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SITTING DAYS—2006

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

- CANBERRA 103.9 FM
- SYDNEY 630 AM
- NEWCASTLE 1458 AM
- Gosford 98.1 FM
- BRISBANE 936 AM
- GOLD COAST 95.7 FM
- MELBOURNE 1026 AM
- ADELAIDE 972 AM
- PERTH 585 AM
- HOBART 747 AM
- NORTHERN TASMANIA 92.5 FM
- DARWIN 102.5 FM
FORTY-FIRST PARLIAMENT  
FIRST SESSION—SEVENTH PERIOD  

Governor-General  

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

Senate Officeholders  

President—Senator the Hon. Paul Henry Calvert  
Deputy President and Chairman of Committees—Senator John Joseph Hogg  
Leader of the Government in the Senate—Senator the Hon. Nicholas Hugh Minchin  
Deputy Leader of the Government in the Senate—Senator the Hon. Helen Lloyd Coonan  
Leader of the Opposition in the Senate—Senator Christopher Vaughan Evans  
Deputy Leader of the Opposition in the Senate—Senator Stephen Michael Conroy  
Manager of Government Business in the Senate—Senator the Hon. Christopher Martin Ellison  
Manager of Opposition Business in the Senate—Senator Joseph William Ludwig  

Senate Party Leaders and Whips  

Leader of the Liberal Party of Australia—Senator the Hon. Nicholas Hugh Minchin  
Deputy Leader of the Liberal Party of Australia—Senator the Hon. Helen Lloyd Coonan  
Leader of The Nationals—Senator the Hon. Ronald Leslie Doyle Boswell  
Deputy Leader of The Nationals—Senator the Hon. John Alexander Lindsay (Sandy) Macdonald  
Leader of the Australian Labor Party—Senator Christopher Vaughan Evans  
Deputy Leader of the Australian Labor Party—Senator Stephen Michael Conroy  
Leader of the Australian Democrats—Senator Lynette Fay Allison  
Leader of the Australian Greens—Senator Robert James Brown  
Leader of the Family First Party—Senator Steve Fielding  

Liberal Party of Australia Whips—Senators Jeannie Margaret Ferris and Stephen Parry  
Australian Democrats Whip—Senator Andrew John Julian Bartlett  
Australian Greens Whip—Senator Rachel Siewert  

Printed by authority of the Senate
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</table>

(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,  Senator the Hon. Nicholas Hugh Minchin
Leader of the Government in the Senate and
Vice-President of the Executive Council
Minister for Agriculture, Fisheries and Forestry  The Hon. Peter John McGauran MP
and Deputy Leader of the House
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  The Hon. Malcolm Thomas Brough MP
Indigenous Affairs
  Minister Assisting the Prime Minister for  The Hon. Ian Elgin Macfarlane MP
Indigenous Affairs
Minister for Industry, Tourism and Resources  The Hon. Kevin James Andrews MP
Minister for Employment and Workplace  Senator the Hon. Helen Lloyd Coonan
Relations and Minister Assisting the Prime
Minister for the Public Service
Minister for Communications, Information  Senator the Hon. Ian Gordon Campbell
Technology and the Arts and Deputy Leader of
the Government in the Senate
Minister for the Environment and Heritage  

(The above ministers constitute the cabinet)
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
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>Shadow Minister for Consumer Affairs and</td>
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<td>Shadow Minister for Population Health and</td>
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<td>John Paul Murphy MP</td>
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<td>The Hon. Graham John Edwards MP</td>
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<td>Shadow Parliamentary Secretary for Education</td>
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<td>Shadow Parliamentary Secretary for Industry, Infrastructure and Industrial Relations</td>
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**TUESDAY, 28 NOVEMBER**

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Tuesday, 28 November 2006

The PRESIDENT (Senator the Hon. Paul Calvert) took the chair at 12.30 pm and read prayers.

BUSINESS

Rearrangement

Senator ELLISON (Western Australia—Manager of Government Business in the Senate) (12.31 pm)—I will shortly seek leave to amend a motion, but I first seek leave to make a short statement.

Leave granted.

