debates and processes to date through all of the submissions and through the hearings of the Lockhart inquiry as well as those of our own Senate committee process. Many people have been emailing us. Literally thousands of Australians have engaged with this process, have expressed a view and have shown interest. That is something we want to encourage. Whatever their individual view about the policy merits, we should not let them down at this point by people feeling that it is being railroaded. If they feel that they are, then let us put it off until we are all clear about what we are doing.

Senator JOYCE (Queensland) (4.52 pm)—The raft of amendments that we are debating involve quite substantial issues with regard to the stem cell bank. If they are successful then we are starting to change the fundamental facts of the Prohibition of Human Cloning for Reproduction and the Regulation of Human Embryo Research Amendment Bill 2006. In many instances people have torn themselves apart over whether they will support it. I do not think that letting people make a decision on one issue and then start changing some of the fundamental legs that it stands on results in a fair outcome. When you do that, you move the debate from one of fact to one of ethos. I do not support a debate on ethos because it creates a human life that apparently is stateless and has no value, and that of course is a very dangerous premise for any civilised nation to act on. Seeing that this is an issue of such moral weight and to now be using the period to put amendments before the chamber—which, on a true consideration, need to be looked at over a longer period—if one of these amendments was to be allowed then everybody should be allowed the chance to go back and reassess the whole bill, and they might come up with a different suggestion.

What we are about to decide here today is probably the most important decision that this parliament will make: that we in Australia have now delivered a status of human being that is without right, and that the only thing that precludes it from developing further are the words ‘14 days’. That will be the next thing that people will try to change in here, because they do not want 14 days. They want further development so that in the end what we will be having is the development of a baby, a foetus—whatever you like to call it—to three months because that will produce a completely compatible liver, pancreas or heart and that is where this debate is heading. The only thing that is now stopping it
are the words ‘14 days’. It took only four years to go from a unanimous vote against this legislation to now supporting it. I would put my house on it: before my Senate term expires, there will be a very good reason why we have to go beyond 14 days. Then we will have this crazy argument, where we will sit down—and it will be calibrated—and they will say, ‘We just need to go to 28 days.’ We will have to have an ethical debate about the difference between 14 days and 28 days. And, on this premise, that will be a very hard debate not to agree to. Then of course it will go from 28 days, because 28 days is a month, and, ‘There will be greater advances we could get if we went to two months or possibly three months.’ We have defined that this person has no rights. This person who lives in Australia—and they are alive—has no rights. It is not a case of no rights at work; they have no rights at all in any way, shape or form.

Where do you draw the line? The only way you can possibly draw the line is in so defining that those inalienable rights, which we all have, have somehow descended on that person. So they have gone from a product—because we are now creating people who are products; human life that is a product—to apparently a life that is endowed with all those rights that manifest in what we try to protect here every day. This is what we are now delivering to the Australian people: the words ‘14 days’. Those two digits are the only protection mechanism we have from it becoming 28 days, two months or three months.

You always wonder how people can get their minds around to delivering something. We look back in history and think, ‘That was manifestly wrong, that was evil’—all those terms we roll out. But it did not just happen overnight. It did not just develop immediately into something that is judged by history to be grossly evil. It got there by calibration and by evolvement. It got there by crossing out a principle—a principle gets rubbed out—and that is the principle that a person has rights.

If you believe in the strength of this place—that it will be endowed almost into the structure of this place that you will keep them to 14 days—then you must prove it to us by showing one piece of legislation or of circumstances where that will not change, where the embryo does not become amorphous, nebulous and move and change. That is the issue. You have to take yourself down the progression. Of course, this ‘thing’ that is 14 days old has no rights. The great value that can be obtained from that same product—because we are now calling human beings ‘products’—if you allowed it to develop to three months would be far greater. It would stand to be a logical argument that what is delivered by a baby that is three months old is far in excess of something that is 14 days old.

And there will be great cures. There will be new retinas, new hearts, new livers, new pancreases—anything you want. We will have a factory of human parts. Even if it is not happening in this nation, we start putting our imprmatur onto it in other places. We give by default, by proxy, our blessing to that process happening elsewhere because we have made the statement that human life is now property, and even the words ‘stem cell bank’ start to define it as a property, like a chattel, something you can put away to be drawn on at a later stage, to be traded or bartered.

That is where this debate has descended to. You can walk away from here tonight, but just look at the terminology that we are talking about right now, within hours of a vote. Within hours of the vote, already the terminology of this callous assessment of human life is coming into place. We will be respon-
sible for where this ends up. You cannot sit back idly in your retirement and say, ‘I never envisaged that that would happen,’ when it develops into what people say it is going to—when we have the development of spare parts from someone who is three months old. You cannot disassociate yourself from that result. You cannot, because you are absolutely ultimately responsible for it. So in voting for this legislation you must acknowledge that you are bringing that about.

Senator STOTT DESPOJA (South Australia) (5.00 pm)—I would like to make a couple of quick points. Firstly, the way that Senator Joyce and other members of this place can ensure that we are not dealing with so-called ‘nebulous circumstances’ or uncertainty or even the ‘slippery slope’ is to make sure that we have clear, specific and strictly regulated legislation. The legislation, the acts that we currently have, provide a nationally consistent framework not just for ART research but also for research involving human embryos. This legislation adds to the kind of research and technological advances that can be undertaken. It does so within a similar if not arguably strengthened regulatory regime.

One of the amendments I have put forward, along with Senator Webber, is for an increase in some of the penalties for prohibited practices and acts. This is very specific. There is nothing nebulous or uncertain about this proposed legislation. Whilst I take on board the personal concerns of Senator Joyce and the ethical debate surrounding this bill, I think we all have to acknowledge that we have differing views ethically or otherwise. But there is no doubt that we as legislators make laws, and we can be as specific as we want when it comes to drafting those rules. This is very specific law.

I am not going to take any great heart from Senator Joyce being homeless in a few years time. If he wants to bet the house, that is his decision. However, as an active member of this parliament, as he is now—and I would assume into the future, but I am not going to either prejudice or predict his re-election or otherwise—I say to him that parliamentarians, their morals and personal ethical codes as well as their interest in science and other things will determine what the framework is. If you want to make sure that people work within that framework, you need to make sure that there are appropriate penalties and monitoring provisions. That is something that Lockhart has done. I do not know how familiar with the specifics of the Lockhart review people are, or with the bills that have been drafted—indeed, the one before us. Looking at the monitoring provisions, you can see that people can operate outside the licensing of the bill’s requirement at the moment—that is, people can break the law, and they can do so because there is not enough monitoring. There are penalties that currently apply to people who are operating without a licence. But what about people who are operating without a licence in terms of access through a warrant? You will see that penalties can be made stronger, and that is what some of the amendments we have put forward seek to achieve.

In relation to the process, I want to make it very clear, as Senator Bartlett has also done, that apart from the fact that it is our job to sift through amendments, whether they are big or small, anyone who has looked at the amendments before us, given them even a cursory look, will see that in most cases they are not substantial. If you look at the list of amendments that Senator Webber and I have circulated, you will see that the first half-a-dozen say: ‘15 years, 15 years, 15 years, 15 years.’ Do you know why? Because we are increasing the penalties from 10 years to 15 years. Allowing for the fact that, yes, this legislation may get through, that people do not want to take an active role in the commit-
tee process and that people do not feel comfortable voting for amendments, if people are going to vote against increasing the penalties for people who actually break the law when doing research involving human embryos, that is just crazy, especially if the legislation goes through. I do not know whether it will. Surely if people say, ‘We cannot ameliorate bad law because we don’t believe in it,’ that is one thing, but what about ensuring that the provisions are tough if this law is going to be in place?

As for the notion that the amendments are substantial and people cannot deal with them, we were not supposed to be dealing with the committee stage of this legislation until tomorrow. Having said that, most of us have done our amendments and they have been circulated. If people are saying, ‘They’ve only just been circulated,’ in the case of Senator Webber and me, read the committee report. Senator Humphries was chair of that committee. We flagged the amendments specifically in that report. There are five areas of amendment, most of them minor. This is not a patch-up of the legislation. This is good legislation. This is people having an opportunity to feed into the process and to value-add to the legislation if they decide that is the way to proceed. I have withdrawn one of my amendments in order to facilitate debate. So there are four areas of amendment, involving roughly 19 amendments in all, but they will be dealt with in a cognate fashion, so it is nothing too scary. I am happy to take any questions on those amendments. This is what we do: it is the nitty-gritty of the lawmaking that we do. It is not a case of, ‘This is too hard; we have got to Tuesday and we haven’t had enough time.’ We have got until Thursday if people want time.

In relation to the stem cell bank, given that is the amendment we are currently dealing with, there are a range of reasons for a stem cell bank. It is not about the commodification of stem cell lines; in fact, it is quite the opposite. The rationale behind stem cell banks, either the one established in the UK or the one that has been introduced in the US, is that they provide some degree of public access. If that is not something that concerns people, then there are other issues that relate to it too. It ensures that researchers can be better informed about, have more knowledge about, the source of that stem cell line—its background, where it has come from and its quality, which are all integral to this research.

Even if we do not agree on some of the amendments before us in relation to somatic cell nuclear transfer, the issue of a stem cell bank is still applicable to the acts we are currently operating under, because we do have stem cell lines derived from adult stem cells and we do have stem cell lines derived from embryos. That is a debate that is even separate from so-called therapeutic cloning. They also have the potential, as the Lockhart review has pointed out, to be a clinical resource in years to come. I do not know if the analogy of a blood bank is the best one, but, if people are worried about it being commodified, it is not necessarily that kind of a repository. It is quite the opposite; it is actually ensuring that it can be used one day, hopefully, down the line, in a clinical capacity.

A stem cell bank is actually about the provision of public good. It can be used in other ways as well. That is why we should be allowing—or encouraging, at least—some of the relevant departments to conduct studies to make sure it works in a way that benefits people who do believe in so-called therapeutic cloning as well as those who do not. A stem cell bank is not the kind of thing to get bogged down on if you are radically opposed to this legislation; it is something that can actually provide benefit in a research and
clinical capacity both now and into the future. Therefore, it should not be dismissed.

I hope that when people are addressing the amendments they realise that they have been put forward in good faith and put forward arguably very early. This is a conscience vote and that is why a lot of people are here who do not necessarily deal with the nitty-gritty of legislating every day. But those on the crossbenches do, and we know sometimes you do not get amendments until the last moment. Sometimes we do not draft them until the last moment. Sometimes the solution to a problem does not become clear until you have had the discussions and you have argued it out. So, please, colleagues, do not dismiss the amendments on the grounds that they are too late or what have you. Most of them were clearly foreshadowed in the committee report. I am happy for people to vote against my amendments, but please do not do so on the basis of process, because this is actually quite an organised process—in fact, so organised that we are running ahead of time. Most of the amendments before us have been well thought out and put forward in good faith. Whether or not they pass, lateness should not be an argument for voting down the bill.

Senator PATTERSON (Victoria) (5.09 pm)—I had hoped to say in my second reading speech, although I did not have time, that Senator Nettle, Senator Stott Despoja and Senator Webber very clearly flagged the intent of the amendments in the additional comments they made in the committee report. If people had addressed that, they would have seen that there were amendments that were going to come. I do not think the amendments are very different from what they flagged. As Senator Stott Despoja said, we often deal with amendments from people presenting bills and people opposing bills, or from people wanting to modify bills that they are supporting, with amendments that come in late—although these were not late, because they were foreshadowed. I think that is the important factor in this.

With regard to the stem cell bank, I very much support Senator Nettle’s concept of a stem cell bank. The Prime Minister indicated on 23 June 2006:

The Government also supports further exploring the establishment of a national register of donated excess embryos created originally for ART—assisted reproductive technology—purposes and a national stem cell bank.

So it is on the radar of the Prime Minister. One of the problems I have about supporting the amendment as it stands is that currently adult stem cells are not required to be in a stem cell bank. We do have two different sorts of processes in the creation of embryonic and adult stem cells. Some are undertaken in the public sector and some of those stem cell lines are publicly available on a register for that purpose. Others, including adult stem cells, are produced in commercial enterprises. You have two situations: one is where a company is producing adult stem cells and there is no requirement for them to go into a stem cell bank because it is not covered in this legislation, and the other where a company is producing embryonic stem cells and there is a requirement which would disadvantage that and would mean that people would be less likely to do embryonic stem cell research. As I have argued before, we need all the aspects of stem cell research together.

Looking at what the Prime Minister has said, and if this bill were to go through, I think there would be a good case to argue that if we have a stem cell bank we need to look at how we incorporate adult stem cells into that process. I cannot see that if a stem cell, adult or embryo, is produced in an institution which is publicly funded they should
be treated differently in terms of what happens to them.  

The other thing is that, if you were able to derive a stem cell line from SCNT, that is somebody’s actual DNA. Under the amendment as it is, you are requiring that stem cell line to go into a bank. The person who has donated that, who may have donated it for one purpose only—to develop a stem cell line that has a particular disease profile—may not want to give consent for it to be used in any other way. I do not know—that is just my thought. What we need to do is to have a much more thorough look at a stem cell bank, which I support, but I do not know that this is the way to do it. For those reasons I will not be supporting the amendment. But I would be advocating very strongly, if the bill goes through, that we follow up the statement of the Prime Minister:  

The Government also supports further exploring the establishment of a national register ... and a national stem cell bank.

**Senator Nettle** (New South Wales) (5.14 pm)—I would like to indicate that the stem cell bank has been talked about in the Australian context since 2002. Here we are, with four years notice from the last time I raised it as an issue of concern in the Australian context, debating it again. I appreciate the comments that people have made in recognising that there is some value in stem cell banks. I have looked very closely into this issue and the operations of the Stem Cell Bank in the United Kingdom. Central to a stem cell bank being able to operate is having stem cell lines. So, rather than moving a whole lot of amendments about how a stem cell bank should operate, this is just the central one. It cannot be a bank if there are no stem cell lines in it, so let us require there to be stem cell lines in it. That is why I am proceeding in this way. I will make some other comments generally about the stem cell bank later on.

People have raised issues around consent and whether that would deter people from doing research. I am not sure that it would deter people from doing research—I do not know. I think that consent issues are issues that need to be dealt with. There are Lockhart recommendations about the NHMRC looking further into issues around consent. Consent is a big issue, an issue I have read books on. This is an issue we can talk about in a lot of detail. But what I have tried to do here is deal with the fundamental, core element, which is: let us have a bank. Everyone has said that they want a bank. And the central component of a stem cell bank is stem cell lines. That is why I am proceeding with this amendment.

I also want to indicate that all the amendments I am moving are on behalf of the Australian Greens. The amendments have the support of all four of the Australian Greens senators including my colleague Senator Milne, who is overseas at the moment. She has indicated she has a different view from mine in relation to the bill but she is supportive of all of these amendments that seek to put the public interest at the forefront of the research and how it occurs.

**Senator Patterson** (Victoria) (5.16 pm)—I want to draw the honourable senator’s attention to item 47B, on page 25 of the bill, which says:  

Minister to report to Parliament

1. The Minister must prepare a report on the following matters:
   1. the establishment of a National Stem Cell Centre and a national register of donated excess ART embryos—

and I know that Senator Nettle is fully across this, but I just want to make sure it is there and on the public record, because not everyone gets into as much detail on the bill as some of us have—

CHAMBER
2. the making of guidelines referred to in this Act, to the extent that those guidelines were not in force on the day on which this Act commenced.

2. The report must be completed not later than 6 months after the day on which Prohibition of Human Cloning for Reproduction and the Regulation of Human Embryo Research Amendment Act 2006 commenced.

It puts some teeth—more than there have been before—into the establishment of a stem cell bank. If I were a minister I would be thinking about how I was going to answer that when the Prime Minister has indicated that the government is prepared for it. That is why I have put that clause in there—to bring it to some sort of head.

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

The Senate divided. [5.22 pm]

(The Deputy President—Senator JJ Hogg)

Ayes…………… 24

Noes…………… 37

Majority……… 13

AYES


NOES


* denotes teller

Question negatived.

Senator Nettle (New South Wales) (5.25 pm)—I move Australian Greens amendment (3) on revised sheet 5112:

(3) Schedule 2, item 35, page 26 (after line 3), at the end of section 47B, add:

(4) The Minister must present to Parliament legislation for the establishment of the National Stem Cell Bank within two years of the Prohibition of Human Cloning for Reproduction and the Regulation of Human Embryo Research Amendment Act 2006 receiving Royal Assent.

This amendment is about establishing a stem cell bank. The last one was about putting stem cell lines into a stem cell bank. This one stipulates that within two years the minister should provide legislation to the parliament designed to establish a stem cell bank. Of the three amendments that I am moving, this is the most straightforward. This says we should have a stem cell bank in two years time.

In 2002, the Australian Greens sought to achieve this outcome. What happened in 2002 was that the Lockhart committee was directed to look at the issue of whether we should have a stem cell bank. Lockhart recommendation No. 47 was that a national stem cell bank should be established. So it is a recommendation of Lockhart that we have a stem cell bank. On 23 June this year, the
Prime Minister put out a media release saying that the government supports a national stem cell bank. The current legislation provides that in six months time the minister has to report back about what is going on in establishing a stem cell bank.

This amendment is quite generous. It says that in two years legislation should be introduced providing for a stem cell bank. There are many issues that need to be discussed around the establishment of a stem cell bank. The CEO of the Australian Stem Cell Centre, as part of the inquiry, indicated that when a stem cell bank was set up in Scotland it took between 18 months and two years. That is where the two years suggested in this amendment came from. If it takes two years overseas, I am allowing for two years here. It could be a lot faster here because there is already an Australian Stem Cell Centre, but there does need to be time; that is recognised in this amendment. This amendment says in two years let us have the minister come in here with some legislation and we will set up a stem cell bank. This is probably the clearest of any amendments. I commend the amendment to the Senate.

Senator STOTT DESPOJA (South Australia) (5.27 pm)—I want to reiterate the position that I put previously, and that is that the Democrats support this amendment. I do not wish to hold the Senate up, but I just want to point out that this is different from the last amendment we dealt with: this amendment deals with the requirement that the minister provide legislation for the establishment of a stem cell bank within two years of the current bill being enacted. If this does not pass the Senate, there are still provisions within the bill before us to be considered, as there were in the exposure draft from Senator Webber and me. Essentially, that dealt with—if not an investigation into the applicability of a stem cell bank or how you would establish it—the requirement that it be provided in a six-month period. I am happy with Senator Nettle’s two-year time frame. There is also pretty much a six-month time frame under Senator Patterson’s bill. So I figure this is win-win, and I am happy to support the amendment before the chair.

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

The committee divided. [5.33 pm]

(The Chairman—Senator JJ Hogg)

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

AYES

NOES
Sherry, N.J. Stephens, U.
Sterle, G. Watson, J.O.W.
* denotes teller

Question negatived.

Senator STOTT DESPOJA (South Australia) (5.35 pm)—by leave—I, and also on behalf of Senator Webber, move our amendments (1) to (15) on sheet 5113:

(1) Schedule 1, item 7, page 5 (line 14), omit “10”, substitute “15”.
(2) Schedule 1, item 7, page 5 (line 27), omit “10”, substitute “15”.
(3) Schedule 1, item 7, page 6 (line 7), omit “10”, substitute “15”.
(4) Schedule 1, item 7, page 6 (line 16), omit “10”, substitute “15”.
(5) Schedule 1, item 7, page 6 (line 25), omit “10”, substitute “15”.
(6) Schedule 1, item 7, page 6 (line 29), omit “10”, substitute “15”.
(7) Schedule 1, item 7, page 7 (line 5), omit “10”, substitute “15”.
(8) Schedule 1, item 7, page 7 (line 9), omit “10”, substitute “15”.
(9) Schedule 1, item 7, page 7 (line 13), omit “10”, substitute “15”.
(10) Schedule 1, item 7, page 7 (line 16), omit “10”, substitute “15”.
(11) Schedule 1, item 7, page 7 (line 21), omit “10”, substitute “15”.
(12) Schedule 1, item 7, page 7 (line 25), omit “10”, substitute “15”.
(13) Schedule 1, item 7, page 7 (line 29), omit “10”, substitute “15”.
(14) Schedule 1, item 7, page 8 (line 28), omit “10”, substitute “15”.
(15) Schedule 1, item 7, page 8 (line 32), omit “10”, substitute “15”.

The amendments by Senator Webber and me on the sheet circulated are very specific, very clear and very easy to understand. These first 15 amendments change the 10-year penalty to a 15-year penalty. We have sought to make all penalties in terms of imprisonment completely consistent throughout that division. In some respects, this will mean the status quo, in that there are some penalties that are already 15. However, those we have sought to change were previously lower—that is, 10 years. This amounts to a beefing-up of the penalty provisions for those acts and practices that previously the parliament has deemed abhorrent, inappropriate and, indeed, criminal.

This is actually the model that Senator Webber and I used in our draft exposure bill. It was not commented on in the Lockhart recommendations, and I can understand that some senators who want to follow Lockhart to the letter might think, ‘Oh well, we can leave the penalties as they are.’ But I think it is a reasonably strong and good message for the parliament to send that, if people are in breach of this legislation, they cop a very hefty penalty. That is, if people are involved in human reproductive cloning or indeed, specifically, in putting an embryo created through any of the processes—other than fertilisation, of course—into the body of a woman, for example, that is not a 10-year penalty; that is a 15-year penalty.

I know that there are senators who have preferred not to vote for amendments in this debate, but I do ask what kind of a message that sends if people have a fundamental ethical or other problem with the legislation. If senators have a problem with the legislation and the practices that are there—certainly if they support the outlawing and the prohibition of certain practices under the current acts and indeed under the legislation before us—I think providing 15-year penalties can be considered quite appropriate.

We have made it completely consistent. All division 1 offences are treated equally. By increasing the 10-year penalty to 15 years, I think the parliament sends a very clear message that we are pretty serious
about the punishment for engaging in the activities that are prohibited outright under this bill so there is no lack of clarity there. These are not difficult amendments. There are 15 of them, dealt with in a block. This is one of the four areas where Senator Webber and I seek to amend the bill.

Senator WEBBER (Western Australia) (5.39 pm)—I obviously support the amendments standing in my name and that of Senator Stott Despoja. As Senator Stott Despoja has outlined, these are very simple and straightforward amendments. They are amendments that were foreshadowed in our additional comments in the committee report. I must say it was interesting listening to the second reading debate, in that a number of people referred to the fact that they had read the committee report and that it helped guide them in coming to a view. I therefore do not necessarily buy the argument that these amendments have snuck up from nowhere. These provisions were very clearly in the exposure draft, as Senator Stott Despoja has said, that she tabled earlier on behalf of both of us. I therefore strongly support these amendments.

I think there is a need for some consistency in terms of the penalties, particularly if people have concerns about the ethical framework regarding how we deal with people who do not comply with the guidelines. Having a fairly tough penalty regime is probably the best safeguard we have to ensure that people do comply with the guidelines. I look forward to hearing any justification as to why we do not need tougher penalties to ensure people comply with the guidelines.

Senator PATTERSON (Victoria) (5.41 pm)—I note Senator Stott Despoja’s and Senator Webber’s amendments. What I did in the bill was to keep consistency in the penalties—if the embryo was implanted, it was 15 years; if it was created, it was 10 years; and the others were five years. I can understand Senator Stott Despoja’s and Senator Webber’s reasons for increasing them to 15 years. It was not something that was addressed in the Lockhart review, but I think it is appropriate that Senator Stott Despoja’s and Senator Webber’s amendments should be supported.

Question put:
That the amendments (Senator Stott Despoja and Senator Webber’s) be agreed to.

The committee divided. [5.46 pm]
(The Chairman—Senator JJ Hogg)

Ayes………….. 35
Noes………….. 29
Majority……….. 6

AYES


NOES


CHAMBER
I understand that there will be a range of views on this particular amendment as to ‘human egg’. I am moving this amendment in an attempt to address concerns that came to the attention of the Senate Standing Committee on Community Affairs both in written submissions and in verbal submissions when witnesses presented to the committee in Sydney. I have no reason to believe that their views have changed. I am referring to the concerns presented to us by ACCESS and the Fertility Society of Australia. Both of these organisations are concerned about the reference to ‘human eggs’ in the title of part 2 of schedule 2 of the bill and throughout the following text. They are concerned that this may have the consequence of extending the coverage of this bill to activities involving human eggs for which a licence is not currently required. They are worried about the consequence of specifying ‘human eggs’ in that title and throughout the bill as it might actually have a negative impact on current processes, particularly those processes involving human eggs that do not necessarily require a licence.

So you are dealing with IVF organisations and fertility networks who are concerned about the impact this will have on their activities. For example, a licence is currently not required to conduct research on eggs alone for ART purposes. Yet it is not clear to me—or to Senator Webber, ACCESS or the Fertility Society of Australia, for that matter—that this bill as read would not force that activity to come under this legislation. I understand that Senator Patterson will provide clarification to the Senate in committee as to the impact or consequences of specifying eggs in the title and text, something that is currently not done. What we are seeking to do is restore the current bill to the status quo to ensure that those particular activities are not covered.

We want to know whether the consequence of doing this would require the NHMRC to license any activity involving human eggs—and I am making sure that the advisers in the chamber have caught that particular question. Would the impact of the current bill on processes that are currently underway require the NHMRC to license any activity involving human eggs? Believe me, Senator Webber and I have spent a bit of time deliberating on how to approach this. It was not simply a case of removing the word ‘egg’ from the bill, thus restoring it to the status quo, because that would not necessarily work given the way the bill is drafted. It was not simply a case of removing the word ‘human eggs’ from the bill, thus restoring it to the status quo, because that would not necessarily work given the way the bill is drafted. Obviously, there are some differences between the approach of the exposure bill that Senator Webber and I have tabled and the approach in this particular bill taken by Senator Patterson. We have taken the approach of defining ‘human egg’ for the pur-
poses of this bill, to ensure that it only refers to a human egg that is used for the research that this bill covers. It is an attempt to clarify and it is an attempt to address the concerns of organisations such as ACCESS and the Fertility Society of Australia. At one stage Senator Webber and I were considering a slight change in terms of that definition as opposed to talking about eggs used for—I think it was something to do with the intention; I might seek clarification from colleagues.

I am not pretending this is an easy issue, but I think it could be resolved simply if Senator Patterson were to outline how her drafting process reached this particular model and path, as opposed to the one that we adopted, given that obviously this bill is different from the original act. We want to provide some reassurance for those people involved in IVF that anything involving human eggs is not going to require an NHMRC licensing process. If Senator Patterson can give us some reassurance, we will then see whether or not we need to proceed to a vote. But at this stage Senator Webber and I prefer our approach and will be supporting it unless convinced otherwise.

Senator PATTERSON (Victoria) (5.54 pm)—I have noted the issues that have been raised by Senator Stott Despoja, by ACCESS and by the Fertility Society of Australia. It has been commented that this bill purports to regulate all uses of human eggs. I think this concern has arisen from a misunderstanding of the operation of the bill. We want to provide some reassurance for those people involved in IVF that anything involving human eggs is not going to require an NHMRC licensing process. If Senator Patterson can give us some reassurance, we will then see whether or not we need to proceed to a vote.

Before the 2002 legislation, the ART institutions were able to test sperm on an egg up to the first mitotic division. One of the unintended consequences of the 2002 legislation was that they were no longer able to do that. They put a case that that is important in fertility treatment. Eggs are used in SCNT—which was not in the previous bill—and therefore they were not covered. I think everyone would agree that appropriate and proper consent should cover the use of eggs in both those cases, and that is what this definition is meant to do.

I apologise to ACCESS and the Fertility Society of Australia. They did put in a submission. I should have responded to explain why that definition was there. Maybe I did not quite see clearly that point in their submission. As I said, their concern has arisen from a misunderstanding of the operation of the bill. This bill does not regulate human eggs per se; rather, it regulates those activities detailed in the Lockhart report—that is, eggs being used for SCNT and research involving eggs and sperm up to the first mitotic division. So references to eggs throughout the bill are only to ensure that, where an egg and sperm are used, up to the first cell division, all the normal licensing conditions also apply to that. Licensing conditions apply to an embryo but not to an egg, and, under the bill, an egg is an egg until the first mitotic division. So this definition was placed in the bill to make sure all the consent arrangements for eggs used in SCNT and research involving egg and sperm up to the first mitotic division apply to the use of an egg. It does not regulate the use of eggs in normal ART; it does not change the current situation for the use of eggs in ART. It is for the two changes that were brought about as a result of the Lockhart report. Before the 2002 legislation, the ART institutions were able to test sperm on an egg up to the first mitotic division.
Lockhart review in various ways in drafting the legislation. Given those comments and the definitional issues regarding a human egg, I am wondering what harm there is, if any, in including the definition that Senator Webber and I have put forward. I acknowledge, for the chamber’s benefit, that this is the amended version. The final terminology is that a human egg means a human egg donated to research ‘resulting in’ as opposed to ‘intended for’, which was the initial terminology. Is there any harm in including that definition? Does it detract in any way from the bill?

The TEMPORARY CHAIRMAN (Senator Crossin)—Senator Stott Despoja, that is not the current wording that I have before me. Are you seeking to amend it?

Senator Stott Despoja—I am not. It is actually the other way around. I am just checking whether there is an updated amendment. I thought that was something that may have been moved on the floor by Senator Webber or other colleagues. Otherwise, I am happy to move that. Would you prefer ‘intended for’, not ‘resulting in’?

The TEMPORARY CHAIRMAN—The wording that I have is ‘intended for’, so that is right.

Senator Stott Despoja—That is what I had. My understanding was that, Senator Webber, you would prefer ‘intended for’.

Senator Webber—Yes.

Senator Stott Despoja—I am happy for you to move that, unless you would like me to do that.

The TEMPORARY CHAIRMAN—No, that is what you have moved; that is what we are debating. I just wanted to clarify what words we are dealing with. Let us be clear about this. The sheet that I have, 5113, says at amendment (16):

Insert:

**human egg** means a human egg donated to research intended for:

Senator WEBBER (Western Australia) (5.59 pm)—I think it was me that created some of that confusion—I was getting my versions of the amendment confused—but yes, it is ‘intended for’. To reiterate some of the comments that have been made in support of this amendment, whilst I appreciate the contribution made by Senator Patterson—and I think indeed we are all trying to arrive at the same result here—this was a concern that was raised, as has been mentioned, during the inquiry process with submissions and what have you. It was just our attempt to make it quite specific to ensure that the NHMRC need only issue a licence where donated eggs will be used for the purposes as outlined here and not for other purposes. It is actually trying to make it quite clear and not in any way to have people come in and interpret legislation in different ways and say that it is required for all ART eggs.

Senator PATTERSON (Victoria) (6.01 pm)—I thank Senator Stott Despoja, through you, Temporary Chair. I am not able to accept this amendment because I have had advice that it is not workable within the bill. The words ‘human oocyte’ are used in the definition of human embryo. Human oocyte is defined as the same as a human egg. Therefore, the new definition of ‘human egg’, which limits an egg to one donated for research only, would, I have been advised, then become part of the definition of ‘human embryo’. This would mean that something is only an embryo if it is donated to research, so it does have some problems. Also, the definition of ‘responsible person’ is related to an excess ART embryo, so it is also a problem there. So it has implications in other parts of the bill. For that reason, I am not able to support it, because it has technical problems. I am also wondering about its
grammar, but that is not the point of it. For that reason, I would not be supporting the amendment.

Senator WEBBER (Western Australia) (6.02 pm)—It has been a long day. I am indebted to my good friend Senator Wong for pointing out to me this question for Senator Patterson: if our definition of egg is about the first mitotic division, how does the bill as it stands ensure that it does not apply to all ART processes? How will you guarantee that you are not going to pick them up? Because I would have thought that is a process that occurs within ART.

Senator PATTERSON (Victoria) (6.03 pm)—The answer to that question is: if you look at subsection 20(1), you can only issue a licence for the ‘(a) use of excess ART embryos’ and so on—I will not go through them all. That is how that can be guaranteed.

Senator STOTT DESPOJA (South Australia) (6.03 pm)—I thank Senator Patterson for her answers. I just want to clarify again which section you just referred to, Senator Patterson.

Senator PATTERSON (Victoria) (6.04 pm)—Fifteen. Do you have a stapled copy of the bill? It is page 18, line 22, and it is subsection 20(1).

Senator STOTT DESPOJA (South Australia) (6.04 pm)—Through you, Chair: Senator Patterson, you are arguing that that guarantees that human eggs will not be caught up in the possibility of requiring a licence as per the concerns raised by ACCESS and the Fertility Society. So, subsection 20(1) as it currently stands—because of, presumably, (b), (c) and (e)—covers that? Just make sure there is a specific protection under 20(1) for those eggs to which we are referring. I am sorry to be pedantic—maybe it is making up for my grammar—but I just want specific clarification.

The TEMPORARY CHAIRMAN (Senator Crossin)—It is section 20(1), not 21. Let us just clarify that.

Senator Stott Despoja—I understand which section. I know it off by heart.

Senator PATTERSON (Victoria) (6.05 pm)—In that section, 20(1), (e) is, as I said before, where they can regulate regarding an egg used in:

research and training involving the fertilisation ... up to, but not including, the first mitotic division, because otherwise it is not regulated at all, because it is not an embryo. So there is no other regulation except under SCNT with regard to this bill. So it is regulating the use of eggs for SCNT, because it did not appear before, and for using up to the first mitotic division—otherwise they would not have to apply for a licence; they could just go and do it. So what we have done is to put in there that, if they are using an egg up to the first mitotic division, they have to apply for a licence to ensure that we have proper consent. That is one way of protecting people giving eggs for SCNT or for ‘research and training involving the fertilisation of the human egg by human sperm’—which is (e)—to make sure that is covered to ensure you have proper consent. I think I have outlined that once before, and it is there in 20(1) and it is also covered under using eggs for SCNT.

Senator STOTT DESPOJA (South Australia) (6.06 pm)—I want to thank Senator Patterson for that perspective. Obviously we have looked at her bill as it stands referring to 20(1)(e) and we still have concerns about whether or not those people are protected. This is what led to the amendment being drafted and moved today. Obviously having Senator Patterson outline or clarify in the chamber the intent of the legislation is important too, so that if there is any impact on those organisations dealing with eggs for research and other activities then it will be
clear that that was unintended. I accept the argument put forward by Senator Patterson. I suspect the fact that I am not totally convinced is evident. I will seek advice from Senator Webber as to whether or not she wants to proceed with the amendment. I am happy to let that lapse or withdraw it in this case. I do suggest to the parliament that this is an area that we need to confirm is not impacted negatively upon as a consequence of the change to the status quo. I seek leave to withdraw amendment (16) on sheet 5113.

Leave granted.

Senator STOTT DESPOJA (South Australia) (6.08 pm)—The Democrats and the opposition oppose schedule 2 item 4 in the following terms:

(17) Schedule 2, item 4, page 14 (line 30) to page 15 (line 13), TO BE OPPOSED.

I will also speak to amendment 18. These amendments relate to the recommendations contained in the Lockhart review—recommendations 20, 21 and 22—in relation to allowing the use of fresh ART embryos for research, training and clinical practice if they have been declared unsuitable for implantation by either pre-implantation diagnosis or objective criteria. The bill before us aims to implement the recommendations with a definition for ‘unsuitable for implantation’ under item 4 pages 14 and 15. I understand that there is also a reference under item 24 on page 20 which states that the licensing guidelines can apply in a modified form for embryos that are unsuitable for implantation.

I am a little concerned that there is a potential with this approach for there to be confusion over how the clauses of this bill actually apply to embryos declared unsuitable for implantation. For example, by having embryos that are unsuitable for implantation as a separate entity under this bill, in item 11 of this bill at page 17, in declaring it an offence to use embryos created by egg and sperm that are not excess ART embryos, that might actually be construed as declaring it illegal to use embryos unsuitable for implantation. Obviously that is not the intent of the Lockhart recommendations; it is quite the opposite.

I believe the approach that Senator Webber and I adopted in the exposure draft of the private members’ bill is arguably a simpler, cleaner approach. We included the definition of embryos that are unsuitable for implantation under the definition of excess ART embryos. We think this is an appropriate way to go, as an embryo that is unsuitable for implantation for ART would naturally be excess to those requirements. Using this approach, all clauses that apply to excess ART embryos also apply to those that are unsuitable for implantation. So, by removing the separate definition of unsuitable for implantation and adding a definition of those embryos under excess ART embryos, under item 9 of the Research Involving Human Embryos Act 2002, we believe that this bill is clearer in how it allows the Lockhart recommendations 20 through to 22 to be implemented. The Prohibition of Human Cloning Act 2002 listed prohibited practices in two divisions, and this bill maintains that model.

To go off on a tangent for a moment, those of us who have been involved in the drafting processes for these bills have had the frustration of realising that the decision in 2002 to divide the bill into two acts actually made it very difficult to draft this private members’ bill because you are taking some things out of the prohibited practices and then putting them into the regulatory framework as to what you can and cannot do with research. It would have been much tidier and easier just to deal with one bill, but obviously that was not the will of the parliament in 2002. I can completely understand and support why we did that at the time, but it has now made for some difficulties in how you approach
amending the two acts. Obviously Senator Webber and I differed slightly in our approach in some places. The issue involving Lockhart recommendations 20 to 22 and the unsuitable for implantation embryos is one such area. I commend this amendment to the Senate. The one we are dealing with is in opposition to schedule 2 item 4. I hope that senators will support this approach. If not, the bill still maintains the integrity of the Lockhart recommendations but just adopts a different approach.

Senator PATTERSON (Victoria) (6.13 pm)—The Lockhart review found when they were doing their consultations that people who were having, in particular, pre-implantation genetic diagnosis had embryos that were deemed not to be suitable for implantation because they had genetic errors—for example, Huntington’s chorea. Because of the way the current bills are written, those could not be used for studying or developing stem cell lines—where people doing research can look at a stem cell line and where cells go wrong in that process. There are some diseases that cannot be identified in an embryo; others can.

It seemed to the Lockhart committee and to those of us supporting the bill that those embryos that are unavailable because of the guidelines stating that people have to give informed consent for a period of time, and that are unable to be frozen, were wasted. People who had those diseases also expressed concern that those embryos were not able to be used for research. What Senator Stott Despoja said before was that there are a number of ways—I will not put words in her mouth—to kill a cat. And there are a number of ways to approach the legislation. With any legislation there are as many ways to draft a bill as there are the number of people drafting it, especially when you are approaching two bills. I believe that the way the bill before us is drafted deals with the issue, and Senator Stott Despoja has expressed that view. I admit there is another way of doing it, but I would prefer to leave it as it is because I think it deals with it.

I want to say here that I appreciate all the work that Senator Stott Despoja has put in. I have to say that she is probably the most informed person in the Senate in this area—I am not going to compete with her on that—and she has put in a huge amount of work. I recognise that there is another way of doing it, but I will not be supporting her amendment.

Senator WEBBER (Western Australia) (6.16 pm)—Yet again, this is one of those of issues where we are all trying to arrive at the same conclusion, a conclusion which I think most of us support. However, as Senator Patterson has said, there is another way, and that is the way that has been outlined in the amendments standing in Senator Stott Despoja’s name and my name. I think our way is perhaps a clearer and more preferable way to achieve the outcome that we all desire, because I think it does give a bit more clarity about exactly what embryos that are unsuitable for implantation may be used for. I think this is a preferable way of approaching it. However, as has been mentioned before, we are all doing our best to stick to the recommendations of the Lockhart review and to implement them through legislation. So either way achieves the end result. However, I think this way achieves it with a lot more clarity.

Senator STOTT DESPOJA (South Australia) (6.17 pm)—I thank Senator Webber for her comments. I want to very quickly seek one further clarification. I am concerned that under the approach that has been adopted it is not clear exactly what embryos that are unsuitable for implantation can be used for. For example, by defining unsuitable embryos as entirely separate from those
deemed excess, it could be interpreted that item 11 of this bill, on page 17, in declaring it an offence to use embryos created by egg and sperm that are not excess ART embryos, does not allow for the use of unsuitable embryos. So, if we proceed with this definition in the way that it is written, will that stop us from using unsuitable embryos?

Senator PATTERSON (Victoria) (6.18 pm)—My advice is they are not being dealt with as a separate category and, no, it will not stop people from being able to use excess embryos that have been deemed excess because they are unsuitable for implantation.

Senator McLUCAS (Queensland) (6.18 pm)—I also need to ask some questions of both the mover of the amendment and Senator Patterson. It is my understanding that the intent of what both Senator Webber and Senator Stott Despoja are moving is very similar to the intent of that of Senator Patterson—that is, to deal with the question of consent and consent being able to be applied. The question I need to have answered is: what is the difference in outcome of the two methods that are being proposed by senators Webber and Stott Despoja by and by the original bill? A specific question for Senator Stott Despoja is: if we were to adopt your definition, is it a problem that in proposed subsec-tion 24(8)(a) we still use the words ‘unsuitable for implantation’ if that is not defined? I am no legal eagle but, if we have removed the definition of ‘unsuitable for implantation’ and then use that language, is that problematic? The broader question is: what is different in intent in the two methods that are being proposed here?

Senator STOTT DESPOJA (South Australia) (6.20 pm)—Chair, through you to Senator McLucas, my understanding is that it is not problematic to remove that definition as we are seeking to do. We are concerned that defining unsuitable for implantation embryos entirely separately from excess ART embryos is where the problem occurs. That is why we are seeking to remove that separate definition. I am happy, however, to acknowledge Senator Patterson’s comments and to take her assurance that that will not mean that there are some circumstances under which embryos that are unsuitable for implantation cannot be used. That was our concern; we had dealt with it under the excess ART just to make it clearer, or so we thought. But this way, with a separate definition, actually might bring up circumstances where you cannot use those embryos, and we did not want to create that circumstance. I am happy with the clarification that has been put forward. I have questions, but rather than going round and round I am happy to leave it at that. We may seek further clarification down the track, see how this operates and make sure that we do not run into any problems with those particular embryos.

Senator PATTERSON (Victoria) (6.21 pm)—I did actually indicate that there are a number of ways of approaching it. The intent is not different, but we have had a different way of approaching it. The overall aim is to ensure that people who have embryos which are not deemed suitable for implantation are not wasted but able to be used. Currently, when you are doing embryo stem cell research you cannot use those embryos. They are embryos that have genetic errors in them and could be very useful for people developing stem cell lines of known genetic diseases that you can identify in embryos. Some you cannot use; you have to wait until they are expressed in the individual. We have not identified genetically every disease, but where you can do that through PIGD—preimplantation genetic diagnosis—it is enabling those embryos to be used. At the moment, you cannot. I think the intent is the same, but it is a different approach.
The TEMPORARY CHAIRMAN (Senator Watson)—Given Senator Stott Despoja’s comments, I put the question that schedule 2, item 4, stand as printed.