Senator ELLISON—I am seeking to amend the motion which has at paragraph (5)(e) the list of bills which we have circulated as being those which we will consider during this sitting fortnight. The amendment I seek is to include the Royal Commissions Amendment (Records) Bill 2006. This comes about as a result of the Cole commission of inquiry report. It is part of the recommendations made by Commissioner Cole. I would suggest that it is an uncontroversial bill and one which would enjoy widespread support—although I do not want to pre-empt things. It is something that Commissioner Cole has asked for. It is essential for our task force to be set up to carry out investigations as a result of that. That is what I am seeking to amend in this list of bills. I ask for leave from the Senate to amend it accordingly.

Leave granted.

Senator LUDWIG (Queensland) (12.32 pm)—by leave—Having not been informed of this prior to it being brought before the Senate, I accept that there is a need to amend the list to include the bill. We have not seen the bill at this stage, so we will reserve our position in respect of that. However, it seems to be appropriate to amend the list accordingly to ensure that the effect of the commission of inquiry is brought in as soon as possible. The government would always have the ability to amend the list in any event by giving notice today and then effecting it tomorrow. On that basis, we will not object, but we reserve our position in respect of the bill itself.

Senator ELLISON (Western Australia—Manager of Government Business in the Senate) (12.33 pm)—I amend the motion by adding to paragraph (5)(e) ‘Royal Commissions Amendment (Records) Bill 2006’, and I move:

That—

(1) On Tuesday, 28 November and 5 December 2006:
   (a) the hours of meeting shall be 12.30 pm to 6.30 pm and 7.30 pm to adjournment;
   (b) the routine of business from 7.30 pm shall be government business only; and
   (c) the question for the adjournment of the Senate shall be proposed at 10 pm.

(2) On Thursday, 30 November 2006:
   (a) the hours of meeting shall be 9.30 am to 6.30 pm and 7.30 pm to 11.40 pm;
   (b) the routine of business from 7.30 pm shall be government business only;
   (c) divisions may take place after 4.30 pm; and
   (d) the question for the adjournment of the Senate shall be proposed at 11 pm.

(3) The Senate shall sit on Friday, 1 December 2006 and that:
   (a) the hours of meeting shall be 9 am to 4.25 pm;
   (b) the routine of business shall be:
      (i) notices of motion, and
      (ii) government business only; and
   (c) the question for the adjournment of the Senate shall be proposed at 3.45 pm.

(4) On Wednesday, 6 December 2006, the routine of business be varied to provide that:
(a) matters of public interest be called on at 1.15 pm; and
(b) questions without notice be called on at 2.30 pm.
(5) On Thursday, 7 December 2006:
(a) the hours of meeting shall be 9.30 am to 6.30 pm and 7.30 pm to adjournment;
(b) consideration of general business and consideration of committee reports, government responses and Auditor-General’s reports under standing order 62(1) and (2) shall not be proceeded with;
(c) the routine of business from not later than 4.30 pm shall be government business only;
(d) divisions may take place after 4.30 pm; and
(e) the question for the adjournment of the Senate shall be proposed after the Senate has finally considered the bills listed below, including any messages from the House of Representatives:
   Australian Nuclear Science and Technology Organisation Amendment Bill 2006
   Copyright Amendment Bill 2006
   Customs Legislation Amendment (New Zealand Rules of Origin) Bill 2006
   Crimes Amendment (Bail and Sentencing) Bill 2006
   Datacasting Transmitter Licence Fees Bill 2006 and Broadcasting Services Amendment (Collection of Datacast-
the point that this is a less than desirable way of doing things. Perhaps it is all just part of that fine old Christmas tradition that we go through this pattern, but I think it is appropriate to once again make the point that this is a legislature, this is a law-making body, and to put through such a large number of pieces of legislation in such a short time frame increases the prospect of bad outcomes.

It is not just an issue of disagreeing with the policy content; it is an issue of ensuring that we get it right. It is more important to get it right than just to get it through. Some of these bills are very significant, as we noted yesterday in debating a related motion which exempted some of the bills from the cut-off and enabled them to be fast-tracked. They are very complex. They are very large. Some of them will have amendments that are to be seen. Some of them will have very longstanding consequences for the wider community. In that situation it always needs to be said that the process is less than ideal.