Question agreed to.

Senator STOTT DESPOJA (South Australia) (6.23 pm)—For similar reasons, I move amendment (18), standing in the name of Senator Webber and me:

(18) Schedule 2, page 16 (after line 26), after item 9, insert:

9A Subsection 9(1) (at the end of the definition of excess ART embryo)

Add:

; or (c) is:

(i) diagnosed by pre-implantation genetic diagnosis according to such NHMRC guidelines on the use of assisted reproductive technology in clinical practice and research as may be prescribed; or

(ii) determined under such NHMRC objective criteria as may be prescribed;

as being unsuitable for implantation.

Question negatived.

Senator BARTLETT (Queensland) (6.24 pm)—by leave—I move my amendments (1) and (2) on sheet 5123:

(1) Schedule 2, item 15, page 19 (lines 12 and 13), omit subparagraph 20(1)(g).

(2) Schedule 2, item 15, page 19 (line 14), omit “(d) and (g)”, substitute “and (d)”.

These amendments go to the issue of preventing the use of animal eggs for the creation of embryos through somatic cell nuclear transfer. It is an issue that has been thrown around as part of the public debate for some months now. Some aspects of the way it has been debated in public have not been terribly accurate. In moving to prohibit the use of animal eggs for the creation of hybrid embryos for research I am not in any way suggesting that I give any credence to some of the views or suggestions that have been put forward that enabling this to happen would inevitably lead to half men, half horses galloping around the streets or rabbit men bouncing about the place or any other sort of half human, half creature, living, breathing, walking, crawling, bouncing—whatever—amongst us. I think that has been a gross distortion of the facts and the science on this issue, and I do not think it has helped in any way to focus attention on what this issue is actually about.

The amendments are fairly straightforward. The legislation before us amends subsection 20, part 1, which currently only allows the NHMRC to provide a licence authorising the use of excess ART embryos—that is, embryos left over or not used through IVF treatment. The new section of the act allows a person to apply to the NHMRC Licensing Committee for a licence authorising a number of extra things, including the creation of human embryos other than by fertilisation of a human egg by human sperm—that is, SCNT procedure—and a range of other creations of human embryos such as using precursor cells. They are all controversial in their own right, but I have chosen to focus solely on the extra power of the NHMRC to issue a licence for the creation of hybrid embryos through introducing the nucleus of a human cell into an animal egg and on the use of such embryos.

I should emphasise that these amendments do not go to the creation of hybrid embryos and the use of such embryos up to but not including the first mitotic division if that creation or use is for the purpose of testing sperm quality and that the creation or use will occur in an accredited ART centre. In fact, animal eggs have been used for some time to test sperm quality, the potential usability of sperm for IVF or ART activities, and that I think is accepted. Whilst one might
seek to say they are related, I think there are distinct issues involved.

The use of animal eggs as basically a host for the introduction of a nucleus of a human cell to create an embryo through somatic cell nuclear transfer is a significant shift. Cloning techniques—SCNT—in themselves are significant shifts in their own right, as I said in my speech on the second reading, but the use of animal eggs to do this, I think, merits some specific consideration. I will not get the opportunity to speak fully to these amendments before we break for dinner.

There are a few aspects on the use of animal eggs that I did want to draw attention to. Firstly, when I read the transcripts of the three hearings of the Senate Standing Committee on Community Affairs on this legislation, a lot of other material relating to this issue, as well as the Lockhart report itself, referred to the use of animal eggs. There is continual reference to the fact that animal research will be involved in various aspects of this technology. Animals, of course, are already used in stem cell research involving both adult stem cells and embryos. I did not see any acknowledgement that there are ethical issues involved in the use of animals. It concerns me that that issue has been completely absent from the debate. I am not insisting that animals should have equal value in our society as humans, but I am saying that animals do also have value, maybe a different value or a lesser value, but there is value there that is not being considered.

Sitting suspended from 6.30 pm to 7.30 pm

Senator BARTLETT—I was part way through speaking to this amendment prior to dinner and was only in the preliminary stage. The issue of using animal eggs in SCNT research did receive a reasonable amount of attention, some of it based around fairly wild assertions that we will have half-animal, half-human creatures galloping around. That is not my concern. But I do have some other concerns, nonetheless, and given the public controversy over the recommendation, I was a little bit surprised how fleetingly the majority report of the Senate committee dealt with it. Many scientists who are broadly supportive of SCNT research have not given great weight to this particular recommendation from the Lockhart review regarding the use of animal eggs for somatic cell nuclear transfer. The proposal to use animal eggs was put forward in part to alleviate concern about the pressure to find enough eggs from women to enable necessary research to take place. As far as I can ascertain, there is no specific essential requirement or need to use animal eggs in creating human embryos from a research point of view. It is purely a matter of them just being available and able to be used so that there is less demand for the use of human eggs from women.

I have listened to the concerns of those who are worried that there may be a risk of undue pressure being placed on women to donate their eggs for SCNT research. I think that there is validity in expressing that concern and making people aware of it, because no doubt there is always a potential for inappropriate or undue pressure. But after examining the varying evidence put forward about this and the reality that some women in Australia already choose to voluntarily donate their eggs for IVF purposes—and of course many already donate other body parts in various ways—I do not believe that there is a need to specifically treat the potential donation of women’s eggs separately from the regulatory regime we have in place at the moment, which does include the donation of eggs, as long as there are appropriate regulatory safeguards.

Speakers on all sides of this debate during the Senate committee process and during debate in this chamber have expressed con-
cern for enhancing the wellbeing of people and minimising the suffering caused by disease, concern about women egg donors, concern about people in general, and concern about embryos of course. I have not heard much concern, if any, about the impact on animals now used for medical research in this country and their suffering. I am not saying that there should not be animals used in research but I am saying that they should not be forgotten and they should not be dismissed. There are ethical issues involved in using animals in research and, indeed, we do have an ethical code, overseen by the National Health and Medical Research Council, specifically governing the use of animals in research. I think that it is important to at least pay attention to it because of some of the comments that have been made. To use just one example, in a media release made by Archbishop Pell in December last year when he was commenting on the Lockhart report after it was released, he said:

The report takes it for granted that human embryos are merely a ‘resource’ to be exploited like an inferior animal or plant.

I realise our society accepts this exploitation of animals and may do it in ways that I am not comfortable with. That is the community view. But I think that the least we can do is try to avoid adopting a mindset that animals are nothing more than a resource to be exploited. They may have less value than humans but they have value and should at least be thought about. That total absence of any consideration being given to animals used in research is one example of how blase and accustomed to particular practices we can become over time.

About six or seven years ago I served on a university animal ethics committee—coincidentally with Professor Alan Mackay-Sim, whose name has been mentioned a lot in this debate as an expert on adult stem cell research. One of the basic considerations that is meant to be applied in considering the proposed use of animals in research is what is sometimes called ‘the three Rs’—reduction, replacement and refinement. That means reducing the number of animals used to as few as possible and using alternative non-animal methods where they are available. I would suggest that using animal eggs when there is clearly an alternative available, when we are able to use human eggs, is actually a breach of those general principles for the care and use of animals for scientific purposes. As the NHMRC Australian code of practice says:

Scientific and teaching activities using animals may be performed only when they are essential to:

obtain and establish significant information relevant to the understanding of humans or animals... and a range of other purposes. I would argue that they are not essential for this purpose. In some ways I think it is just making things a bit more convenient for us and making it easier for us to avoid confronting what is involved in this research. As I have said, I am not opposed to this research. I think that you can confront something and embrace it at the same time. In fact, if you do embrace it after truly confronting the reality of it, it is better.

The quote that has been used a lot—and was indeed helpfully provided in the majority report of the Senate committee—came from the Chief Scientist, Dr Peacock. He said that in the Lockhart review it was suggested:

... animal eggs could be used for some of the research so that fewer human eggs would be required. Many scientists think that using a nucleus and egg cell from different species complicates the research. Most scientists regard this particular recommendation to be of little importance. The majority committee report just has a single sentence after that saying that his statement was about safety. I do not read it as
being about safety at all, frankly. I would also note comments by Professor Bob Williamson from Melbourne university, material that was helpfully sent around by Dr Mal Washer MP:

... in contrast to the great importance of permitting the use of somatic cell nuclear transfer into human enucleated eggs in culture, the use of animal eggs in this way is not critical for scientific progress. Indeed, he said that using more than one species could make the interpretations of some experiments more difficult.

We have a range of scientists supportive of the thrust of the research who are saying using animal eggs is not essential—that in some ways it can be potentially problematic and not significant. In that context, taking into account existing codes of practice of ethics regarding reducing the use of animals in research, this is one occasion when we could at least make a small attempt to do that.

Senator WEBBER (Western Australia) (7.37 pm)—I rise briefly to make a contribution. As I have said before, all of us bring our own code of what is important to us ethically to this debate. Senator Bartlett, probably quite rightly, pulled some of us up for perhaps being a little dismissive of other codes. Whilst I have acknowledged people in my own party that have a different moral code to me for the respectful way in which they have conducted this debate, perhaps we have not properly considered the points that Senator Bartlett raises. I have had some time to think about it and I think he probably quite rightly pulls us up, so I will be supporting his amendments.

Senator PATTERSON (Victoria) (7.38 pm)—I thank Senator Bartlett for his contribution. I agree with him that some of the comments about this area of research and its possibilities were very overblown. The issue of using animal eggs instead of human ova was suggested by some people who made submissions to the Lockhart review but it was not the most strongly supported recommendation by the Lockhart committee. As Senator Stott Despoja said, in doing both of our bills, we did not cherry pick; we put all the Lockhart recommendations in there. I have no objection to that recommendation not being in the legislation and therefore I will be supporting Senator Bartlett’s amendment.

Senator STOTT DESPOJA (South Australia) (7.39 pm)—I think Senator Patterson just made the key point for me; that is that enshrining the Lockhart recommendations in a legislative format was about putting them in holus-bolus—apart from those that required no legislative change or could be dealt with in a different way—and then leaving it up to the parliament to decide. Senator Webber and I had the exact same intention: leave it to the democratic process. Duly elected representatives would decide what was right, what was wrong, what they sat comfortably with and what reflected human values. I think this bill does reflect community values and I recognise that there are some areas within this legislation that are perhaps more strongly supported by members of community than others.

I acknowledge the comments my Democrat colleague has made and his observations throughout this debate. When I look at this particular amendment and the lines to which it refers—that is, 20(1)(g), an area that has been the subject of much debate—I find it agreeable. I find it an amendment that can be supported but I will wait and see what the will of the parliament is. I am happy to support it. I think it is a reasonable compromise in terms of determining community values and expectations in the context of this legislation. Once again, it gives elected representatives the opportunity to decide which recommendations from Lockhart they support.
and which they do not. I am happy to support the amendment before us.

Senator McLucas (Queensland) (7.41 pm)—I will only make some brief comments. We all knew that this was the area of controversy in the legislation. I think the Lockhart committee recognised that as well, but Senator Bartlett’s concern is different to other concerns that have been expressed. That does not make it any less valid, and we recognise that. The concern I have—and it is evident that this amendment will be accepted—is what this will do to the use of human eggs as they exist under the current legislation. We should be aiming for the best and highest use of human eggs as part of the process that is under debate at the moment.

My personal view is that I was comfortable with the legislation as it stood. I believe that there are safeguards in place to ensure that eggs are used ethically and that animal eggs will also be used ethically, although I recognise that those safeguards are not enunciated in this legislation. However, I do not think it is the end of the world, so to speak. I think we will be able to continue with the sort of research that the Senate has agreed to progress with. I dare say we will revisit this issue at another point in time.

Senator Bartlett (Queensland) (7.43 pm)—Perhaps I should be quiet when I have had so many voices in support but I want to acknowledge those responses from people and reiterate a couple of points. I am conscious that passing an amendment like this does create a situation where the only eggs that could be used for this research are the eggs of women. Therefore the concern that people have expressed about the potential for there to be greater pressure on them to donate their eggs is increased by this amendment going through. I want to indicate again that that is not something I am dismissing lightly. I think it is an important issue.

I cannot remember who it was, but somebody speaking in favour of the legislation in the second reading debate did point to the fact that donation is still a voluntary choice—certainly in Australia. There clearly have been problems overseas in regard to potential inducements for donating not just eggs but all sorts of body parts. That is a concern. That is why I am very pleased that Australia does not go down that path and has not gone down that path. I believe that our safeguards have shown that we are very effective at ensuring that people are not unduly pressured with regard to being donors in all sorts of areas in medicine. That is not to say that it can never happen, but I think we have safeguards that are as good as you can expect. They will apply as effectively in this area.

I note also the comments of Professor Schofield, one of the members of the Lockhart committee, in the Senate committee hearings in response to some of these questions about whether there will be enough eggs available. The evidence was pretty clear that, at this stage, that is certainly not an issue. However, he said:

... if there are not enough eggs for researchers, tough.

I think I would concur with that view. The other point I want to emphasise is that, whilst I do not at all agree with the distorted view that somehow this legislation would allow half-horse or half-animal creatures or rabbit men bouncing around the neighbourhood or whatever, this legislation does at least remove the potential for that distortion and even for that misunderstanding.

That is one of the difficulties that I have found in this area. When you try to do some research in the mainstream media, it is very easy to see that it is not always reported accurately. By total coincidence, whilst I was listening to the debate before dinner, a report
came up on the ABC website saying that there is a British bid to create part-cow, part-human embryos. When you actually go to the source of that, which is a BBC website report, you find that it is precisely what we are talking about here—that is, using in this case cow eggs to be the host for the creation of a human embryo using SCNT. It is very easy for that sort of probably unintended misreporting to happen. It creates the impression that we are talking about half-half creatures and trying to fuse genes together and all of those sorts of things. I think that, by removing this from the legislation, it also clearly removes that potential apprehension about what is involved.

Question agreed to.

Senator STOTT DESPOJA (South Australia) (7.47 pm)—On behalf of Senator Webber and me, I move:

(19) Schedule 2, item 34, page 22 (line 31), omit “one month”, substitute “15 days”.

The amendment is a simple one and relates to the duration of the warrant in the bill. We have suggested a time frame of 15 days as opposed to a month or, indeed, any longer. I understand that this has the support of Senator Patterson. I am happy to explain if people need more understanding as to the motive behind the amendment. But, given the circumstances in which that warrant would normally be exercised, I think that the provision of a 15-day period is more than adequate and stops any excess warrant power, if you like. This is a compromise amendment moved by Senator Webber and me.

Senator PATTERSON (Victoria) (7.48 pm)—I just want to say that it was somewhat arbitrary on Senator Stott Despoja’s part. There is another similar bill which has a much longer period. We thought that one month was sufficient. But if the bill goes through it will be reviewed. If it is not sufficient time then that will be expressed.

One of the things it does give me an opportunity to say is that this is about strengthening the bill. This was not there before, in the previous bill in 2002. The Lockhart committee discovered that people could be breaking the law if they were outside of an institution that was not licensed and they had very few tools to actually apprehend those people. So this is a strengthening of the bill. For those people who are opposing the bill, I point out that there are parts of this bill that are about strengthening the oversight of this sort of research and making sure it is not being undertaken in black-market laboratories—I do not know what you would call them—or at-home laboratories or wherever else, or in institutions that do not have a licence. So this does give me the opportunity to say that this is about strengthening the bill. I agree with Senator Stott Despoja’s amendment.

Question put:

That the amendment (Senator Stott Despoja and Senator Webber’s) be agreed to.

The Senate divided. [7.54 pm]

(The Deputy President—Senator JJ Hogg)

Ayes............ 34

Noes............ 29

Majority....... 5

AYES

Adams, J. Allison, L.F.
Bartlett, A.J.J. Brown, B.J.
Brown, C.L. Carr, K.J.
Colbeck, R. Crossin, P.M.
Evans, C.V. Faulkner, J.P.
Ferguson, A.B. Ferris, J.M.
Johnston, D. Kirk, L.
Lundy, K.A. Marshall, G.
McEwen, A. McClucas, J.E.
Moore, C. Murray, A.J.M.
Nettle, K. O’Brien, K.W.K.
Patterson, K.C. Payne, M.A.
Ray, R.F. Sherry, N.J.
Siewert, R. Stott Despoja, N.
Troeth, J.M. Trood, R.B.
Question agreed to.

Senator COLBECK (Tasmania—Parliamentary Secretary to the Minister for Finance and Administration) (7.56 pm)—I move my amendment on sheet 5124:

(1) Schedule 2, page 26 (after line 3), at the end of the Schedule, add:

36 After section 47

Insert:

47C Study of non-blood human tissue based therapies

(1) The Minister must cause to be prepared a report on the feasibility of establishing a national legislative or regulatory approach for effective governance of non-blood human tissue based therapies.

(2) The review must be undertaken by persons chosen by the Minister with the agreement of each State.

(3) The report of the review must contain recommendations for a national legislative or regulatory framework.

(4) The persons undertaking the review must give to the Council of Australian Governments and both Houses of Parliament a written report of the review.

(5) The report must be completed not later than 18 months after the day on which the Prohibition of Human Cloning for Reproduction and the Regulation of Human Embryo Research Amendment Act 2006 receives Royal Assent.

(6) The Minister must cause a copy of the report to be tabled in each House of the Parliament within 15 sitting days of that House after the day on which the report was completed.

The amendment proposes that a report be prepared to investigate the practicality of establishing a national legislative or regulatory approach for effective governance of non-blood, human tissue based therapies. Given that it was not possible for me during the initial debate, or through amendments that I proposed during the second reading debate, to achieve what I was looking to do and that it is quite clear to me—and I think it has been accepted by many others who are involved in this debate—that there are a number of issues that need to be dealt with across the legislative framework, relating to these issues in Australia, I think it is pertinent that a review be undertaken that has a look at this issue across the whole. My proposal is that it be undertaken by a committee established by the minister in similar terms to the Lockhart process, that the committee reports to the parliament and to COAG within 18 months, that it consults with the states and territories in relation to their regulatory frameworks and that it reports to the parliament within 15 days after completion of the report.

In some senses, I think that this potentially provides the capacity for a better outcome than I was searching for in my initial amendments to the bill. Those amendments dealt with only a narrow scope of research. They did not look at the broader issues that I think have been recognised and have come to the fore as part of this process. I suppose as a
matter of persistence I would commend this amendment to the Senate. It does not necessarily detract or modify the legislation itself but puts in place a process whereby, in the longer term, there is the capacity for the country to have a better legislative framework across a range of therapies dealing with issues that we are looking at, particularly given the variation of approaches that have turned up as part of this process and as part of my investigation and the investigation of others in relation to the matter we are discussing today.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (8.00 pm)—I support any move to look further at these complex issues. It is a very broad brush that Senator Colbeck has put forward here. I wish that committee well, because non-blood therapy encompasses a lot more than embryonic based therapy. It involves heart transplant and skin therapies, as well as a whole range of even non-medical therapies. It may be that, with a little longer to look at this, the legislation could be narrowed to focus on exactly what Senator Colbeck wants.

Question agreed to.

Senator BARTLETT (Queensland) (8.01 pm)—Those are all the amendments, as I understand it. I just want to ask one or two more questions about the legislation as a whole before we come to a final vote. The issue I flagged in the second reading debate that is still causing me some consternation is that embryos created through cloning techniques are seen as having a different value from embryos created through sperm and egg. I understand the rationale behind the Lockhart committee coming to this view.

Over the dinner break, I reviewed the different arguments and views that the committee heard from people and why they perceive embryos created through SCNT as being intrinsically different. These embryos are not just created differently; they are seen as intrinsically different, and so people feel differently about them. In that context, they are being created for a different purpose. I can certainly understand that.

I have been asking people about this issue and many of them feel that the entities created through the SCNT process are fundamentally different. The Lockhart review used terminology to describe how SCNT embryos had a different social and relational significance from other embryos. In the majority report of the community affairs committee, clause 3.31 states:

While respecting the individual’s right to see the SCNT embryo as equal in status to that of an embryo produced by egg and sperm, it is intrinsic in the recommendations of Lockhart and the Patterson Bill that the continued prohibition of the creation of an embryo by egg and sperm for any purpose other than ART demonstrates the difference in the intrinsic value of the egg and sperm embryo.

In the context of what is envisaged by the legislation before us, that does not hugely concern me. However, incorporating a principle that one embryo has a lower intrinsic value than another as a consequence of its method of creation and the purpose for which it was created is a principle that causes me concern in terms of how it might be applied in the future. I wonder whether Senator Patterson could respond to that.

Senator PATTERSON (Victoria) (8.04 pm)—I think Professor Skene, who was one of the members of the Lockhart committee, indicated that her view in the beginning was that there was no problem with creating egg-sperm embryos for the purpose of research. I do not know the views of the other members of the Lockhart committee—they have not expressed them—but her view was that there was no difference between a SCNT embryo and an egg-sperm embryo. However, as the committee went around talking to a large
number of people from all walks of life and to those who presented submissions, she became convinced that people saw the egg-sperm embryo as different. Two people had come together to create that embryo, whereas a somatic cell nuclear transfer embryo did not have the same potential and purpose. That is the reason that the committee finally came to the decision to continue the prohibition of the creation of egg and sperm embryos for the purpose of research.