The motion requires the Senate to sit relatively late tonight and Thursday night and to sit on Friday as well. I am sure there will also be late-night sittings next week which are yet to be determined. Again, this is not unusual, so in that sense I am not accusing the government of any particular new type of malfeasance, but it is more dangerous now. In previous times when there was an attempt to rush through a large amount of legislation, if there was a general view amongst all non-government parties that a particular bill needed more examination then there was the prospect of deferring it, unless there were very strong grounds for urgency. That possibility is now much reduced, almost to the point of zero. Therefore, the risks are increased when we take actions like this. So it is appropriate to put on the record the Democrats’ continued concern that this is a less than ideal process. It is not a new one, but the risks involved are greater now than they were previously because of the reduction in the checks and balances that the Senate was able to provide in the past.

Question agreed to.

AUSTRALIAN NUCLEAR SCIENCE AND TECHNOLOGY ORGANISATION AMENDMENT BILL 2006

In Committee

Consideration resumed from 27 November.

The CHAIRMAN—The committee is considering the Australian Nuclear Science and Technology Organisation Amendment Bill 2006 and the amendment on sheet 5081 revised, moved by Senator Allison. The question is that the amendment be agreed to.

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural Affairs) (12.37 pm)—Senator Allison seeks to prevent something happening in the future under this government. With respect, in her speech the senator made a number of statements like, ‘If the government did not do this, you could assume that they wanted to do something else’—and I do not know that you can assume those things. Actually, I am being a bit more polite than I should be; I know you cannot. But that might be just a part of the polemics of this matter, and I will leave it be.

Senator Allison, what you seek to do is prevent something happening. What I would say to you, firstly, is that that is against the law at this point. There is already a limitation on importation—although you say ‘by government’, and it is true that, with a sign-off from the Minister for Health and Ageing, that can happen. That is necessary because, while there is a law against importation at this point, that does not mean that someone will not try it or that there will not be some accident at sea and we may need to have that
facility available. Consequently, we see it as appropriate for that opportunity to be there.

As I said, it is against the law at the moment. It is an offence under the Customs (Prohibited Imports) Regulations, unless authorised by the health minister. It has been the consistent position of successive governments since the resumption of uranium mining that those countries enjoying the benefits are responsible for managing the wastes. Nothing in the bill changes either the legal status of radioactive material imports or the policy of the Australian government. Nothing in the bill changes those things. If passed, the bill will not authorise ANSTO to import any radioactive waste. It will authorise ANSTO to manage, once returned to Australia, the waste arising from overseas reprocessing of ANSTO spent fuel—and ANSTO will, nonetheless, still need to apply for authorisation to import that waste.

The proposed amendment moved by Senator Allison could undermine a key purpose of the bill, namely, to ensure that ANSTO can assist the Commonwealth, state and territory emergency services in the event of a radiological incident or accident. No activities in Australia generate high-level radioactive waste, so it is not expected that ANSTO’s assistance would ever be required to manage such material; however, we do take very seriously the responsibility to ensure that Australia is prepared for radiological emergencies, no matter how unlikely.

The premise of the proposed amendment is somewhat fanciful, given that the Commonwealth Radioactive Waste Management Act prohibits the storage of high-level waste at the Commonwealth radioactive waste management facility. The question to ask is whether the Democrats seriously believe that the government or ANSTO intends to import large quantities of high-level radioactive material for indefinite storage at Lucas Heights. Is that really what you believe? It is certainly not the government’s policy. Frankly, to misconstrue the purpose of the bill—which is in fact to ensure that ANSTO has the necessary legal authority to safely and securely manage the waste—is, I think, more properly described as grandstanding. That is why we do not support the amendment.

Senator ALLISON (Victoria—Leader of the Australian Democrats) (12.41 pm)—I point out to the minister that this is not only about importing waste; this is about any high-level waste, including the high-level waste that might come from the 25 nuclear power reactors the government’s report has canvassed. This is not about grandstanding. It is not even fanciful, Minister, given that this has been very much a hot debate that has been underway for the last few weeks. It is not unreasonable for us—or, particularly, for Northern Territorians—to be interested in whether high-level radioactive waste material might be on its way to the Northern Territory and to the dump there.

I am aware that it is not legal at this point in time for Australia to import high-level radioactive waste, but it may well generate some itself. As the minister knows, it is perfectly appropriate for us to ban some future event. The minister well knows that governments can change such bans and commonly do. So, to suggest that we must not pass a law or an amendment to a law which would oblige future governments to a particular course of action is, I would say, really quite fanciful. Minister, I think you are the one who is grandstanding on this issue. We just want to know where the government stands on high-level radioactive waste material.

We understand and support the purpose of this amendment bill—that is, to charge ANSTO with the task of managing the waste which is headed for this dump—but I think it would be reassuring for Australians to know
that your intention is not for ANSTO to also manage high-level waste that comes from facilities other than Lucas Heights or health or medical facilities that currently operate in Australia. The amendment the Democrats have moved makes sure that there is no hidden agenda and no intention that high-level waste from anywhere else, including those 25 reactors that might or might not be coming, ends up in the Northern Territory.

Senator MILNE (Tasmania) (12.43 pm)—I support the amendment that Senator Allison has moved. Far from being grandstanding, it is exactly what the Australian people want to hear. If anybody is grandstanding on nuclear power at the moment, it is the government. We have a really serious situation where we have the government saying that they want to extend ANSTO’s functions to handle radioactive materials and, particularly in relation to this matter, returned waste not exclusively from ANSTO’s reactors.

At the same time, we are looking at other legislation which says that an application for a site for a nuclear dump in the Northern Territory can be approved by the minister even if it does not comply with the current law in relation to informed consent from traditional owners. We have a situation where, an application for a waste dump having been approved, there can be no judicial review and no question if there is inappropriate process. The government is running roughshod over the Northern Territory and over communities, and it is even abolishing procedural fairness. It is intent on imposing a nuclear waste dump on the Northern Territory and on Indigenous communities. That is what we are hearing about in one committee, and now we hear this minister say that it is fanciful to suggest that the government is interested in taking back high-level waste from overseas.

We know that Prime Minister Howard went to the United States in May and met with President George Bush, who has a grand nuclear plan. His plan is to identify nuclear fuel suppliers around the world. Those suppliers would enrich uranium, send it overseas on a lease basis and then take back the high-level waste. That is the George Bush nuclear suppliers deal. That is what the Prime Minister’s task force was asked to look at, and they came back and said that enrichment is a possibility. It is not economically viable. It will be of no benefit to Australian companies because the entry levels are so high that the only ones that can benefit are—surprise, surprise—the American or British companies who are already involved in processing and enriching high-level waste.

The key factor is: in spite of the rhetoric from Mr Switkowski, the chair of the Prime Minister’s task force, the Americans are not happy with their Yucca Mountain Facility. They do not have a high-level waste dump. Former Prime Minister Bob Hawke would love for Australia to provide a global facility to take the world’s high-level waste. That is his vision for Australia. It is not the Greens’ vision and it is certainly not the Democrats’ vision. We have got a very active debate in the nuclear community around the world, and they would love for Australia to become a major supplier of uranium and a waste dump. That is their vision.

Here in front of this chamber we have got a piece of legislation which is extending ANSTO’s powers to, first of all, manage the radioactive waste and then take back into Australia waste not generated in Australia. You ask us why we are cynical. It is because we are watching what is going on with the Prime Minister and what is going on with the nuclear debate. We have seen a significant shift in government policy. The government is suddenly excited about 25 nuclear reactors around the coast of Australia, within 100
kilometres of major population centres. When asked where the dumps would be, the chair of the Prime Minister’s task force said, ‘Take your pick. The geological structure of Australia is such that you could have waste dumps anywhere.’ But we know that the government’s preference is to impose them on Aboriginal communities in a remote location, because the government does not want to have the political fallout of dumping radioactive waste within 100 kilometres of major population centres. It is prepared to give some financial compensation to Aboriginal communities.