Also, there was an indication that there were excess embryos to the needs of ART, whereas that is not the case with SCNT embryos. There is a difference in the sense that there are existing excess ART embryos, but there are no existing SCNT embryos. So one argument is that you are creating something that you do not necessarily need, because it is already there. The other argument is that, for many people, those embryos have a different significance. That is why there is provision in the bill, if it goes through, for the legislation to be reviewed in three years time. People may have different views then, but that was a strong view of the community at the time.

One of the things the Lockhart committee was asked to do as part of its review was to look at community attitudes. So the members of the committee took into account what they felt was a strong expression by people who had egg-sperm embryos that were excess to ART and how they saw them differently, although the legislation encompasses SCNT embryos and egg-sperm embryos under the definition of embryo.

Senator JOYCE (Queensland) (8.07 pm)—The differentiation, I think, is not apparent. A sperm is just a transport mechanism for the material. The genetic material is what makes the embryo. If it arrives by sperm or it arrives by motor vehicle, it makes no difference. It is like saying that people in this place are intrinsically different if they arrived here by car as opposed to arriving on foot or by plane. Once you have an egg with two lots of genetic material, you have an embryo.

I have just heard Senator Patterson say that this is likely to be reviewed in the future. So we are already acknowledging that this whole process is a moving target, and part of that review will be to change the 14 days to 28 days, to 36 days, to three months—to whatever is convenient. What we have in that final part is the acknowledgement that this is just a process; it is not the final point. It is going to move on from here and we are really heading towards that brave new world.

Bill, as amended, agreed to.

Bill reported with amendment; report adopted.

Third Reading

Senator PATTERSON (Victoria) (8.09 pm)—I move:

That this bill be now read a third time.

Senator BARTLETT (Queensland) (8.09 pm)—I do not want to drag the debate out, but I feel it is appropriate to put a few views on the record in regard to the particular matter I have been querying throughout the debate. I find myself in a strange position. I am not sure I like conscience votes so much at the moment, actually. But, seriously speaking, I still think they are good in principle and we should have more of them.

The issue I just raised by way of a question to Senator Patterson goes wider than the legislation before the Committee of the Whole. On a personal level, I do not have a problem with what this legislation seeks to do. I know many people do have problems with the legislation and I respect the reasoning that some of them have expressed for that. The perception that is at risk of being adopted along with this legislation is that
some embryos have less value than others. I
do not think there is much doubt, particularly
at this stage of scientific knowledge, that
embryos created through SCNT are different
in some way from sperm-egg embryos. It is
not surprising that people perceive them dif-
ferently for that reason. I am in a strange
position. Most of the people who have been
opposing this legislation have been doing so
because they do not like embryos being used
at all, but I am someone who can accept em-
byros being used. Indeed, the counterintui-
tive result of my position would be that it
would be better if sperm-egg embryos were
able to be created specifically for research as
well so there was not potential for a different
value to be attached to different classes of
embryos.

I continually have in my mind the view
that all people are created equal, even though
I realise that embryos are created in different
ways. But if they are both perceived to be
embryos then the perception that they may
have different worth is a perception that I
think could have significant problems if ap-
plied in different contexts. I do not think it is
a problem if applied within the context of
this legislation, but if it is applied in other
contexts I think it is a problem, potentially.
That is why the principle that all people are
created equal is one that most, if not all, of
us adhere to.

Senator Patterson gave some indication in
her answer before about why this approach
was taken in the legislation. I appreciate that
the legislation attempts to be a faithful re-
production of the Lockhart committee’s re-
port. And, again, I would like to congratulate
the committee on their work, even though I
am not convinced they got it right in regard
to this particular point that I am pursuing.

My understanding is that the situation is
different in the UK, that sperm-egg embryos
can be created specifically for the purposes

of research. That is a position that some
would see as being even further from what
they would see as desirable. But I also
know—and I think Senator Patterson alluded
to this—that there was a debate about
whether entities created through SCNT could
be determined to be embryos. In different
contexts, in different countries, people have
argued that they should not be considered
embryos. My understanding is that some of
those who would be against this sort of re-
search have taken the view that we should
not consider them as embryos. They have
done that within the context of debates in
their own country. Clearly, we are at a stage
where there are different perceptions, and I
would suggest we are still working through
those perceptions about what the real status
is and what the real intrinsic worth is of an
entity created through the SCNT process.

As I said in my contribution in the second
reading debate, I think there is a much
greater risk from people unfairly taking away
hope of a genuine prospect of cures and bet-
ter treatments than there is from creating
false hope. Therefore, there is a strong onus
on people who seek to prevent that hope be-
ing explored in regard to a certain area of
research to have very good reasons. I think
the principle that all people are created equal
is a good one, one which should be main-
tained and one we should continue to apply. I
recognise that at a community level there are
still different views and, I suggest, there are
views that are still forming about what we
consider an entity created through SCNT to
be.

Again, as I said in my contribution in the
second reading debate, I do not think con-
science votes are just an opportunity for us to
impose our individual, personal philosop-
hyical positions on the community or on legisla-
tion. If I were keen to do that, I would be
looking for every chance I could to legislate
to reduce the killing of animals for food con-
sumption and other unnecessary purposes. I
do not do that because I recognise that I have
a broader responsibility, whether I am engag-
ing in a conscience vote or not.

One of the difficulties the Lockhart com-
mittee clearly had was the issue, in its terms
of reference, which Senator Patterson re-
ferred to, of trying to assess what community
standards are in an area that is still develop-
ing. It is an area of research that is still com-
plex and challenging. In that context, I note
the requirement for a further review by some
committee down the track that will have the
pleasure of going through what the Lockhart
committee has just done. If this legislation
were to pass, this particular point that I am
drawing attention to now would be one that I
hope they give a lot of attention to.

Senator FIERRAVANTI-WELLS (New
South Wales) (8.16 pm)—I would like to
make some comments, particularly in light of
the passage of Senator Bartlett’s amendment,
because I think it really puts more into focus
an issue that was raised in the inquiry and
that has been raised in quite a number of the
submissions—that is, the scarcity of eggs.
These provisions remain in the bill, and one
of the concerns that I have—and which was
raised by Women’s Forum Australia, Ge-
nEthics and, in particular, FINRAGE, which
really did focus on it—is the number of eggs
that will be required. We can see from over-
seas that it is impossible—the scarcity of
eggs was an issue that was very much fo-
cused on. If this legislation is passed, it will
create a demand.

I refer senators to page 176 of the report,
which canvassed alternatives for getting
eggs, particularly since we have now re-
moved those provisions. Clause 23A of the
bill expressly proposes the use of precursor
cells from a human embryo or a human foe-
tus—clearly, the use of eggs from cadavers.
Whilst people do donate organs, there are
ethical issues that this raises, and I do not
think that this bill carefully canvasses those
concerns and, in particular, the ethical and
legal issues associated with that. Those were
issues that were raised by witnesses at the
inquiry and which have been raised in sub-
missions. And, for me, they remain important
issues. They remain in this bill and there re-
main very big question marks around them in
relation to support for this bill.

In my earlier speech, I referred to a study
‘Proposed regulation in Victoria of the use of
donated foetal ovarian tissue for assisted
conception or my mother was an aborted
foetus’. It raises very difficult issues. In
South Korea, researchers have used ovarian
tissue from human cadavers to produce live
births and ovarian tissue grafting to create
animals. The study states that it was tradi-
tionally thought that when a baby girl is born
she is already endowed with a quota of ap-
proximately two million oocytes. The ques-
tion becomes: should these be used for dona-
tion? There are social, ethical and legal is-
sues that I do not think that we have covered.
What is the status of the foetus and what is
the protection at law that it deserves? Whilst
abortion is legal in Australia, there are issues
associated with that, such as the possible
oppression and exploitation of women and
the effect on children born of this reproduc-
tive technology.

Those are the issues that I think still re-
main in the bill. This bill is not a good one,
and for those of us who oppose it, they are
just some concerns. There are so many other
concerns and, as I asked when I spoke ear-
lier: are we ready to cross the boundary?
There are certain scientific and ethical
boundaries that should not be crossed. Once
they are crossed, you cannot return. The
questions I posed in my earlier speech were:
what has changed since 2002? Do we believe
that our constituents and the Australian pub-
lic are ready to take that quantum leap? As so
many speakers who have spoken against this bill have said, to take the quantum leap and to pass this legislation is to in effect create human embryos for the purpose of research and for the purpose of their destruction.

In conclusion, there are two basic arguments in opposition to this bill. The first is the utilitarian argument, which goes to concerns that have been raised about cancer and women’s issues, whether adult stem cell technology is offering genuine cures and what the commercial driver for change is, which has really been assisted reproductive technology and not medical cures. There are also, of course, the ethical issues. This debate has raised scientific, medical and ethical issues, and those ethical issues—the arguments about the slippery slope, the sanctity of life and, most importantly, the evidentiary threshold for change, which I do not believe has been met—seriously need to be considered as we make this decision.

Senator PATTERSON (Victoria) (8.21 pm)—I rise to close the debate on the Prohibition of Human Cloning for Reproduction and the Regulation of Human Embryo Research Amendment Bill 2006. I presume I am closing the debate, since nobody else jumped up. I appreciate very much the contribution of honourable senators in the chamber—

Senator Humphries interjecting—

Senator PATTERSON—If I may, I will resume my seat. I did not realise—

The ACTING DEPUTY PRESIDENT (Senator Marshall)—Senator Humphries did not seek the call, and I have been searching the chamber for senators who may have wanted to seek the call. I have now called Senator Patterson, who is closing the debate.

Senator Humphries—I would certainly like to be able to speak. I did not understand that Senator Patterson was closing the debate.

Senator Heffernan—We did not know that she was closing the debate.

Senator PATTERSON—I am sorry. I looked around. I am happy to resume my seat, if I may.

The ACTING DEPUTY PRESIDENT—If leave is sought to do that, we can do it. Otherwise, you need to continue speaking and close the debate.

Senator PATTERSON—I seek leave to resume my seat to enable other honourable senators to make their contribution to the third reading debate.

Leave granted.

Senator HUMPHRIES (Australian Capital Territory) (8.23 pm)—I want to make a few remarks before the end of this debate on the Prohibition of Human Cloning for Reproduction and the Regulation of Human Embryo Research Amendment Bill 2006. I do not apologise for detaining the house at this time of night, because I think that the issues that are being raised by this legislation are extremely important and deserve to be fully understood by every senator and every person listening to this debate. I hope I can shed light on a couple of matters that have been discussed in the course of the last 36 hours or so.

I see that we have amended the legislation in a number of ways. We have, for example, taken out reference to the idea of hybrid embryos being used for scientific research. At one level that pleases me greatly. I think that it is a good development to see. It was claimed that the legislation did not in fact lead to the sorts of concerns that some had expressed about this, but I note that, nonetheless, the amendments have been made. I do take the point that Senator Bartlett made in respect of this, which is that as a consequence of that amendment all the experimentation that will be done in this field will be on human embryos, not on hybrid embryos,
which would arguably have minimised the number of human embryos required to be used in those experiments. I did not suggest that we should take one course or another, because, frankly, neither course was particularly acceptable. Both courses result in, in my opinion, unacceptable uses of human embryos in circumstances which I believe have not been fully understood, certainly by the broader community in Australia.

The point is not so much what this bill does with respect to opening up a variety of uses of cloned human embryos; the point is what other legislation that will follow it down this pathway will do. I repeat the point that with this legislation we accept the concept that it is acceptable for one human being, albeit in a pre-birth state, to be used and then destroyed for the therapeutic benefit of another. That human being, under this legislation, remains less than 14 days old. Under this legislation, its life is brought to an end at the end of that 14 days. I fully accept that that is the case. It is not changed by this particular legislation. But I have asked in the course of hearings of the Senate Standing Committee on Community Affairs and I have asked again in the course of debate here for a clear description from those who support this legislation of why they draw the line at 14 days—a clear, ethical description of the reason for that line.

There is a scientific reason for that line to be drawn at 14 days, which is that in their present state of knowledge scientists believe that they can extract the necessary stem cell lines from embryos during that period, before the embryo reaches 14 days. That is in their present state of knowledge. But no-one in this debate has guaranteed that it will not be possible for scientists to return to the Senate and say: ‘Fourteen days is not long enough. We want more.’ If a scientific case is made for more, the question I want to have answered today in response to this debate is: why do we say that 28 days is not acceptable but 14 days is? What are the limits of acceptable experimentation on human embryos at that stage of their lives? We do not know. It has not been explained. The extent of the parameters and the appropriate limits of scientific inquiry have not been described by anybody who supports this legislation. Some have said that an embryo at that stage of life is not a human being. I respect them for the frankness of their point of view but I would be more comforted if I could know when an embryo or a foetus becomes a human being by that reasoning.

How many more iterations of this debate are we going to see, describing the expansion of this area of technology, this area of exploration by science, that will further penetrate into that area of discomfort that I certainly feel, and I know other senators feel, at the idea of embryos at a later and later stage in their lives being used for this purpose? I do not know where that will end. I think that today, in conjunction with this debate, is the appropriate time to ask the question and to get answers. If we do not have an answer, we should not support the legislation.

Senators, if you are comfortable in supporting this legislation tonight because you think that an embryo at 14 days is not really a human being, you need to ask yourselves: what about an embryo at 28 days? Is that a human being? What about an embryo at 50 days or beyond? If you cannot describe clearly where that line gets drawn then you have to accept that there is some prima facie value in the argument that the line is not clearly drawn anywhere in that period and that in fact the critical line is the line that we cross by passing this legislation today, where we say that it is acceptable to use a human being at any stage of its development for the therapeutic benefit of another human being. I want to understand what this legislation does in that respect. The proponents of the legisla-
tion have not, with respect, outlined at any point what they see as the appropriate limits of scientific inquiry—that is, at what point scientists may not continue to conduct such experiments.

I think this legislation has a number of very troubling features. It has been amended to remove some elements that had the potential to be particularly troubling for the proponents, but there are other things which I think are quite unacceptable. The fundamental point about the legislation is that it allows the creation of human embryos, other than by fertilisation between an egg and a sperm, for scientific experiments. The legislation will also allow the NHMRC licensing committee to create human embryos where there are more than two genetic parents. This has been described by some people as science fiction—the idea of people with multiple parents, like something out of *The Hitchhiker's Guide to the Galaxy*—but it is possible. It can happen. This legislation actually makes it allowable. It gives the NHMRC licensing committee the power to authorise experiments for that purpose—provided the embryos do not live beyond 14 days. Why 14 days? What is the immutable magic about 14 days? Where will we end up if there are further debates in this place suggesting that some later period is appropriate? Why is a later period not acceptable?

The legislation would also allow the creation of human embryos using precursor cells from a human embryo or a human foetus. For example, the cells of an aborted foetus could be extracted for the purpose of creating a human embryo. I do not think the Australian community fully understands that implication of this bill. I am certain that, if I walked through the streets of this city and stopped 100 people, there would be almost nobody who would be able to tell me that that is what this legislation does. That raises a very interesting question about just what Australians think is happening here tonight. We have heard a lot about how, supposedly, the opinion polls demonstrate that Australians want this legislation; they want to see heinous diseases destroyed and for the community to be freed of those diseases.

Professor McNeil, who appeared before the Senate community affairs committee in Melbourne on the last day of hearings, appeared to support the legislation, but he made a very interesting point. He said that most opinion polls suffer from the disability that they present people with a simple question—a little bit of preamble but a simple question—and people are expected to understand enough about the science to be able to say whether they approve or disapprove of these particular uses of those embryos by science. He said that the only research that had been being conducted by means of deliberative polling—which, as members would be aware, is a form of polling where you actually take people to one side, properly educate them about the issues, and then ask them the questions—was conducted by Swinburne University. It found much more ambiguous outcomes as far as the attitudes of Australians to this technology are concerned. I think that there are, quite rightly, questions that Australians would ask about where this leads.

I conclude by saying that this process really deeply troubles me. I was chair of the Senate community affairs committee, and the committee worked very hard over three days to understand the very detailed information in the Lockhart review—a very large report—and to understand a small cross-section of the huge amount of scientific debate and argument about this. We discovered that there was very lively and very real debate in the scientific community about this and no consensus about the issues subject to this legislation. We produced in very short order a report for this Senate. Now, just a
little over a week later, we are voting these changes into law. Given the lack of understanding by so many Australians of what is entailed in these changes and the nature of the process that we have used, we do not greatly dignify the process or serve the public interest by the means that we have used to reach this point today.

I appeal to senators to consider whether it actually is in the public interest of Australians to pass this legislation tonight. I suggest to them that, with the passing of this legislation, we will cross a critical line. We cannot retreat from this point. With the passing of this bill tonight, we will have established that it is acceptable to use one human being for the therapeutic benefit of another human being. The possibilities from that proposition, once established, are quite limitless. We need to ask ourselves where that will end. It begins tonight, and I would argue that we should not take that step unless we are absolutely certain that we know where we are going to end up.

Senator HEFFERNAN (New South Wales) (8.35 pm)—There is a saying that governments should not pick winners, and I agree with everything that Senator Humphries has said. I have never heard a pregnant mother refer to her ‘embryo’. I have asked people tonight, ‘When does an embryo transfer to being a foetus and when does a foetus become a baby?’ Most mothers say, ‘My baby is doing fine.’ In my view, this has been one of the most dishonest processes that this Senate has endured. I think that there has been a lot of emotional and political blackmail in the process, and I think it is disgraceful.

Senator EGGLESTON (Western Australia) (8.36 pm)—I too would like to make a few remarks before the end of this debate. As I said in my speech, I really do not believe that the need for this legislation has been established in this debate. I believe the Senate would be wise to reject this legislation in the interests of senators being given more time to evaluate the current state of stem cell technology in dealing with the known basic problems which stem cell technology and treatments face. There are many hurdles to be overcome before stem cell technology can be used therapeutically, and I referred to them in my speech.

Chiefly, I am concerned, as I said, about the fact that senators have been rushed into expanding the horizons of stem cell technology by committing to somatic cell transfer when major problems, such as how to differentiate a stem cell from a particular cell of a particular organ, have not been overcome yet. Professor Mackay-Sim said to me on the phone last Thursday that differentiation was a very difficult problem to solve. People seem to imagine that, with stem cell therapy, it is simply a matter of putting a stem cell in an organ and tissues of that organ will develop—but that is not the case. That is a very fundamental hurdle which has to be crossed.

There is also the question of limiting the growth of stem cell implants, which in effect become tissue cultures in a person’s body. As we all know, all organs have a size and there is a natural mechanism at play which limits the size of various organs. A stem cell tissue culture would not be subject to those sorts of natural limitations. Just as cancer cells overgrow, so very probably would stem cell cultures overgrow within the body—and that could be quite catastrophic for patients.

Then, of course, we have the most important question of tumour formation. It was pointed out to us during the course of the debate that embryonic stem cells have a 25 per cent chance of turning into a very unpleasant kind of tumour called a teratoma. According to Professor Mackay-Sim, whom I spoke to last Thursday, adult stem cells
have a tumour problem as well. I do not see that somatic cell transfer will add to finding answers to those basic problems—answers which must be found if stem cell therapies are ever going to be developed.

As I said in my speech, I find it hard to see any justification for this legislation. I must say that, in my view, the only real beneficiaries of this legislation are those in the biotechnology industry. I can understand the desire of people in the community to see cures developed for various illnesses, but I do not believe that that legitimate desire is served by rushing into legislation such as this. Scientific research is a long, slow process which requires much patience to produce results. It seems to me that this legislation has been conceived in haste, and that is never a good practice in medical research.

The Senate may imagine that it is facilitating a more rapid development of therapy through the use of stem cells, but I doubt very much whether that is the case. I would urge my colleagues to not pass this bill and to let a little time elapse so that they can fully evaluate the state of stem cell research and see what directions this country should go in the future and what regulation should apply to provide the best benefits to the community.

Senator STEPHENS (New South Wales) (8.41 pm)—I concur with the comments of the previous three speakers in the sense that, from what we have heard throughout the debate in the last few days, this legislation raises as many questions as it answers. For many of us, there is no confidence that the legislation, as it is drafted and as it has been amended here today, is going to deliver the outcomes that are in the best interests of the Australian community. I urge all my colleagues to be cautious about passing this legislation with such haste.

Senator PATTERSON (Victoria) (8.42 pm)—I take this opportunity to pay tribute to the members of the Lockhart committee. We are all used to the rough and tumble of politics. We are used to people saying things about us that can sometimes cut us to the quick. We develop thick skins in this place—the longer you are here the thicker your skin. But people who are not used to it do not necessarily find it as easy to cope with. I also want to say how much I appreciate how colleagues—as far as they have been able to be—have been as reasonable as possible in this debate. But I do not think it is cricket to actually attack the messenger. Some of the comments that have been made about the Lockhart committee—not necessary by my colleagues but by people who have been supporting them—have been, I think, quite hurtful. For that, I apologise to the members of the Lockhart committee. I would hope that all of us would expect that they would be treated with due respect and dignity.