I am not prepared to take this ANSTO bill at face value, because behind it we have got the uranium industry framework. We have got the uranium task force, we have got a proposal for 25 reactors and now—surprise, surprise—we have got a provision in legislation which would provide for Australia to take back waste not generated in Australia. This is waste not generated at Lucas Heights and not generated as a result of medical technology. I think it would be entirely sensible for the Senate to support the Democrats’ amendment so that it is very clear to everybody that the Prime Minister’s proposal to lease and take back high-level waste is not on the government’s agenda. If you do not pass this amendment, you are setting us up precisely for that.

Senator STEPHENS (New South Wales) (12.49 pm)—I would like to say briefly that Labor is supporting the Democrats’ amendment and shares the concerns that we have heard in the chamber today about the absolute policy incoherence that is occurring in the area of nuclear debates. We share the concerns about where nuclear waste facilities might be proposed. This is an important amendment that helps to secure a clear policy position about the conditions under which ANSTO will manage or store high-level radioactive materials. On that basis, Labor is supporting the amendment.

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural Affairs) (12.50 pm)—It is clear that this amendment is going to pass, but I want to make a couple of things clear. Firstly, the passing of this amendment does mean that, should there be a desperate need for the storage of some sort of material that later cannot be stored in a safe place like ANSTO, we will be coming back for the names of the people who voted against the capacity to have that storage. I do not look forward to that day, because no-one wants us to be in a hazardous situation and to have no capacity to deal with it. I am absolutely certain that people in the future, if we are in that position, will look back and ask if federal parliament ever considered the need for that. They will look back at these debates and wonder why people opposite supported this amendment. If that does happen, I only hope that all of you are alive to answer for it.

Question put:

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

The committee divided. [12.56 pm]

(The Chairman—Senator JJ Hogg)

Ayes………… 33
Noes………… 37
Majority……… 4

AYES

Allison, L.F. Bartlett, A.J.J.  
Bishop, T.M. Brown, B.J.  
Brown, C.L. Crossin, P.M.  
Evans, C.V. Faulkner, J.P.  
Fielding, S. Forshaw, M.G.  
Hogg, J.J. Hurley, A.  
Hutchins, S.P. Kirk, L.  
Ludwig, J.W. Lundy, K.A.  
Marshall, G. McEwen, A. *  
McLucas, J.E. Milne, C.  
Moore, C. Murray, A.J.M.
Third Reading

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural Affairs) (1.00 pm)—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

INSPECTOR OF TRANSPORT SECURITY BILL 2006

INSPECTOR OF TRANSPORT SECURITY (CONSEQUENTIAL PROVISIONS) BILL 2006

Second Reading

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

That these bills be now read a second time.

Senator O’BRIEN (Tasmania) (1.01 pm)—At last we have the Inspector of Transport Security Bill 2006 and the Inspector of Transport Security (Consequential Provisions) Bill 2006 before the Senate chamber. It was in fact on 4 December 2003—quite a long time ago now—that the government announced its intention to create the position of the Inspector of Transport Security. In spite of repeated statements from various Howard government ministers seeking to score political points out of the current security situation, they in fact did precious little about actually filling this crucial role.

It was not until 23 November 2004 that former Australian Federal Police Commissioner Mick Palmer was appointed as the Inspector of Transport Security. It took a full three years after 9-11 for this government to actually get someone to work on this very important task. As with so many other areas of policy, this government has been obsessed with putting a political spin on issues such as this rather than taking the sensible, practical measures necessary to make travel as safe as possible in a new climate of threat. But even...
here, with this appointment, the Howard government were really concealing their inadequacy. They were using this appointment—quite a smoke and mirrors appointment—to cloak the propaganda that they had been using to heighten the fear about threat in the community.

What did they do with this appointment? The Inspector of Transport Security was engaged for an average of one day a week. We had a part-time Inspector of Transport Security at the same time as the world was experiencing terrorist attacks on mass transport systems on an increasing basis. On 7 July 2005 terrorist attacks on mass urban rail and bus systems in London occurred. Fifty-six people died, including one Australian, and hundreds were injured in quite a cowardly attack. On 21 July, four terrorists attempted bomb attacks and disrupted part of London’s public transport system. Only two weeks after the first successful attack, stations were closed and evacuated. Apparently, the terrorists’ intention was to cause large-scale loss of life. Luckily only the detonators of the bombs exploded, so the public were fortunate. Going back to 2004, terrorists successfully attacked a commuter train in Madrid. We saw, earlier this year, a terrorist bomb kill innocent people on a train in Mumbai in India. On 11 August this year, the United Kingdom went to its highest threat level after authorities arrested 24 suspects in what was described as a plot to blow up as many as 10 passenger jets leaving Britain for the United States.

What have we seen here in Australia? We have seen repeated breaches of security in the Australian transport industry—and those are only the ones that have been drawn to the public’s attention. Some may seem trivial but what they demonstrated was the inadequacy of our security preparation. For example, in March 2005 at Perth airport, three men under the influence of alcohol jumped the fence at Perth International Airport and boarded an empty Qantas passenger plane. If they can do that, how good is the security? You would think that, if security were being well managed, one place in Australia where it would be at its strongest would be the busiest airport in the nation. But it is not so.

In July this year a Sydney airport tailgating incident saw two vehicles tailgate a van through a security gate. That gate was set up to allow one car to pass through with a security pass. Two other vehicles followed it through. We were lucky in this case it was not terrorism: it was road rage. But what might have happened if it were not an accident, if it were planned for some improper, perhaps terrorist, purpose? We have security by good luck and good fortune but certainly not by good management. The simple fact is that the incidence of tailgating vehicles was drawn to the attention of the government well before this incident occurred, but nothing was done.

Who could forget the incident of a public side doorway giving access to Sydney airport runways being held open with a timber chock without any security? Even though I believe the Minister for Transport and Regional Services at the time, Mr Truss, denied the incident occurred, we have photos. We saw the notorious camel suit incident in April last year, when a baggage handler stole a camel costume out of a man’s bag and wore it onto the tarmac.

In incidents related to other modes of transport, when the ship the Pancaldo entered Gladstone in September 2005, Kim Beazley and the shadow minister for homeland security, Arch Bevis, were there waiting for it so as to point out that the Pancaldo was carrying 3,000 tonnes of ammonium nitrate, an explosives component. The vessel was registered in Antigua, its crew came mainly from the Ukraine and, under the Howard
government’s so-called maritime security, the crew had not been the subject of any credible background checks, as is the case for other foreign vessels sailing into our ports. This vessel was carrying enough ammonium nitrate to cause a major explosion in the port—affecting not just the port but also coastal communities and cities around the port.

One other issue that has been drawn to the minister’s attention is that of graffiti on rail stock. It sounds innocuous, doesn’t it? But every night trains are vandalised in rail yards. I think it takes some time for the elaborate graffiti that appears on those trains to be put in place. Some might suggest it would take hours to vandalise some of these trains. But how long would it take to plant a bomb on a train that was available for vandalism? If you compare the time, it would obviously take a lot less time to plant a bomb than it would to vandalise the trains in the way that they are. Labor drew this to the attention of the government on the anniversary of the Madrid attacks and on the anniversary of the London train attacks, but we cannot see any evidence of action.

We have seen a number of regional airports with lax security—gates open, for example, at Dubbo and Ballina airports in September this year. Similarly, at Taree airport there have been security gates hanging wide open and no security in place. That is the airport from which the minister for transport is regularly picked up by an Air Force jet. Two weeks ago, Sydney airport was evacuated because a flight from Wagga arrived and passengers had not been screened prior to boarding. Those are just some of the examples of the failures in transport security.

Going back to Mr Palmer, after his appointment the inspector had no legal powers to do anything. At that time, Labor called for and have continued to call for urgent legislation to underpin his important job. Finally, on 23 May 2005, the government announced its intention to underpin the inspector’s role with legislation. That was on 23 May 2005. We have been consistently arguing for that legislative underpinning. So we are here now—17 months later—and we finally have these bills in the parliament. Five years after 9-11, the Howard government has finally managed to complete the process of establishing the Inspector of Transport Security position with real powers. However, we do believe there are some flaws in the legislation and we will come to that in the committee stage.