I pay tribute to the late John Lockhart. He was inappropriately referred to on a radio station in a way that was totally unacceptable. He was very ill when he did his final press and he tabled the report, and he was described in a way that I think was totally inappropriate. To Juliet Lockhart I say: I hope that the accolades that he was given throughout his life and his career and the contribution he made to directing a committee in a very difficult debate overcome the hurt that she felt at that comment. I have been told that John Lockhart chaired that committee with great dignity and great sensitivity. Juliet—who is, I think, trying to listen to this debate—we thank you for sharing with the Australian community your husband over that last six months of his life. He died only weeks after the report was tabled. For Juliet, it must be a very difficult time, especially when some of the criticisms were measured directly at him. But that is in the
past, and I hope that it is a lesson that we can all learn from.

We owe the rest of the committee—which included Professor Loane Skene, Professor Peter Schofield, Associate Professor Ian Kerridge, Professor Barry Marshall and Associate Professor Pamela McCombe—our appreciation and thanks. In particular, we should thank Professor Skene and Professor Schofield. They made themselves available to people from all sides. They came here in their own time. I do not think that when they accepted the job they realised that the work would go on for more than a year—nearly a year and a half. I thank them.

I also want to extend my appreciation to Senator Stott Despoja and Senator Webber. Their exposure draft was very important in assisting the debate. Only Senator Stott Despoja and I know what is involved in producing a very detailed bill. Usually, private member’s bills are a couple of clauses. This was quite difficult and, as Senator Stott Despoja said, you could have done a number of things a number of ways. It was a challenge. I appreciate the knowledge that Senator Stott Despoja and Senator Webb brought to the committee hearings, but particularly what Senator Stott Despoja brought, because she was the leader of that twosome—group, partnership, whatever you would like to call it. I am not sure if you can use the first word like that anymore, but anyway. The knowledge they brought meant that the committee hearings were very well informed. I also want to acknowledge that this has been carried out at a very difficult time for Senator Natasha Stott Despoja personally. I appreciate the fact that she has made an enormous effort to be here this week.

I want to also thank all those people who made submissions to the Lockhart review and to the Senate Standing Committee on Community Affairs. Many of them did so passionately, on both sides. That is the way that a democracy works: people put their views and participate in the democratic process. I want to put on the record my appreciation of the minister’s help. When I asked for technical assistance from the minister, that technical assistance was forthcoming. My view was that it was a bill that carried huge penalties and to have a bill that was not technically correct would be inappropriate and not in the best interests of the Australian public.

I want to also put on the record my personal thanks to a friend, Dr Sally Cockburn, whom I have known since she was in second-year medicine. She takes a very deep interest in health policy and a number of times would have liked to have given me advice when I was Minister for Health and Ageing, but I was not prepared to take it as readily as she might have liked. She has been a very close personal friend. We have shared lots of ups and downs in our various professional lives, and I want to thank her for her unerring advice, frequently via emails very late at night. I appreciate her bringing her medical knowledge and skills to bear in assisting me in this.

I have to respond to something that Senator Humphries said. He asked, ‘What is so important about 14 days in terms of putting a stop on any development?’ It is the point at which you can physically identify a primitive streak in any embryo. It lets a researcher know when they have overstepped the mark. Anything else is less clear and less objective. That is why 14 days was chosen and that is why it will be very hard for anybody to argue for going beyond 14 days. That is why that was chosen. It was very clear in the submissions; it was very clear to most of us that that was why 14 days was chosen.

I want to again thank honourable senators for their contributions. It is not easy to have
these conscience votes. For people who are voting against this bill, I have been on that side, for example, on the bill regarding euthanasia. It is not easy, but it is an important part of the democratic process. I commend the bill to the house.

Question put:
That this bill be now read a third time.
The Senate divided. [8.53 pm]
(The President—Senator the Hon. Paul Calvert)

Ayes............ 34
Noes............. 32
Majority........ 2

AYES
Adams, J.        Allison, L.F.
Bartlett, A.J.J. Brown, B.J.
Brown, C.L.      Carr, K.J.
Colbeck, R.      Crossin, P.M.
Evans, C.V.      Faulkner, J.P.
Ferguson, A.B.   Ferris, J.M. *
Johnston, D.     Kirk, L.
Lundy, K.A.      Marshall, G.
McEwen, A.       McLucas, J.E.
Moore, C.        Murray, A.J.M.
Nettle, K.       O’Brien, K.W.K.
Patterson, K.C.  Payne, M.A.
Ray, R.F.        Sherry, N.J.
Siewert, R.      Stott Despoja, N.
Troeth, J.M.     Trood, R.B.
Vanstone, A.E.   Webber, R.
Wong, P.         Wortley, D.

NOES
Abetz, E.        Barnett, G.
Bernardi, C.     Bishop, T.M.
Boswell, R.I.D.  Calvert, P.H.
Chapman, H.G.P.  Eggleston, A.
Ellison, C.M.    Fielding, S.
Fierravanti-Wells, C. Fifield, M.P.
Heffernan, W.    Hogan, J.J.
Humphries, G.    Hurley, A.
Hutchins, S.P.   Joyce, B.
Kemp, C.R.       Lightfoot, P.R.
Ludwig, J.W.     Macdonald, J.A.L.
McGauran, J.J.J. Minchin, N.H.
Parry, S. *      Polley, H.

Ronaldson, M.    Santoro, S.
Scullion, N.G.   Stephens, U.
Sterle, G.       Watson, J.O.W.

* denotes teller

Question agreed to.
Bill read a third time.

ADJOURNMENT

Senator ELLISON (Western Australia—Minister for Justice and Customs) (8.57 pm)—I move:
That the Senate do now adjourn.

Obesity

Senator BARNETT (Tasmania) (8.57 am)—I rise to speak about the millennium disease, the obesity epidemic, and what is being done to address the epidemic. I rise to inform the Senate of my seventh healthy lifestyle forum, which was held at Parliament House on Wednesday, 18 October. It was attended by 150 invited participants and featured 16 speakers from around Australia and overseas. The forum was opened by the Minister for Health and Ageing, Tony Abbott, and was attended by Minister for Education, Science and Training, Julie Bishop, who also addressed the forum.

Participants were invited on the basis that they were seriously interested in being part of the solution to childhood obesity and did not want in any way to be part of the problem. Diabetes Australia commissioned a report by Access Economics on the cost of obesity, which was released at the forum with considerable media interest from around Australia.

This report is a time bomb because it does not deal with the traditional and typical broadbrush statistics of people who are overweight and those who are obese; rather, it deals only with those who are obese. The report warned that, if our current lifestyle remained unchecked, there would be 7.2 mil-
lion obese Australians by the year 2025, or a staggering 29 per cent of the population.

The Access Economics report underlined the seriousness of this issue. If we take no action we face a health crisis like a tsunami—such that we have never seen before. The report said that obesity is already costing Australians $3.767 billion in direct costs each year or $21 billion a year after Access Economics included factors such as loss of wellbeing through premature death and disability.

In 2005, 3.24 million Australians were estimated to be obese—1.52 million males, or 15.1 per cent of all males, and 1.72 million females, or 16.8 per cent of all females. Obesity was defined in terms of body mass index—over 30 for adults and, for children aged 2 to 8 years, as a set of age-gender specific BMI thresholds. Obesity is linked to genetic, perinatal, socioeconomic and other factors, but is primarily due to energy imbalance—energy in and energy out and the imbalance between the two. BMI is defined as body weight in kilograms divided by height in metres squared. The 55 to 59 year age group contained the largest number of obese people for both men, 159,000, and women, 203,000. Over 280,000 young Australians aged between five and 19 years are obese.

The report considered a number of scenarios in measuring the worsening trend of obesity. It said that, despite serious weaknesses in data, obesity prevalence rates appeared to be increasing for both adults and children, although it is unclear at exactly what rate. A baseline prevalence projection, with no further change in age-gender prevalence rates, such that all further increases are due to demographic ageing alone, indicated that by 2025 a total of 4.2 million Australians, or 16.7 per cent of the population, are forecast to be obese. However, if rates continued to increase at historical rates there could be as many as 7.2 million obese Australians by 2025, or 28.9 per cent of the population.

Obesity led to the following serious ailments: 102,204 Australians had type 2 diabetes as a result of being obese, 10.8 per cent of all type 2 diabetics; over 379,000 Australians had cardiovascular disease as a result of being obese, obesity causing 14 per cent of hypertension, 12 per cent of cardiovascular disease and 12 per cent of stroke; over 225,000 Australians had osteoarthritis as a result of being obese, or 14 per cent of all people with osteoarthritis; and 20,430 Australians had cancer as a result of being obese, obesity causing 13 per cent of colorectal and kidney cancers, and 16 per cent of breast and uterine cancers.

The total financial cost of obesity, as I indicated, was estimated as $3.767 billion. Of this, productivity costs were estimated as $1.7 billion, health system costs were $873 million and carer costs were $804 million. The net cost of lost wellbeing—the dollar value of the burden of disease, netting out financial costs borne by individuals—was valued at a further $17.2 billion, bringing the total cost of obesity in 2005 to $21.0 billion, according to Access Economics.

Of the financial costs, 29 per cent are borne by individuals, 16.4 per cent by family and friends, 37 per cent by federal Australian government and five per cent by state governments, 0.1 per cent by employers and 12.4 per cent by the rest of society. However, if the cost of lost wellbeing is included, the individual’s share rises markedly to 87.3 per cent of the total.

Also at the forum, the Australian Association of National Advertisers released its new national advertising code based on new international guidelines. The AANA was the first organisation in the world to respond publicly to the new guidelines. I thank the AANA, especially Chairman Ian Alwill and
Executive Director Collin Segelov for their input over the years to my forums. I have worked closely with them since 2002, developing the Jo Lively advertising campaign promoting healthy lifestyles among children and produced at a cost to advertisers of some $10 millions a year in a benefit to the local community.

This was an enormously successful forum in Canberra with much public interest and some highly professional contributions from the experts. Of course I would like to thank many of the people who contributed to its success, especially the Hon. Tony Abbott; Professor Louise Baur from the University of Sydney; Associate Professor Michael Booth from the University of Sydney; Lynne Pezzullo from Access Economics; Professor Stig Pramming, who is based in London at the Oxford Health Alliance and who flew all the way from the UK; Mr Philip Vita from New South Wales Health; the Hon. Julie Bishop, Minister for Education, Science and Training; Ms Lynette Brown from Nutrition Australia; Dr Alastair Robertson from CSIRO Agribusiness; Dr Michael Brydon from Sydney Children’s Hospital; Mr Dick Wells from the Australian Food and Grocery Council; Mr Peter Kell from Choice; as I have mentioned, Collin Segelov from AANA; Megan Cobcroft from Unilever; Mr Mark Peters from the Australian Sports Commission; Associate Professor Leonie Segal from Monash University; Dr Carolyn Whitzman from the University of Melbourne; and Professor Boyd Swinburn from Deakin University, who is also President of the Australasian Society for the Study of Obesity. Also I have a special thank you to: Professor Ian Caterson for deputising as chair for me at the forum; and members of the program committee and supporters Associate Professor Ruth Collaguiri, Professor Stephen Leeder and Professor Jennie Brand Miller, along with the 130 participants including representatives from Kraft, Masterfoods, Coca Cola, McDonalds, Sanitarium and Woolworths, who all want to be part of the solution.

Special acknowledgements also to: Red Hill Primary School for their wonderful demonstration of the Australian government’s Active After-school Communities program; Tasmanian Independent Retailers for the fantastic Tasmanian apples; Mr Philip Steel, Deputy Principal of Karabar High School; and Karabar High School students Tim Crawley, Ketura Budd, Lara Bowyer and Sam Parsons, who also brought a fresh perspective to the issue of childhood obesity. A special thank you to David Albachten and Clive Benne from Novo Nordisk Pharmaceuticals for being the principal sponsor of the forum. Novo Nordisk have demonstrated at all times good intentions in seeking new health solutions through community and government partnerships. And a special thank you to Janelle Frewin in my office for her support and efforts in making the forum happen. She has made a sterling effort.

Since entering the Senate in 2002 I have convened seven healthy lifestyle forums to help combat childhood obesity. Each forum has brought together experts in their field. I am editing my third book on the many speaker contributions to these forums and it is planned for this book to be launched before the end of this year. Tragically, 8,000 deaths in Australia annually are related to weight problems. A report in March 2005 said this could be as high as 12,000. There are many things that we should be doing and can be doing to address this epidemic. There are a number of things that I want to place on record. I wish to work with the many industry and community groups to address the epidemic, and plan to continue these efforts. (Time expired)
Australian Defence Industries Limited

Senator MARSHALL (Victoria) (9.07 pm)—Approval has recently been given for the private company Thales to buy out Australian Defence Industries Limited. The Australian owned 50 per cent of ADI Limited will be purchased by Thales from Transfield. So now we have a company, Australian Defence Industries Ltd, which provides a number of our defence needs, being wholly owned by interests outside Australia including a foreign government. I wonder aloud why it should continue to be named Australian Defence Industries, given it is no longer Australian; perhaps it should be renamed ‘Foreign Defence Industries Supplying Australian Defence Consumers’.

With 32 per cent of Thales being owned by the French government, we see the remarkable situation where another nation owns a direct share of our defence interests. I have been contacted by many of my constituents who seem to be asking the same questions and making the same points surrounding this takeover bid. Amongst these are employees of ADI Limited, who have a keen interest in the future of regional industry and our national interest. People have continually asked me why the federal government continues to use private companies to provide basic army supplies with so many cost overruns and failures in projects. It seems that the government makes a habit of ignoring the realities.

People are now asking why, on top of this, we would be allowing foreign companies to control supply and skills for one of our most crucial institutions—the armed forces. Perhaps I should remind the government that an army cannot get very far without any ammunition like ADI currently provides. Australian Defence Industries is unlike other privatised government business enterprises in that it has unique capabilities essential to the defence of our country. Its workforce carries a skills base which, once lost, cannot be replaced in the short term—a skills base built up over decades of producing our Defence Force requirements; capabilities and skills which are desirable and of commercial value in peacetime but are absolutely essential in times of conflict.

This whole episode reminds me of the short-sighted actions that led to our diggers in Gallipoli eating imported poor quality beef after we sold most of our tinned beef to the Turks just before the war. It is the same kind of short-sighted approach we see from the federal government. The Commonwealth should understand that if we do not support our capabilities we will lose our unique capability, skills and capacity in Australia. Should a conflict occur this could leave us in a very dire position, despite the billions of dollars spent by successive governments.

When my constituents ask questions about this deal, they want to know how, when we let foreign companies work with some of our most basic defence needs, this will protect Australian’s national interest, national security and defence relationships from compromise. Will this foreign owned firm, Thales, guarantee Australia’s national and strategic interests over the commercial interests of its parent company or the foreign policy objectives of its parent country? Would Thales use its position to lock Australia into purchasing products from overseas, which may not be the best for Australian defence purposes? Will Thales rely on the concept of purchasing from the cheapest source, regardless of Australian policy objectives and our national interest? For all private companies their commercial viability in the global marketplace is the most important factor. It determines their survival and it is their survival which counts. It may then be that Australia’s national security and strategic interests come second to this.
Since the privatisation of the Bendigo Ordnance Factory in 1999, there has been little new work brought into Bendigo. The current work was planned prior to the sale. The future prospects beyond July 2007 for ADI look like we may have to endure even more work being done overseas under licensing agreements with other foreign companies. Our future looks to be shaping up to have a limited amount of specialised work done in Australia and an ever increasing reliance on overseas companies to support our Defence Force’s needs.

ADI has been working with an international engineering contracting organisation to supply a substantial amount of the components and parts that are currently manufactured and sourced in Australia from overseas and primarily from Asia. This means that while considerable economic benefit continues to accrue to ADI from vehicle export orders, the actual economic benefit to Bendigo and Australia could very well be minimal or non-existent when again we are sending our defence capacity offshore.

The issue of overseas involvement with ADI Bendigo projects goes even further than that. ADI has sold a licence for the manufacture of the high-speed engineering vehicle to a Chinese company. At the time, ADI gave assurances that the Chinese licensee would only ever manufacture these vehicles and vehicle parts for the Chinese market. Despite this assurance, ADI has recently announced that it is making plans for this licensee to supply vehicle systems and parts for an export order of vehicles. ADI has told its Bendigo employees that final vehicle assembly would be the only work on this export contract that would be undertaken in Bendigo or indeed Australia. This leaves ADI only one short step away from fully manufacturing vehicles offshore.

Thales is a fully foreign owned company and, with the federal government showing that it does not care about where our defence supplies come from, the pressure to move Australian defence jobs offshore will only increase with no Australian ownership. Again we see classic Howard themes—the government actively encouraging companies to take advantage of the lowest wages and conditions around, not caring about the consequences for our skills base and our working people in the defence industry in our country. I fear that, like all manufacturing, the future of defence manufacturing under this government has been in demise over the last decade.

We cannot stand idly by whilst the Howard government makes another sacrifice to the altar of its own ideology. It acts as though defence is one big market which is untroubled by relations between nation states, untroubled by accountability or thought to our national security. It has turned its back upon our defence capability and capacity while throwing good money after bad when it comes to private projects. To add insult to injury, it is destroying the economic future of many of the regional defence employees who rely on an Australian based defence industry. Hopefully, the government responsible for this will lose its job before these workers do.

Stolen or Unpaid Wages

Senator MURRAY (Western Australia) (9.14 pm)—As part of my long campaign to achieve some measure of public consciousness and justice for those who experienced institutional care as children, my adjournment speech tonight addresses the problem of stolen or unpaid wages. What prompts me to do so is a reading of the Indigenous Law Centre’s report entitled Eventually they get it all: government management of Aboriginal
trust money in New South Wales, published in September of this year.

The words ‘eventually they get it all’ date back to 1937. They were the words uttered by the secretary of the Aborigines Protection Board at that time, one Arthur Pettit, during a Legislative Assembly parliamentary committee session in New South Wales. When pressed about the return of wages to young Aborigines indentured to work as apprentices and whose earnings were being paid into trust accounts controlled by the board, he gave a rather misplaced reassurance, as it turned out, that eventually they get it all.

Leaping ahead some seven decades, the hollow ring of this somewhat patronising ‘trust me’ claim continues. Most Aborigines never received their entitlements. Both the Queensland and New South Wales governments have apologised for the mismanagement, even misappropriation, of millions of dollars held in trust as wages for Aboriginal workers last century. It is a pity they did not use plain English and call it theft. That is what you call keeping what does not belong to you, isn’t it?

However, the issue is not restricted just to these states; it is an issue that crosses all state and territory boundaries. Furthermore, it is an issue that is not restricted to Indigenous Australians. All races in Australia are affected. There is another group of people for whom the non-payment of wages is a burning issue and who have had no justice. In contrast to Indigenous people who were institutionalised, non-Indigenous people who were institutionalised or in care in Australia have weak and virtually unfunded advocacy organisations and they get only sporadic media attention.

Children shipped to Australia under the child migration schemes last century represent a period of our history that remained largely hidden until the 2001 Senate Community Affairs References Committee inquiry into child migration. Unfortunately, it has been hidden since, although not as markedly as before. Many of the submissions to this child migrant inquiry included stories of teenage child migrants forced to work outside their institutions as domestic and agricultural labourers. The main concerns raised about these employment placements were the payment or nonpayment of low wages and the failure to facilitate access to accumulated moneys held in trust by churches, charities and state governments.

From at least the 1920s, trust accounts were part of the formal service agreements that were signed by employers, who were usually farmers. Children or young persons were generally paid a small token amount of pocket money, with the rest banked by child welfare. Evidence to the inquiry revealed that many children never received, or could not remember receiving, moneys held in trust. Evidence also revealed that, for the most part, child migrants provided a cheap, powerless labour force for farmers and supporters of the respective, mostly religious based, institutions. On leaving their employment, child migrants would attempt to access the moneys owed but were invariably told that there was none to collect. Many have taken action decades later to get what they are owed, only to be informed that records have been destroyed or that no evidence at all exists of such moneys.

The 2001 child migrant report Lost innocents: righting the record cites evidence given by the Catholic Joint Liaison Group on Child Migration that best sums up the records situation. It says:

The child welfare records are very patchy indeed. A whole lot of records were destroyed back in the 1950s. Our own records are uneven—there are some there—so exactly how the thing was administered, where money went, why kids were not caught up with when they turned 21 to receive
this money when they came of age, I do not have any clear cut answers to that.

Overall, there appears to have been the likelihood of or at least the potential for fraud and mismanagement of such a significant nature that it is plainly unjust that no reparations have been made. It is even more unjust considering that most child migrants were also callously and deliberately exploited within institutions. This work went far beyond carrying out a few domestic chores. Many were involved in hazardous situations such as building sites and commercial laundries. This has often had tragic long-term health consequences. The working hours and conditions were often horrendous.

There is another group of people—possibly the largest group of all—who were shamelessly exploited to benefit the agencies who were supposed to care for them. They are the non-Indigenous, non-child-migrant state wards raised in institutional care. The 2004 Senate Community Affairs References Committee report *Forgotten Australians: a report on Australians who experienced institutional or out-of-home care as children* notes:

The exploitation of children as ‘slave labour’—a term used in many submissions, often at a very young age, was a common means to gain income for the institution. This included working in commercial laundries, on farm plots or in other ventures that would create income for the institution.

State wards also experienced outside employment during their mid to late teens. However, just as with the child migrants, promises of wages banked were mostly misleading. Submission 287 sums up the experience of many. It states:

All money that was banked or earned later on other jobs where I was placed by the Department was placed in an account under the name of McCall who was at the time Director ... There was a large amount of money involved, and on reaching the age of 21, I approached the department, but was told there was none left.

The Lost Innocents report notes at page 95 that evidence given by the Western Australian Department for Family and Children’s Services revealed that a number of inquiries about trust moneys had been received. They advised that trust moneys should have been paid when the child turned 21, went to work or was married. Money not collected was returned to Treasury. However, as financial records were apparently only kept for seven years, they were unable to prove whether moneys had been paid or not.

This sham of inexcusable excuses has been exposed by Aboriginal activism into their stolen wages issue. Their refusal to accept these excuses is precisely what has led to the Indigenous Law Centre report I referred to earlier, *Eventually they get it all: government management of Aboriginal trust money in New South Wales*. Get it all they did not, nor did the child migrants or the ‘forgotten Australians’. But at least the Indigenous people are now getting some of it. Non-Indigenous people are not.

What separates these groups in their activism for justice is access to resources. It is certainly pleasing that long-term substantial government funding has facilitated a mostly well organised and effective Aboriginal advocacy network. It is also pleasing that the Senate Standing Committee on Legal and Constitutional Affairs are currently conducting an inquiry into the issue of Indigenous paid labour. I would have preferred that this inquiry had been broader in its scope to include former child migrants and ‘forgotten Australians’. If only the child migrants and ‘forgotten Australians’ had the same political clout. If only they could also attract the funding they deserve. It would be nigh on impossible for them to have the capacity to carry out the research required to put together a comprehensive and effective report such as
Eventually they get it all. These people have to scramble for every dollar they can lay their hands on. It is a constant struggle for their support groups to put together regular newsletters, let alone survive.

Governments and parliaments across Australia need to remember that there were over half a million children in institutions and in care last century. Non-Indigenous children too were stolen or taken away from their families. They too suffered often unspeakable treatment by their so-called carers. They too have endured adulthoods marred by their childhoods. And, most importantly, they too deserve access to substantial ongoing funding and resources for advocacy, including addressing the stolen wages issue. They say justice delayed is justice denied: there was never a truer statement when applied to former child migrants and the ‘forgotten Australians’. I call on the Senate and the Commonwealth government to help rectify this terrible wrong. One group of institutionalised children in society are rightly getting redress, and they well deserve it. The other groups of institutionalised children deserve redress for their stolen wages as well.

Senate adjourned at 9.24 pm

DOCUMENTS

Tabling
The following government documents were tabled:
Aboriginal Land Commissioner—Report for 2005-06.
Aged Care Standards and Accreditation Agency Limited—Report for 2005-06.
Airservices Australia—Equity and diversity program—Progress report for 2005-06.
Army and Air Force Canteen Service Board of Management (trading as Frontline Defence Services)—Report for 2005-06, including report on the equal employment management plan.
Australian Broadcasting Corporation (ABC)—Report for 2005-06.
Australian Competition and Consumer Commission—Telecommunications report for 2005-06—Telstra’s compliance with price control arrangements.
Australian Film Commission—Report for 2005-06.
Australian Industrial Relations Commission and Australian Industrial Registry—Reports for 2005-06.
Australian Institute of Criminology and Criminology Research Council—Reports for 2005-06.
Australian Prudential Regulation Authority—Report for 2005-06.
Australian Radiation Protection and Nuclear Safety Agency—Report for 2005-06.
Australian Rail Track Corporation Limited (ARTC)—Report for 2005-06.
Australian Reinsurance Pool Corporation—Report for 2005-06.
Centrelink—Report for 2005-06.
Civil Aviation Safety Authority—Report for 2005-06.
Companies Auditors and Liquidators Disciplinary Board—Report for 2005-06.
Cotton Research and Development Corporation—Report for 2005-06.
Dairy Adjustment Authority—Report for 2005-06.
Defence Housing Authority—Report for 2005-06.
Department of Communications, Information Technology and the Arts—Report for 2005-06.
Department of Defence—Reports for 2005-06—
Volume 1—Department of Defence.
Department of Families, Community Services and Indigenous Affairs—Report for 2005-06, including financial statements for Aboriginals Benefit Account and Aboriginal and Torres Strait Islander Land Fund Account.
Department of Finance and Administration—Report for 2005-06.
Department of Human Services—Report for 2005-06.
Family Court of Australia—Report for 2005-06.
Federal Court of Australia—Report for 2005-06.
Federal Magistrates Court—Report for 2005-06.
Fisheries Research and Development Corporation—Report for 2005-06.
Forest and Wood Products Research and Development Corporation—Report for 2005-06.
Future Fund Management Agency and Future Fund Board of Guardians—Report for the period 3 April to 30 June 2006.
Grains Research and Development Corporation—Report for 2005-06.
Health Services Australia (HSA Group)—Report for 2005-06.
Land and Water Resources Research and Development Corporation (Land and Water Australia)—Report for 2005-06.
Military Superannuation and Benefits Board of Trustees—Report for 2005-06.
National Native Title Tribunal—Report for 2005-06.
Native Title Act 1993—Native title representative bodies—Reports for 2005-06—
Cape York Land Council Aboriginal Corporation.
Central Land Council.
Central Queensland Land Council Aboriginal Corporation.
Goldfields Land and Sea Council Aboriginal Corporation.
Gurang Land Council (Aboriginal Corporation).
Kimberley Land Council.
North Queensland Land Council Aboriginal Corporation.
Northern Land Council.
Yamatji Marlpa Barna Baba Maaja Aboriginal Corporation.

Office of the Official Secretary to the Governor-General—Report for 2005-06.

Private Health Insurance Ombudsman—Report for 2005-06.
Professional Services Review [Medical and pharmaceutical services]—Report for 2005-06.
Public Lending Right Committee—Report for 2005-06.
Royal Australian Mint—Report for 2005-06.
Rural Industries Research and Development Corporation—Report for 2005-06.
Services Trust Funds—Reports for 2005-06 of the Royal Australian Navy Relief Trust Fund, the Australian Military Forces Relief Trust Fund and the Royal Australian Air Force Welfare Trust Fund.
Social Security Appeals Tribunal—Report for 2005-06.
Sugar Research and Development Corporation—Report for 2005-06.
Telstra Instalment Receipt Trustee Limited—Report for 2005-06.

Tabling
The following documents were tabled by the Clerk:

[Legislative instruments are identified by a Federal Register of Legislative Instruments (FRLI) number]

Broadcasting Services Act—Broadcasting Services (Local Content on Regional Commercial Radio) Direction No. 1 of 2006 [F2006L03621]*.

Civil Aviation Act—
Civil Aviation Regulations—Instruments Nos—
CASA 399/06—Instructions—GLS approach procedures [F2006L03603]*.
CASA EX57/06—Exemption—from take-off minima inside Australian territory [F2006L03598]*.
CASA EX58/06—Exemption—from take-off and landing minima outside Australian territory [F2006L03599]*.
CASA EX59/06—Exemption, permit, permission and directions—bungey jumping [F2006L03620]*.

Civil Aviation Safety Regulations—Airworthiness Directives—Part—
105—
AD/AS 355/67 Amdt 3—Main Gearbox Lubrication Pump [F2006L03583]*.
AD/AT 800/8—Hopper Rinse Tank Shelf Attachment [F2006L03613]*.
AD/B747/167 Amdt 2—Section 41 Bonded Skin Panels [F2006L03614]*.
AD/BELL 430/9—Yaw Synchro Resolver Shaft Control Arm Screw [F2006L03616]*.
AD/ECUREUIL/112 Amdt 1—Cabin Vibration Damper Assembly [F2006L03585]*.
AD/F100/82—Piccolo Tube Peri-Seals [F2006L03587]*.
AD/SA 315/2—Free-Wheel Inspections following Main Rotor Impact [F2006L03607]*.
AD/SA 315/3—Main Rotor Blade Root Skin and Reinforcement Strip Bonding [F2006L03622]*.
AD/SA 315/4—Main Rotor Blade Cuff to Spar Assembly [F2006L03623]*.
AD/SA 315/9—State of Design Airworthiness Directives [F2006L03608]*.
AD/UH-1/19—Tail Rotor Slider [F2006L03612]*.

AD/PHZL/86—Propeller Hub Cracks [F2006L03606]*.

Class Rulings—
Criminal Code Act—Select Legislative Instruments 2006 Nos—
276—Criminal Code Amendment Regulations 2006 (No. 4) [F2006L03473]*.
277—Criminal Code Amendment Regulations 2006 (No. 5) [F2006L03474]*.
278—Criminal Code Amendment Regulations 2006 (No. 6) [F2006L03475]*.
279—Criminal Code Amendment Regulations 2006 (No. 7) [F2006L03476]*.
280—Criminal Code Amendment Regulations 2006 (No. 8) [F2006L03538]*.

Customs Act—Select Legislative Instruments 2006 Nos—
281—Customs (Prohibited Exports) Amendment Regulations 2006 (No. 3) [F2006L03550]*.
282—Customs (Prohibited Imports) Amendment Regulations 2006 (No. 5) [F2006L03549]*.

Health Insurance Act—
Health Insurance (Allied Health and Dental Services) Determination 2006 [F2006L03568]*.

Health Insurance Regulations—
Revocation of Health Insurance (Requirements for Allied Health Professionals) Determination 2005 [F2006L03566]*.

Migration Act—Migration Regulations—
Instrument IMMI 06/076—Organisations that may sponsor Short Stay Business Visitors [F2006L03602]*.

Nuclear Non-Proliferation (Safeguards) Act—Select Legislative Instrument 2006 No. 284—Nuclear Non-Proliferation (Safeguards) Amendment Regulations 2006 (No. 1) [F2006L03560]*.


Product Rulings PR 2006/150 and PR 2006/151.

Sales Tax Rulings—Notices of Withdrawal—ST 2123, ST 2130 and ST 2254.


Superannuation (Government Co-contribution for Low Income Earners) Act and Superannuation Guarantee (Administration) Act—Lodgement of statements by superannuation providers for the year ended 30 June 2006 [F2006L03536]*.

Taxation Determinations—Notices of withdrawal—TD 93/30 and TD 93/193.

Taxation Rulings—
  Addenda—
    TR 2002/14.

Notices of Withdrawal—
  Old Series—IT 2128, IT 2144, IT 2214, IT 2471, IT 2475 and IT 2528.
  TR 94/9.
  TR 95/30.
  TR 98/18 and TR 98/19.
  TR 2006/13.

Veterans’ Entitlements Act—Statements of Principles concerning—
  Acute sprain and acute strain No. 55 of 2006 [F2006L03570]*.

Cerebrovascular accident No. 51 of 2006 [F2006L03556]*.
Cerebrovascular accident No. 52 of 2006 [F2006L03557]*.
Fracture No. 53 of 2006 [F2006L03562]*.
Gastric ulcer and duodenal ulcer No. 57 of 2006 [F2006L03572]*.
Gastric ulcer and duodenal ulcer No. 58 of 2006 [F2006L03573]*.
Meniere’s disease No. 59 of 2006 [F2006L03574]*.
Meniere’s disease No. 60 of 2006 [F2006L03575]*.
Osteoporosis No. 61 of 2006 [F2006L03579]*.
Osteoporosis No. 62 of 2006 [F2006L03576]*.
Vascular dementia No. 63 of 2006 [F2006L03577]*.
Vascular dementia No. 64 of 2006 [F2006L03578]*.

Governor-General’s Proclamation—Commencement of provisions of an Act


* Explanatory statement tabled with legislative instrument.
QUESTIONS ON NOTICE

The following answers to questions were circulated:

Dairy Regional Assistance Program: Steel Profiling Plant
(Question No. 288)

Senator O’Brien asked the Minister representing the Minister for Agriculture, Fisheries and Forestry, upon notice, on 23 December 2004:

(1) (a) Was the Minister or his office contacted by the proponents of a steel profiling plant at Moruya, New South Wales, listed in the Dairy Regional Assistance Program project summary of round 6 for the 2001-02 financial year; and (b) was the Minister or his office contacted by any person on behalf of the proponents of the above project.

(2) Was the Minister or his office contacted by the Federal Member for Eden Monaro (Mr Nairn) in relation to the above project.

(3) Was the Minister or his office contacted by any member of the South East New South Wales Area Consultative Committee in relation to the above project.

(4) Was the Minister or his office contacted by the Minister for Transport and Regional Services, or his staff, or officers of the Department of Transport and Regional Services in relation to the above project.

(5) With reference to any contact by the persons listed above with the Minister or his office: (a) when did each communication take place; (b) who was involved in each communication; (c) what was the nature of each communication; (d) what was the form of each communication; and (e) which officers from the department were involved in any way in these contacts.

Senator Abetz—The Minister for Agriculture, Fisheries and Forestry has provided the following answer to the honourable senator’s question:

(1) (a) There is no record of such contact. (b) There is no record of such contact.

(2) There is no record of such contact.

(3) There is no record of such contact.

(4) Yes, the Department of Transport and Regional Services, as the administrator of the Dairy Regional Assistance Programme, provided written briefing, either directly or as a copy, to the then Minister for Agriculture, Fisheries and Forestry. The then Minister for Agriculture, Fisheries and Forestry also received written correspondence from the then Minister for Transport and Regional Services.

(5) (a) Briefings and correspondence that mentioned the project were provided twice in April 2003 and once in July 2003.

(b) All briefings originated within the Department of Transport and Regional Services and were provided to the then Minister for Agriculture, Fisheries and Forestry.

(c) The nature of the communication between the Department of Transport and Regional Services and the then Minister for Agriculture, Fisheries and Forestry was to:

(i) provide advice of approved project;

(ii) agree to the Department of Transport and Regional Services providing information to a Senate Estimates Committee in response to questioning about the project; and

(iii) provide advice on the recommendations of any issues arising from the Senate Finance and Public Administration References Committee Report on A Funding Matter under DRAP.

(d) The form of each communication was written briefing and written correspondence.
(e) No officers of the Department of Agriculture, Fisheries and Forestry were involved in this communication.

**Families, Community Services and Indigenous Affairs: Consultants**

*(Question No. 597)*

**Senator Chris Evans** asked the Minister representing the Minister for Families, Community Services and Indigenous Affairs, upon notice, on 4 May 2005:

With reference to the department and/or its agencies:

1. For each financial year from 2000-01 to 2004-05 to date: (a) how many consultants were engaged by the department and/or its agencies to conduct surveys of community attitudes to departmental programs and what was the total cost; and (b) for each consultancy: (i) what was the cost, (ii) who was the consultant, and (iii) was this consultant selected by tender; if so, was the tender select or open; if not, why not.

2. Were any of the surveys released publicly; if so, in each case, when was the material released; if not, in each case, what was the basis for not releasing the material publicly.

**Senator Kemp**—The Minister for Families, Community Services and Indigenous Affairs has provided the following answer to the honourable senator’s question:

The Department of Families, Community Services and Indigenous Affairs publishes information on market research expenditure and new consultancies valued at $10,000 or more in Appendices 3 and 5 (respectively) of the department’s Annual Report. Consultancies to conduct surveys of community attitudes to departmental programs are not separately identified but may be inferred from the consultancy descriptions. Appendix 5 includes a description of each consultancy, the contract price, the name of the consultant, the selection process and justification for the selection process.

I am not prepared to commit departmental resources to extract any further detail at this point.

**Superannuation**

*(Question No. 1406)*

**Senator Sherry** asked the Minister representing the Treasurer, upon notice, on 30 November 2005:

For the past 5 financial years: (a) what is the amount of exit tax collected on superannuation; and (b) from how many persons has it been collected.

**Senator Minchin**—The Treasurer has provided the following answer to the honourable senator’s question:

Eligible Termination Payment (ETP) taxation revenue is reported each year in the Taxation Statistics publication of the ATO. However, these published figures do not separate exit taxes collected on superannuation from other exit taxes (for example, taxes on ‘excess’ redundancy payments). There are no published figures which make this separation and Treasury does not have comprehensive access to separated data.

The most recent Taxation Statistics publication applies to the 2003-04 year.

Later this year, the Government will be introducing legislation to abolish superannuation end benefit taxes on people aged 60 and over from 1 July 2007. The Government notes that the Labor Party has not indicated its support for the abolition of end benefit taxes.
Human Services: Grants and Payments to City View Christian Church Inc.
(Question No. 1537)

Senator O’Brien asked the Minister representing the Minister for Human Services, upon notice, on 18 January 2006:

For each financial year since 2001-02, what grants or payments has the Minister’s department, or have agencies for which the Minister is responsible, made to City View Christian Church Inc. (formerly known as Crusade Centre Inc.) based in Launceston, Tasmania.

Senator Kemp—The Minister for Human Services has provided the following answer to the honourable senator’s question:

For each financial year since 2001-02, the Department of Human Services and its agencies have made no grants or payments to City View Christian Church Inc. (formerly known as Crusade Centre Inc.).

To prepare this answer it has taken approximately 14 hours and 24 minutes at an estimated cost of $671.

In-Home Care Program
(Question No. 1698)

Senator Allison asked the Minister for Families, Community Services and Indigenous Affairs, upon notice, on 21 April 2006:

Can a copy of the report into the review of the In-Home Care Program be provided; if not, why not.

Senator Kemp—The Minister for Families, Community Services and Indigenous Affairs has provided the following answer to the honourable senator’s question:

The report requested by the honourable Senator is yet to be released publicly.

Conclusive Certificates
(Question No. 1957)

Senator O’Brien asked the Minister for the Environment and Heritage, upon notice, on 8 June 2006:

(1) Since October 1996, on how many occasions has a conclusive certificate been issued in relation to departments or agencies within the Minister’s portfolio exempting a document or documents from disclosure under the Freedom of Information Act 1982 (FOI).

(2) For each occasion: (a) what was the date; (b) what was the department or agency of which the FOI request was made; (c) what officer made the decision; (d) what was the document or documents excluded from disclosure pursuant to the certificate; and (e) was an appeal made against the decision in the Administrative Appeals Tribunal; if so, what was the case name and its outcome.

Senator Ian Campbell—The answer to the honourable senator’s question is as follows:

There have been no conclusive certificates issued under the Freedom of Information Act 1982 by the department or agencies in this portfolio since October 1996.

Conclusive Certificates
(Question No. 1961)

Senator O’Brien asked the Minister representing the Minister for Human Services, upon notice, on 8 June 2006:

(1) Since October 1996, on how many occasions has a conclusive certificate been issued in relation to departments or agencies within the Minister’s portfolio exempting a document or documents from disclosure under the Freedom of Information Act 1982 (FOI).
(2) For each occasion: (a) what was the date; (b) what was the department or agency of which the FOI request was made; (c) what officer made the decision; (d) what was the document or documents excluded from disclosure pursuant to the certificate; and (e) was an appeal made against the decision in the Administrative Appeals Tribunal; if so, what was the case name and its outcome.

Senator Kemp—The Minister for Human Services has provided the following answer to the honourable senator’s question:

Core Department (that is, excluding the Child Support Agency and CRS Australia)

(1) Nil.
(2) Not applicable.

Child Support Agency

(1) Nil.
(2) Not applicable.

CRS Australia

(1) Nil.
(2) Not applicable.

Centrelink

(1) Nil.
(2) Not applicable.

Medicare Australia

(1) Nil.
(2) Not applicable.

Australian Hearing

(1) Nil.
(2) Not applicable.

Health Services Australia

(1) Nil.
(2) Not applicable.

To prepare this answer it has taken approximately 7 hours and 10 minutes at an estimated cost of $427.

Compensation for Detriment Caused by Defective Administration Scheme

(Question No. 1981)

Senator O’Brien asked the Minister representing the Minister for Human Services, upon notice, on 8 June 2006:

With reference to the Compensation for Detriment Caused by Defective Administration Scheme: for each department and agency for which the Minister is responsible, what is the total payment made under this scheme for each financial year since October 1996, by department and agency. The CDDA scheme was administered through area offices prior to this time and was not reported on in the Annual Reports.

Senator Kemp—The Minister for Human Services has provided the following answer to the honourable senator’s question:

Core Department

Nil
Child Support Agency
The Child Support Agency (CSA) is able to provide the amount of monies paid under the Compensation for Detriment Due to Defective Administration Scheme for the following years:

<table>
<thead>
<tr>
<th>Year</th>
<th>Amount Paid</th>
</tr>
</thead>
<tbody>
<tr>
<td>2000 - 2001</td>
<td>$42,172</td>
</tr>
<tr>
<td>2001 - 2002</td>
<td>$34,437</td>
</tr>
<tr>
<td>2002 - 2003</td>
<td>$59,517</td>
</tr>
<tr>
<td>2003 - 2004</td>
<td>$29,825</td>
</tr>
<tr>
<td>2004 - 2005</td>
<td>$16,757</td>
</tr>
<tr>
<td>2005 - 2006</td>
<td>$41,252</td>
</tr>
</tbody>
</table>

In the financial years from 2000 to 1998 the CSA is able to provide an annual figure for the compensation paid, however this figure includes monies paid for defective administration as well as for legal liability. CSA paid:

<table>
<thead>
<tr>
<th>Year</th>
<th>Amount Paid</th>
</tr>
</thead>
<tbody>
<tr>
<td>1997 - 1998</td>
<td>$92,120</td>
</tr>
<tr>
<td>1998 - 1999</td>
<td>$52,826</td>
</tr>
<tr>
<td>1999 - 2000</td>
<td>$35,323</td>
</tr>
</tbody>
</table>

CSA also made payment of compensation in the 1996 and 1997 financial years. During these years CSA was part of the Australian Taxation Office (ATO). Therefore, the ATO will be providing figures of the combined compensation paid in these years.

CRS Australia
Nil.

Centrelink
The CDDA scheme was administered through area offices prior to this time and was not reported on in the Annual Reports. The table presents the data for which searchable records exist in respect of the Compensation for Detriment Caused by Defective Administration Scheme (CDDA Scheme) for Centrelink.

<table>
<thead>
<tr>
<th>Financial Year</th>
<th>Total Amount Paid (A$)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1996 - 1997</td>
<td>Unknown</td>
</tr>
<tr>
<td>1997 - 1998</td>
<td>Unknown</td>
</tr>
<tr>
<td>1998 - 1999</td>
<td>$108,797</td>
</tr>
<tr>
<td>1999 - 2000</td>
<td>$276,261</td>
</tr>
<tr>
<td>2000 - 2001</td>
<td>$341,283</td>
</tr>
<tr>
<td>2001 - 2002</td>
<td>$626,064</td>
</tr>
<tr>
<td>2002 – 2003</td>
<td>$659,052</td>
</tr>
<tr>
<td>2003 - 2004</td>
<td>$1,253,652</td>
</tr>
<tr>
<td>2004 – 2005</td>
<td>$1,640,059</td>
</tr>
<tr>
<td>2005 – 2006</td>
<td>$1,369,539</td>
</tr>
</tbody>
</table>

Before 1998, records of the CDDA Scheme were manually maintained in the regional offices, and no electronically recorded data for that period are available. CDDA CDDA scheme was administered through area offices prior to this time and was not reported on in the Annual Reports.

Medicare Australia
Medicare Australia paid $26,894.91 in 2005/06 in relation to the Compensation for Detriment Caused by Defective Administration Scheme.
Prior to October 2005 before the Health Insurance Commission became Medicare Australia, the Compensation for Detriment Caused by Defective Administration Scheme did not apply to the Health Insurance Commission.

**Australian Hearing**

As Australian Hearing operates under the Commonwealth Authorities and Companies Act 1997 the Compensation for Detriment Caused by Defective Administration Scheme does not apply.

**Health Services Australia**

Health Services Australia does not operate under the provisions of the Compensation for Detriment Caused by Defective Administration Scheme.

To prepare this answer it has taken 11 hours and 44 minutes at an estimated cost of $730.

**Attorney-General’s: Monetary Compensation**

*(Question No. 1992)*

Senator O’Brien asked the Minister representing the Attorney-General, upon notice, on 8 June 2006:

What is the quantum of payments made as settlements to claims for monetary compensation by the departments and agencies for which the Minister is responsible that are consistent with Legal Services Directions issued under section 55ZF of the Judiciary Act 1903, by financial year, since the first Legal Services Directions were issued.

Senator Ellison—The Attorney-General has provided the following answer to the honourable senator’s question:

**Attorney-General’s Department**

Providing a response to this Question on Notice would require an unreasonable diversion of resources.

**Administrative Appeals Tribunal**

<table>
<thead>
<tr>
<th>Details</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 September 1999 – 30 June 2000</td>
<td>Nil</td>
</tr>
<tr>
<td>1 July 2000 – 30 June 2001</td>
<td>Nil</td>
</tr>
<tr>
<td>1 July 2001 – 30 June 2002</td>
<td>Nil</td>
</tr>
<tr>
<td>1 July 2002 – 30 June 2003</td>
<td>Nil</td>
</tr>
<tr>
<td>1 July 2003 – 30 June 2004</td>
<td>Nil</td>
</tr>
<tr>
<td>Period</td>
<td>Details</td>
</tr>
<tr>
<td>----------------------</td>
<td>-------------------------------------------------------------------------</td>
</tr>
<tr>
<td>1 July 2004 – 30 June 2005</td>
<td>Agreed settlement following advice from AGS following complaint to HREOC regarding employment offer that was withdrawn due to inability of person to fulfil stated criteria in duty statement</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Period</th>
<th>Details</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 July 2005 – 30 June 2006</td>
<td>Nil</td>
<td></td>
</tr>
<tr>
<td>1 July 2006 onwards</td>
<td>Nil</td>
<td></td>
</tr>
</tbody>
</table>

**Australian Crime Commission**
Nil.

**Australian Customs Service**
Providing a response to this Question on Notice would require an unreasonable diversion of resources.

**Australian Federal Police**
Providing a response to this Question on Notice would require an unreasonable diversion of resources.

**Australian Government Solicitor**
Not applicable. The Australian Government Solicitor has been a government business enterprise (GBE) since 1 September 1999. As a GBE, the Australian Government Solicitor is not subject to the Legal Services Directions 2005 with respect to the handling of monetary claims against Australian Government Solicitor.

**Australian Institute of Criminology**
Nil.

**Australian Law Reform Commission**

<table>
<thead>
<tr>
<th>Period</th>
<th>Details</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 September 1999 – 30 June 2000</td>
<td>Nil</td>
<td></td>
</tr>
<tr>
<td>1 July 2000 – 30 June 2001</td>
<td>Nil</td>
<td></td>
</tr>
<tr>
<td>1 July 2001 – 30 June 2002</td>
<td>Nil</td>
<td></td>
</tr>
<tr>
<td>1 July 2002 – 30 June 2003</td>
<td>Nil</td>
<td></td>
</tr>
</tbody>
</table>
### QUESTIONS ON NOTICE

<table>
<thead>
<tr>
<th>Details</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Settlement of litigation by former employees.</td>
<td>$19,000</td>
</tr>
</tbody>
</table>

#### 1 July 2003 – 30 June 2004

<table>
<thead>
<tr>
<th>Details</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nil</td>
<td></td>
</tr>
</tbody>
</table>

#### 1 July 2004 – 30 June 2005

<table>
<thead>
<tr>
<th>Details</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nil</td>
<td></td>
</tr>
</tbody>
</table>

#### 1 July 2005 – 30 June 2006

<table>
<thead>
<tr>
<th>Details</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nil</td>
<td></td>
</tr>
</tbody>
</table>

#### 1 July 2006 onwards

<table>
<thead>
<tr>
<th>Details</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nil</td>
<td></td>
</tr>
</tbody>
</table>

**Australian Securities and Intelligence Organisation**

ASIO does not generally publish financial data below Organisational level for reasons of national security.

**Australian Transaction Reports and Analysis Centre**

Nil.

**Commonwealth Director of Public Prosecutions**

Nil.

**Criminology Research Council**

Nil.

**Crim Trac**

Providing a response to this Question on Notice would require an unreasonable diversion of resources.

**Family Court of Australia**

Nil.

**Federal Court of Australia**

Nil.

**Federal Magistrates Court**

Nil.

**Federal Police Disciplinary Tribunal**

Nil.

**High Court of Australia**

Nil.

**Human Rights and Equal Opportunities Commission**

To provide a definitive response to this Question on Notice would require an unreasonable diversion of resources. Although it is believed that the answer to this question is nil, data that would provide a basis for a definitive answer has not been captured in the process of Commission payments.

**Insolvency and Trustee Service Australia**

Details of payments made by the Insolvency and Trustee Service Australia are as follows:
<table>
<thead>
<tr>
<th>Details</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alleged failure by ITSA on behalf of the Official Trustee to disclaim a lease (30 October 2000).</td>
<td>$27,900</td>
</tr>
<tr>
<td>Failure by ITSA on behalf of the Official Trustee to pay a dividend in respect of a proved claim (19 March 2002).</td>
<td>$471</td>
</tr>
<tr>
<td>Failure by ITSA on behalf of the Official Trustee to pay petitioning creditors costs (28 August 2003).</td>
<td>$2,603</td>
</tr>
<tr>
<td>National Native Title Tribunal</td>
<td></td>
</tr>
<tr>
<td>Providing a response to this Question on Notice would require an unreasonable diversion of resources.</td>
<td></td>
</tr>
<tr>
<td>Office of Film and Literature Classification</td>
<td></td>
</tr>
<tr>
<td>Nil.</td>
<td></td>
</tr>
<tr>
<td>Office of Parliamentary Counsel</td>
<td></td>
</tr>
<tr>
<td>Nil.</td>
<td></td>
</tr>
<tr>
<td>Office of the Privacy Commissioner</td>
<td></td>
</tr>
<tr>
<td>To provide a definitive response to this Question on Notice would require an unreasonable diversion of resources. Although it is believed that the answer to this question is nil, data that would provide a basis for a definitive answer has not been captured in the process of Commission payments.</td>
<td></td>
</tr>
</tbody>
</table>
Human Services: Monetary Compensation

(Question No. 2002)

Senator O’Brien asked the Minister representing the Minister for Human Services, upon notice, on 8 June 2006:

What is the quantum of payments made as settlements to claims for monetary compensation by the departments and agencies for which the Minister is responsible that are consistent with Legal Services Directions issued under section 55ZF of the Judiciary Act 1903, by financial year, since the first Legal Services Directions were issued.

Senator Kemp—The Minister for Human Services has provided the following answer to the honourable senator’s question:

Core Department

The following response relates to the Department:

Nil.

Child Support Agency

The Child Support Agency (CSA) is able to provide the amount of monies paid consistent with the Legal Services Directions issued under section 55ZF of the Judiciary Act 1903, since the first Legal Services Directions were issued, for the following years:

<table>
<thead>
<tr>
<th>Financial Year</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>2000 - 2001</td>
<td>$6,064</td>
</tr>
<tr>
<td>2001 - 2002</td>
<td>$11,050</td>
</tr>
<tr>
<td>2002 - 2003</td>
<td>$2,316</td>
</tr>
<tr>
<td>2003 - 2004</td>
<td>$560</td>
</tr>
<tr>
<td>2004 - 2005</td>
<td>$514</td>
</tr>
<tr>
<td>2005 - 2006</td>
<td>$39,706</td>
</tr>
</tbody>
</table>

In the 2000 financial year the CSA is able to provide an annual figure for compensation paid, however, this figure includes monies paid for defective administration, which is not consistent with the legal services direction as well as for legal liability. The CSA paid:


CRS Australia

Settlement details for claims for monetary compensation are not easily identifiable from CRS Australia records. Comcover would be in the best position to provide accurate records of payments made.

Centrelink

The table presents the data for which searchable records exist in respect of the legal liability claims for monetary compensation made by Centrelink customers against Centrelink.

<table>
<thead>
<tr>
<th>Financial Year</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>2000 – 2001</td>
<td>$115,921</td>
</tr>
<tr>
<td>2001 – 2002</td>
<td>$67,039</td>
</tr>
<tr>
<td>2002 – 2003</td>
<td>$157,732</td>
</tr>
<tr>
<td>2003 – 2004</td>
<td>$170,743</td>
</tr>
<tr>
<td>2004 – 2005</td>
<td>$343,501</td>
</tr>
<tr>
<td>2005 – 2006</td>
<td>$560,747</td>
</tr>
</tbody>
</table>

Before 2000, records of legal liability claims were manually maintained in the regional offices, and no electronically recorded data for that period are available.
Medicare Australia

The total cost of claims for monetary compensation paid by Medicare Australia for each financial year, since the first Legal Services Directions were issued:

<table>
<thead>
<tr>
<th>Financial Year</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1999 – 2000</td>
<td>$3,647.00</td>
</tr>
<tr>
<td>2000 – 2001</td>
<td>$101,268.15</td>
</tr>
<tr>
<td>2001 – 2002</td>
<td>$0.00</td>
</tr>
<tr>
<td>2002 – 2003</td>
<td>$15,536.20</td>
</tr>
<tr>
<td>2003 – 2004</td>
<td>$4,551.85</td>
</tr>
<tr>
<td>2004 – 2005</td>
<td>$811.14</td>
</tr>
<tr>
<td>2005 – 2006</td>
<td>$31,720.34</td>
</tr>
</tbody>
</table>

Australian Hearing

Since 1999 Australian Hearing has made the following settlements by financial year:

<table>
<thead>
<tr>
<th>Financial Year</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>2001 – 2002</td>
<td>$13,500</td>
</tr>
<tr>
<td>2004 – 2005</td>
<td>$10,000</td>
</tr>
</tbody>
</table>

Health Services Australia

Health Services Australia has made no payments under the Legal Services Directions.

To prepare this answer it has taken approximately 25 hours and 21 minutes at an estimated cost of $835.

Cape York Peninsula: Natural Resource Management

(Question No. 2111)

Senator McLucas asked the Minister for the Environment and Heritage, upon notice, on 23 June 2006:

With reference to arrangements for natural resource management (NRM) on Cape York Peninsula:

(1) Who recommended Mrs Mary Woods as the eminent person to conduct a review of the Cape York Peninsula natural resources management plan and investment strategy, and to recommend a community advisory group to administer Natural Heritage Trust funds for Cape York.

(2) Were the draft terms of reference, provided to the Environment, Communications, Information Technology and the Arts Committee at Budget estimates, updated or have they been adopted and agreed as final.

(3) What qualifications and experience does Mrs Woods have in natural resource management.

(4) (a) Who appointed Mrs Woods; and (b) when did her appointment become official.

(5) Can a copy of Mrs Woods’ contact [sic] of engagement be provided.

(6) Did Mrs Woods give a list of names of a selection panel for the proposed Cape York Peninsula Community Advisory Group to the Minister, or to departmental officials or to the Ministerial Steering Committee.

(7) (a) In the Minister’s letter to Mrs Mary Woods did he state: ‘The Ministers meeting in February was also provided with a proposal for establishing community delivery and engagement arrangements for the region. Given your experience in community natural resource management delivery, I would also appreciate your advice on the suitability of the proposed approach or any alternative approach’; and (b) what was the proposed approach.

(8) (a) Did the Minister also state in Mrs Woods’ terms of reference that she was to ‘provide advice on the most suitable model for regional arrangements in the Cape York Peninsula including commu-
nity advisory arrangements to support the delivery of trust investment in the region'; and (b)(i) what was the advice given, (ii) when was it given, (iii) to whom was it given, and (iv) was that advice adopted.

(9) It is [sic] correct that the terms of reference for the eminent person, Mrs Woods, state that the person will be responsible for ‘assisting with the development of a process to establish the Cape York Community Advisory Group and a transitional process for regional decision-making on natural resource management for Cape York Peninsula consistent with the rest of the state’.

(10) Is it correct that every other NRM region has a representative board or advisory group selected on the basis of an exhaustive community consultation; if not, which regions do not have a community-based board or advisory group.

(11) Is it correct that the contract for Mrs Woods, copied to departmental officials calls for her to provide advice on the ‘most suitable model for regional arrangements in the Cape York Peninsula including community advisory arrangements to support the delivery of trust investment in the region’.

(12) Can a copy be provided of the report prepared by the eminent person on the public consultation process for the Cape York Advisory Group and Regional Plan which was presented to the Federal and Queensland Governments in mid July 2005.

(13) (a) Who commissioned that report; and (b) did the Minister, or his department or the Ministerial Steering Committee receive a copy; if so, when was it received.

(14) Did the Minister, or his department or the Ministerial Committee approve the report and act on its recommendations.

(15) Did the report include a list of names of people to comprise the Community Advisory Group.

(16) Was this list compiled after community consultation on Cape York by Mrs Woods and her selection panel.

(17) Did the Minister have a meeting with Mrs Woods in Canberra in July or August 2005; if so: (a) who attended that meeting and in what capacity; and (b) what was the purpose of the meeting.

(18) (a) Did the Minister and/or Mr Entsch MP inform Mrs Woods that the list of names was unacceptable; and (b) did the Minister and/or Mr Entsch MP remove four names from that list and substitute them with people of their own choosing.

(19) On what basis were those four people selected by the Minister and/or Mr Entsch MP.

(20) Was the substitution of those four names made in accordance with the processes approved by the Ministerial Steering Committee; if so, how.

(21) Was the Ministerial Steering Committee advised of the changes or substitutions; if so: (a) were those changes or substitutions approved; and (b) when was the committee advised.

(22) Were the original names approved by the Queensland Government.

(23) Did Mrs Woods object to the substitutions of names, and the way in which this was done outside the processes agreed by the community of Cape York Peninsula.

(24) Did the Minister, who is responsible for NRM arrangements on Cape York, approve or authorise the public release of the amended list of names on the Community Advisory Group, which was published in the Cooktown Local News of 28 September 2005; if not: (a) on what basis was that list published; and (b) was it published in accord with the agreed processes.

(25) Were the people on that list notified of their appointment prior to the list being published and did each of them agree to be on the Community Advisory Group.

(26) (a) What natural resource management expertise or experience does the Cape York Peninsula Development Association (CYPDA) have; and (b) what expertise or experience does it have in NHT
processes and reporting, specifically: (i) what environmental, Indigenous or economic development expertise or representation does it have, and (ii) what expertise in matters such as land and vegetation management, grazing and water quality does it have.

(27) What knowledge does the CYPDA have of the target-setting and review process required in the NRM plan?

(28) Is it correct that the terms of reference for the Cape York Community Advisory Group state that ‘the term of appointment of the chairperson and members will cease on 30 June 2006’, and that one of the proposed tasks was to establish an NRM board for Cape York.

(29) What is the term of appointment of the CYPDA as an interim board?

(30) Is the Minister aware of a unanimous decision by 28 community-wide representatives of Cape York on Thursday, 15 June 2006 to seek support to establish a Cape York Natural Resources Management Advisory Group to administer National Heritage Trust Funds.

(31) Is the Minister aware of a letter to the Cooktown Local News of 26 April 2006, in which the writer says Mr Entsch MP has spun ‘a web of half-truths and misinformation’ concerning the selection of an NRM advisory board.

(32) Is the Minister aware that this letter was written by Mrs Woods, the eminent person appointed by himself to select an advisory board for his approval and that it states the Minister was ‘prepared to allow him (Mr Entsch) to kick the approved process into the weeds’.

(33) Will the Minister agree to the unanimous view of Cape York community representatives and support them to establish an NRM board of their own.

Senator Ian Campbell—The answer to the honourable senator’s question is as follows:

Further to the answers I provided at Estimates, my letter to Mrs Mary Woods, dated 15 March 2005, contains instructions for the task and the Terms of Reference against which Mrs Woods was to report. A copy of the letter of 15 March 2005 has been provided to the honourable senator and is available from the Table Office. These are the only instructions I gave to Mrs Woods following the February 2005 meeting of the Australian and Queensland Government’s Cape York Ministerial Steering Committee. The Queensland Government, through the Department of Communities, contracted Mrs Woods to undertake the project. The Terms of Reference in the contract are in accord with my letter of instructions, dated 15 March 2005. A copy of the Queensland Government contract terms of reference has been provided to the honourable senator and is available from the Table Office. Whilst I asked for Mrs Woods’ advice on the suitability of the proposed approach put to Ministers in February 2005 or any alternative approach for establishing community delivery and engagement arrangements for the region, she was not asked by me to go beyond them.

In relation to the Cape York Peninsula Development Association (CYPDA), they have been contracted by the Queensland Government on agreement with the Australian Government to deliver a number of projects into Cape York Peninsula. The CYPDA is therefore the delivery agent, not the regional body. The CYPDA with members drawn from industry, local government, and the community, is a trusted regional association which has good experience in managing projects for the Queensland Government and some Natural Heritage Trust projects on the Peninsula. This is an interim arrangement that allows another step towards establishing a natural resource management regional body as is the case for the rest of Australia.

As I’ve indicated previously the contracting of the CYPDA will ensure Natural Heritage Trust funds continue to flow into the Peninsula for projects such as fire management and weed and feral animal control, as well as directing investment to new initiatives. For example, the Australian Government is supporting an extension of pest management training and strategic control activities, the construction of a vehicle wash down facility to reduce the spread of weeds in the Peninsula, and an integrated turtle
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management and protection programme in Western Cape York involving local Aboriginal communities in protecting turtle nesting sites and the targeting of feral pigs which dig up nests to rob turtle eggs.

**Human Services: Travel Entitlements**

*(Question No. 2224)*

Senator O’Brien asked the Minister representing the Minister for Human Services, upon notice, on 14 July 2006:

1. What entitlement do partners or family members of senior officers of the department, or agencies for which the Minister is responsible, have to travel at government expense.
2. If an entitlement exists, by department and/or agency: (a) what process is used to assess whether the travel costs of partners or family members are met by the Government; (b) who undertakes such an assessment; and (c) who approves funding for partner or family travel.

Senator Kemp—The Minister for Human Services has provided the following answer to the honourable senator’s question:

**Core Department**

1. There is no formal entitlement for partners or family members of senior officers of the Department of Human Services to travel at government expense. The Secretary of the Department may consider payment of these expenses on a case-by-case basis.
2. Not applicable.

**Child Support Agency**

1. Nil.
2. Not applicable.

**Centrelink**

1. Senior Executive Service (SES) officers’ partner or family members may be entitled to travel at the government’s expense in the following circumstances only:
   - if relocating due to Centrelink’s business requirements, partners or family members will be provided with reasonable travel costs subject to meeting specific guidelines; and
   - if the CEO exercises his delegation to approve partners to accompany on overseas business travel.
2. The CEO in all cases.

**Medicare Australia**

1. Medicare Australia staff have no standard entitlement to partner/family accompanied domestic or overseas travel at the Commonwealth’s expense. The Chief Executive Officer (CEO) can, however, approve such travel at her discretion.
2. If partner/family travel was approved at the CEO’s discretion:
   - The CEO would assess an application by an employee for accompanied travel, taking into consideration a range of factors including the cost and nature of travel, whether representational duties are required and the employees’ level and length of service. Where travel was approved, the cost of transport and accommodation only would be met by the Agency.
   - As noted in 2(a) above, the CEO makes the assessment.
   - Funding would be approved by the CEO from the existing Agency budget.

**Australian Hearing**

1. Nil.

QUESTIONS ON NOTICE
(2) Not applicable.

Health Services Australia
(1) Nil.
(2) Not applicable.

To prepare this answer it has taken approximately 7 hours and 42 minutes at an estimated cost of $499.

Council of Australian Governments Trial
(Question No. 2247)

Senator Chris Evans asked the Minister representing the Minister for Education, Science and Training, upon notice, on 21 July 2006:

In relation to the Council of Australian Governments (COAG) Trial in the Murdi Paaki region:

(1) (a) is the department the lead agency for this trial; and
(b) are there any plans to pass on responsibility for the trial.

(2) What has been the total amount of expenditure for each financial year over the course of the trial, specifying
(a) the amount of administered funds and departmental expenses for each financial year; and
(b) what the administered funds were used for.

(3) With reference to the answer to question on notice no. 1562 (Senate Hansard, 27 March 2006, p. 208) provided by the Department of Families, Community Services and Indigenous Affairs which indicated that a Request for Quote process was planned for February 2006 and the expected date of submission of the final report was 19 May 2006:
(a) what is the name of the consultant that has been appointed to evaluate the trial;
(b) on what date did or will this evaluation begin;
(c) on what date did or will the final evaluation report be submitted to the department;
(d) will the Minister make this report publicly available; if so, can a copy be provided;
(e) did any community members have an opportunity to read or approve the draft report; if so:
(i) how and when did this happen,
(ii) which people were consulted,
(iii) how many were consulted, and
(iv) how were these people selected; and
(f) what is the most recent assessment of the cost of this consultancy.

(4) What is the amount of departmental travel costs incurred during each financial year over the course of the trial for departmental staff visiting the Murdi Paaki region, including airfares, accommodation, travel allowance, car hire and any other related costs.

Senator Kemp—The Minister for Families, Community Services and Indigenous Affairs has provided the following answer to the honourable senator’s question:

The Department of Education, Science and Training is the lead agency for the Murdi Paaki COAG trial. Any changed arrangements would be a matter for discussion between COAG Trial partners.

The table over contains information on departmental expenditure and Indigenous-specific administered funding to the Murdi Paaki COAG Trial site from the key Australian Government funding agencies.

QUESTIONS ON NOTICE
It is not possible to identify travel costs for every departmental officer to visit the COAG Trial site, due to the fact that travelling staff often visit multiple locations, and because it would place a heavy burden on agencies to conduct such a level of auditing of individual travel accounts.

In the table below, Departmental expenditure figures may include funding for items such as computers, plant and equipment assets used by agencies in providing goods and services, as well as employee expenses, supplier costs and other administrative expenses (including travel), where these staff, equipment, assets etc are 100% dedicated to the Trial site.

Urbis Keys Young was appointed to undertake the Murdi Paaki COAG Trial evaluation on 31 March 2006. The cost of the consultancy was $36,960.

The draft report was provided to the all trial partners, including the Murdi Paaki Regional Assembly, on 26 May 2006 and again on 13 September 2006 for their comment. (The Murdi Paaki Regional Assembly is the recognised body representing Indigenous people across the region for the COAG trial). The consultant is currently considering comments and we expect the final report in late October 2006.

Release of the final report will be a matter for the trial partners to determine. The Minister has agreed in principle to the release of all COAG Trial evaluation reports conditional upon agreement by trial partners.
## QUESTIONS ON NOTICE

### INDIGENOUS SPECIFIC FUNDING EXPENDED IN MURDI PAAKI COAG

#### TRAIL SITE BY AGENCY

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Council of Australian Governments Trial  
(Question No. 2248)

Senator Chris Evans asked the Minister representing the Minister for Families, Community Services and Indigenous Affairs, upon notice, on 21 July 2006:

With reference to the evaluation of the Council of Australian Governments (COAG) Trial in Northeast Tasmania:

1. Is the department the lead agency for this trial.
2. What were the objectives of the trial.
3. What has been the total amount of expenditure for each financial year over the course of the trial, specifying:
   (a) the amount of administered funds and departmental expenses for each financial year; and
   (b) what the administered funds were used for.
4. What has been the amount of departmental travel costs incurred during each financial year over the course of the COAG trial for departmental staff visiting the trial site, including airfares, accommodation, travel allowance, car hire and any other related costs.
5. With reference to the answer to question on notice no. 1562 (Senate Hansard, 27 March 2006, p. 208) which indicated that assessment of consultancy proposals commenced in February 2006 and that the evaluation of the trial would begin in March 2006 and that the expected date of submission of the final report was in May 2006:
   (a) what was the name of the consultant appointed and what was the date of appointment;
   (b) what is the start date for the evaluation; and
   (c) what is the date of submission for the final report.
6. Will the Minister make this evaluation report publicly available; if so, can a copy be provided.
7. Did any community members have an opportunity to read or approve the draft report; if so:
   (a) how and when did this happen;
   (b) which people were consulted;
   (c) how many were consulted; and
   (d) how were these people selected.
8. What is the most recent assessment of the cost of this consultancy.

Senator Kemp—The Minister for Families, Community Services and Indigenous Affairs has provided the following answer to the honourable senator’s question:

The Department of Families, Community Services and Indigenous Affairs is the lead agency for the Northeast Tasmania COAG trial.

The objective of the COAG Trials is to improve the way governments interact with each other and with communities to deliver more effective responses to the needs of Indigenous Australians.

The table over contains information on departmental expenditure and Indigenous-specific administered funding to the Northeast Tasmania COAG Trial site from the key Australian Government funding agencies.

It is not possible to identify travel costs for every departmental officer to visit the COAG Trial site, due to the fact that travelling staff often visit multiple locations, and because it would place a heavy burden on agencies to conduct such a level of auditing of individual travel accounts.

QUESTIONS ON NOTICE
In the table below, Departmental expenditure figures may include funding for items such as computers, plant and equipment assets used by agencies in providing goods and services, as well as employee expenses, supplier costs and other administrative expenses (including travel), where these staff, equipment, assets etc are 100% dedicated to the Trial site.

Learning Futures Australia Pty Ltd was appointed on 28 March 2006 to undertake the evaluation of the Northeast Tasmania COAG Trial site. The evaluation commenced in late March 2006 and the consultancy cost $32,600.

The consultant submitted a final report to OIPC on 3 August 2006. The Minister has agreed in principle to the release of all COAG Trial evaluation reports conditional upon agreement by trial partners.

Members of the community contributed to the development of the draft evaluation report. The public release of the final report will be used to consult with Indigenous people on a way forward.
## INDIGENOUS SPECIFIC FUNDING EXPENDED IN TASMANIA COAG TRAIL SITE BY AGENCY

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<td>Departmental</td>
<td>$99,140</td>
<td>$89,140</td>
<td>$86,400</td>
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<td>Administered</td>
<td>$99,140</td>
<td>$89,140</td>
<td>$86,400</td>
<td>$274,680</td>
</tr>
<tr>
<td></td>
<td>funds spent on youth and family support. Legal services funding provided on a state-wide basis so has not been included here.</td>
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<td></td>
<td>Sub-Total</td>
<td>$99,140</td>
<td>$89,140</td>
<td>$86,400</td>
<td>$274,680</td>
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<tr>
<td></td>
<td>Department of Communications, Information Technology and the Arts</td>
<td>Departmental</td>
<td>$463,396</td>
<td>$513,750</td>
<td>$470,722</td>
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<td></td>
<td>Administered</td>
<td>$463,396</td>
<td>$513,750</td>
<td>$470,722</td>
<td>$1,447,878</td>
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<tr>
<td></td>
<td>funds spent on maintenance and promotion of Indigenous culture and language, and sport and recreation.</td>
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<td></td>
<td>Sub-Total</td>
<td>$463,396</td>
<td>$513,750</td>
<td>$470,722</td>
<td>$1,447,878</td>
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</tbody>
</table>

**TOTAL AUSTRALIAN GOVERNMENT INVESTMENT** | $5,739,056 | $6,351,256 | $7,222,126 | $19,312,438 |

**QUESTIONS ON NOTICE**
QUESTIONS ON NOTICE

Council of Australian Governments Trial
(Question No. 2249)

Senator Chris Evans asked the Minister representing the Minister for Families, Community Services and Indigenous Affairs, upon notice, on 21 July 2006:

With reference to the evaluation of the Council of Australian Governments (COAG) Trial in Shepparton:

(1) Is the department the lead agency for this trial.

(2) What were the objectives of the trial.

(3) What has been the total amount of expenditure for each financial year over the course of the trial; specifying: (a) the amount of administered funds and departmental expenses for each financial year; and (b) what the administered funds were used for.

(4) With reference to the answer to question on notice no. 1562 (Senate Hansard, 27 March 2006, p. 208) which indicated that Morgan Disney was selected to conduct an evaluation of the trial and that the evaluation would begin in February 2006, with the final report to be submitted on 19 May 2006:

(a) what is the name the consultant appointed and what was the date of appointment;

(b) what is the start date for the evaluation; and

(c) what is the date of submission for the final report.

(5) Will the Minister make this evaluation report publicly available; if so, can a copy be provided.

(6) Did any community members have an opportunity to read or approve the draft report; if so: (a) how and when did this happen; (b) which people were consulted; (c) how many were consulted; and (d) how were these people selected.

(7) What is the most recent assessment of the cost of this consultancy.

Senator Kemp—The Minister for Families, Community Services and Indigenous Affairs has provided the following answer to the honourable senator’s question:

The Department of Families, Community Services and Indigenous Affairs is the lead agency for the Shepparton COAG trial.

The objective of the COAG Trials is to improve the way governments interact with each other and with communities to deliver more effective responses to the needs of Indigenous Australians.

The table over contains information on departmental expenditure and Indigenous-specific administered funding to the Shepparton COAG Trial site from the key Australian Government funding agencies. Departmental expenditure figures may include funding for items such as computers, plant and equipment assets used by agencies in providing goods and services, as well as employee expenses, supplier costs and other administrative expenses (including travel), where these staff, equipment, assets etc are 100% dedicated to the Trial site.

OIPC appointed Morgan Disney & Associates to undertake the Shepparton COAG Trial evaluation on 20 February 2006. The evaluation commenced in February 2006 and the consultancy cost $42,350.

The Aboriginal Community Facilitation Group (ACFG) was the COAG trial community partner and community representative for the trial evaluation. The ACFG was provided with the draft and final reports for comment and endorsement on behalf of the community.
Morgan Disney provided a report to the COAG Trial Steering Committee (comprising the Australian and Victorian governments and the ACFG) on 14 August for final comments. The final report was provided on 6 September 2006. Release of the final report will be a matter for the trial partners to determine. The Minister has agreed in principle to the release of all COAG Trial evaluation reports conditional upon agreement by trial partners.
### INDIGENOUS SPECIFIC FUNDING EXPENDED IN SHEPPARTON COAG TRIAL SITE BY AGENCY

<table>
<thead>
<tr>
<th>AGENCY</th>
<th>Appropriation Source</th>
<th>2003-04</th>
<th>2004-05</th>
<th>2005-06</th>
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<td><strong>Office of Indigenous Policy Coordination</strong></td>
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<tr>
<td>Departmental</td>
<td>$9,500</td>
<td>$193,638</td>
<td>$224,890</td>
<td>$428,028</td>
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<tr>
<td>Administered</td>
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<tr>
<td>Administered funds spent on promoting public awareness of Indigenous culture, women's leadership development, community engagement and Shared Responsibility Agreements.</td>
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<tr>
<td>Sub-Total</td>
<td>$9,500</td>
<td>$193,638</td>
<td>$224,890</td>
<td>$428,028</td>
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<td><strong>Department of Families, Community Services and Indigenous Affairs</strong></td>
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<td>Departmental</td>
<td>$1,007,309</td>
<td>$994,730</td>
<td>$1,246,435</td>
<td>$3,248,474</td>
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<td>Administered</td>
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<tr>
<td>Administered funds spent on child care, family and community networks, community housing, family violence initiatives and emergency relief.</td>
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<tr>
<td>Sub-Total</td>
<td>$1,007,309</td>
<td>$994,730</td>
<td>$1,246,435</td>
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<td>$1,629,338</td>
<td>$1,604,586</td>
<td>$4,682,542</td>
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<tr>
<td>Administered</td>
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<tr>
<td>Administered funds spent on support for Indigenous medical services, chronic disease prevention and management, and health capital works.</td>
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<tr>
<td>Sub-Total</td>
<td>$1,448,618</td>
<td>$1,629,338</td>
<td>$1,604,586</td>
<td>$4,682,542</td>
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<td><strong>Department of Transport and Regional Services</strong></td>
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<td>Administered</td>
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<td><strong>Department of Education, Science and Training</strong></td>
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<td>Departmental</td>
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<td>$638,592</td>
<td>$242,946</td>
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<tr>
<td>Administered funds spent on addressing barriers to educational success through parent-school partnerships and home work centres, increasing vocational guidance and learning opportunities for Indigenous students, supplementary per capita funding to education providers and tutorial assistance for Indigenous students.</td>
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<tr>
<td>Sub-Total</td>
<td>$159,172</td>
<td>$638,592</td>
<td>$242,946</td>
<td>$1,040,709</td>
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<td><strong>Department of Employment and Workplace Relations</strong></td>
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<td>Sub-Total</td>
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<td><strong>Attorney-General's Department</strong></td>
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<td>Departmental</td>
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<td>Administered</td>
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<td><strong>Department of Communications, Information Technology and the Arts</strong></td>
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<tr>
<td>Departmental</td>
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<td>$310,749</td>
<td>$267,048</td>
<td>$775,524</td>
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<td>Administered</td>
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<tr>
<td>Administered funds spent on maintenance and promotion of Indigenous culture and language, skills development, visual arts and craft, and sport and recreation.</td>
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<tr>
<td>Sub-Total</td>
<td>$198,727</td>
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<td>$267,048</td>
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<td><strong>TOTAL AUSTRALIAN GOVERNMENT INVESTMENT</strong></td>
<td>$5,811,225</td>
<td>$7,127,999</td>
<td>$7,027,522</td>
<td>$19,966,746</td>
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QUESTIONS ON NOTICE
Robertson Barracks  
(Question No. 2263)

Senator Mark Bishop asked the Minister representing the Minister for Defence, upon notice, on 28 July 2006:

With reference to the report in the Northern Territory News of 18 July 2006 entitled ‘Army cops fire for its blasts’:

(1) (a) What was the cause of the ‘loud explosions’ at Robertson Barracks on or about 16 July 2006; (b) how many explosions occurred; (c) at what time did the first explosion occur; and (d) when did the last explosion occur.

(2) Who authorised the use of explosives at the barracks on or about 16 July 2006.

(3) What procedures are in place for the use of explosives at Robertson Barracks.

(4) (a) How often are explosives used in exercises conducted at Robertson Barracks; (b) what types of explosives are used; and (c) in what areas of the barracks site are explosives used.

(5) Can a copy of the media release issued to the Northern Territory News be provided.

(6) (a) What other methods are used to inform nearby residents of use of explosives at Robertson Barracks; and (b) how much notice of such events is given to residents.

Senator Ian Campbell—The Minister for Defence has provided the following answer to the honourable senator’s question:

(1) (a) The explosions took place on 26 June 2006. The explosions were battlefield noise simulations, which were part of mission rehearsal exercises used to enhance training of soldiers deploying to Afghanistan.

(b) Four.

(c) and (d) Between 9 pm and 10 pm.

(2) Headquarters 1st Brigade approved the use of explosives on 26 June 2006.

(3) A request to use explosives would be submitted and considered by Headquarters 1st Brigade. If approval is given, Robertson Barracks Base Service Manager would be notified, as well as resident units, base security, civil authorities and local residents.

(4) (a) Explosives may be used during routine training activities, which occur during work hours. Special training activities, such as the mission rehearsal exercises, can be 24-hour operations and, therefore, can be conducted outside work hours. Mission rehearsal exercises occur approximately three times per year.

(b) There are a range of explosives available to the Army. On this occasion, plastic explosives with detonating caps were used.

(c) Explosives can be used in any area as long as all safety requirements have been met.

(5) Yes, a copy has been forwarded separately to your office.

(6) (a) A letter box drop of residents within the immediate vicinity of Robertson Barracks is normally conducted. In this case, the lack of notification of the use of explosives was caused by an oversight occurring during a changeover of key personnel. Personnel involved in arranging activities within Robertson Barracks have been counselled on the correct procedures to be used to ensure that this does not happen again.

(b) There is no set time for notifying residents. Letters will be delivered as soon as possible and a media alert will generally be issued 24 to 48 hours prior to the activity. In this case, a media alert was released on 22 June 2006 warning residents of a military helicopter landing at Royal
Drummond Hospital on 23 June 2006. Due to an oversight, the media alert did not mention that explosions were to occur on 26 June 2006.

**Directed Energy Weapons**

(Question No. 2268)

Senator Bob Brown asked the Minister representing the Minister for Defence, upon notice, on 31 July 2006.

(1) What knowledge does the Government have of the use of directed energy weapons, including high energy microwave, lasers or the ‘Active Denial System’ by forces of the United States of America (US) in Iraq.

(2) Is the Government aware of claims, made in a documentary aired by Italian TV station RAI on 16 May 2006, that such directed energy weapons have been responsible for numerous deaths and casualties, specifically at the battle for Baghdad Airport in 2003.

(3) What information does the Government have about these casualties.

(4) Did the US Government inform the Government that it was planning to use directed energy weapons; if so, what briefings did the Government receive about these weapons and the danger they posed to civilians and to Australian troops.

(5) What does the Government know about the ‘Project Sheriff’ vehicles, which are equipped with a range of directed energy weapons, including the Active Denial System, or so-called ‘Pain Ray’.

(6) Are Australian troops involved in any way with the use of any of these weapons.

(7) Is the Government aware that US Brigadier-General James Huggings, Chief of Staff for the Multi-National Corps-Iraq, has requested 14 ‘Project Sheriff’ vehicles for deployment to Iraq.

(8) What is the Government’s position regarding the use of directed energy weapons.

Senator Ian Campbell—The Minister for Defence has provided the following answer to the honourable senator’s question:

(1) The Government is aware from open-source reporting that the US is in the process of trialling a range of directed energy force protection systems and counter-measures.

(2) No.

(3) Not applicable.

(4) No.

(5) The Government is aware of Project Sheriff from open sources, such as the internet and Jane’s Defence Weekly, but has not received any specific briefings or information.

(6) No.

(7) No.

(8) The threat from improvised explosive devices in Iraq and Afghanistan is an ever present danger. The Australian Defence Force has a responsibility to provide its deployed personnel with the highest level of protection against all threats. With the evolving nature of improvised explosive devices, the Government continues to monitor their development, assess their impact, and seek to develop new force protection and counter-measures.

**Bankstown Airport**

(Question No. 2308)

Senator O’Brien asked the Minister representing the Minister for Transport and Regional Services, upon notice, on 7 August 2006:

QUESTIONS ON NOTICE
QUESTIONS ON NOTICE

(1) Can details be provided of the number of aircraft movements at Bankstown Airport for each calendar year since 2000.

(2) How does Airservices Australia define ‘aircraft movements’.

(3) Has Airservices Australia amended the definition of ‘aircraft movement’ since 2000; if so, how has this amendment impacted on analysis of trend data for Bankstown Airport.

(4) Has Airservices Australia altered or adjusted the methodology of analysing aircraft movements since 2000; if so, how has this change of methodology impacted on analysis of trend data for Bankstown Airport.

Senator Ian Campbell—The Minister for Transport and Regional Services has provided the following answer to the honourable senator’s question:

(1) Airservices Australia has advised that the number of aircraft movements at Bankstown Airport for each calendar year since 2000 are as below:

<table>
<thead>
<tr>
<th>Year</th>
<th>Movements</th>
</tr>
</thead>
<tbody>
<tr>
<td>2000</td>
<td>298,798</td>
</tr>
<tr>
<td>2001</td>
<td>331,420</td>
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<td>2002</td>
<td>345,268</td>
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<td>2003</td>
<td>296,398</td>
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<tr>
<td>2004</td>
<td>233,338</td>
</tr>
<tr>
<td>2005</td>
<td>275,846</td>
</tr>
</tbody>
</table>

(2) Airservices Australia has advised that movements are the sum of Arrivals and Circuits multiplied by 2 (this then accommodates departures).

(3) Airservices Australia has advised that it has not amended the definition of movements in the last five years. This information is publicly available on the Airservices Australia web site under Reports and Statistics. Therefore there is no impact on the Bankstown data.

(4) Airservices has advised that since 2000 it has upgraded data processing technologies and enhanced the querying process. The impact of the improved systems on Bankstown Airport data is a marginal increase in captured aircraft movements.