On 18 October this year the government finally tabled these bills in the House of Representatives, after the delays and after all of those incidents that I have spoken about. As I said, we think the bills have some flaws. Clause 80 of the Inspector of Transport Security Bill 2006 states that the inspector is to minimise disruption to transport. Under clause 80 the inspector has that responsibility, and that is fair. We do not want to unnecessarily delay commuters going to and from their daily duties, but we do want commuters to be safe as well as on time.

Clause 81 of the Inspector of Transport Security Bill 2006 calls on the inspector to act consistently with Australia’s international obligations. The inspector, and each delegate of the inspector, must exercise the inspector’s power in a manner that is consistent with Australia’s obligations under international arrangements. From time to time it may be appropriate for states and territories to confer powers and functions on the inspector. Clause 83 of the bill allows that temporary passing of power from the states to the inspector to occur.

As I said, there are some problems with the bills. Firstly, the Inspector of Transport Security Bill 2006 claims to provide a
framework for independent inquiry and recommendations in relation to transport security matters and offshore security matters upon the minister authorising an inquiry—that is, the inspector has no independent power to initiate an inquiry. It has to be approved by the minister. We think that is a limitation which should not be there and we will be moving to empower the inspector to initiate an inquiry of his or her own volition.

We say that the second deficiency is the provision in clause 25(3) of the Inspector of Transport Security Bill 2006, which states that the inspector may be appointed on a part-time basis. We do not think it is sufficient, in this important post, for a concession to be made that, if someone cannot devote themselves full-time to the job, they be appointed on a part-time basis. Indeed, we do not believe it is proper that Mr Palmer’s role has been effectively a day a week. We think this is an important post; it should be filled on a full-time basis. We will move an amendment to that effect.

We also believe that this bill should be brought into line with the principles enunciated in the Inspector-General of Intelligence and Security Act—that is, before a recommendation is made to the Governor-General for the appointment of a person as the Inspector of Transport Security, the relevant minister should consult with the Leader of the Opposition in the House of Representatives. We say that is similar to section 6 of the Inspector-General of Intelligence and Security Act 1986. We also say that the relevant minister should give a copy of the report furnished under subsection (1) of that provision to the Leader of the Opposition in the House of Representatives, provided of course that it is the obligation of the Leader of the Opposition to treat as secret any part of the report not tabled in a house of the parliament. We think those are changes which will improve this bill.

The other change which we think should be made is to section 64 of this bill, which states that the minister is permitted, but not required, to table a copy of a final report, or part of a final report, in parliament. We think that there should be a compulsion to table reports, although there can be the ability to withhold any matter which is sensitive at that time. I now move Labor’s second reading amendment, which I believe has been circulated:

At the end of the motion, add:

“but the Senate:

(a) notes the failure of the Howard government to appoint a person as Inspector of Transport Security until one year after the announcement of the position;

(b) notes that the Howard government finally committed to underpin this important job with appropriate laws in May of 2005 but has only now introduced legislation into the House for that purpose;

(c) condemns the slowness with which the Howard government dealt with the important role of Inspector of Transport Security,

(d) condemns the Howard government’s dismissive use of the Inspector of Transport Security who has been engaged on an average of just one day a week in spite of repeated failures in security in the Australian transport sector at the same time as terrorists have targeted aviation and rail transport over recent years, and

(e) condemns the Howard government for its failure to engage the Inspector of the Transport Security in a full time capacity”.

Having moved that amendment, I indicate that the opposition will be supporting the second reading of this bill.

The ACTING DEPUTY PRESIDENT (Senator Murray)—Senator O’Brien, you
should be aware that that amendment has not been circulated. You might want to arrange to have it circulated, but, since you have moved it and you have read it into the record, the Senate takes note of that.

Senator O'BRIEN—Thanks for that. I thought it had been circulated. I thought I had asked for it to be circulated, but perhaps there was a breakdown somewhere.

Senator STERLE (Western Australia) (1.18 pm)—I rise today to make a few brief comments about the Inspector of Transport Security Bill 2006 and to support Senator O'Brien's comments. It is a pleasant surprise to actually see this bill in the Senate after all these years, so I will try not to delay it further than necessary. Under the provisions of this bill, the Minister for Transport and Regional Services will be able to direct the Inspector of Transport Security to inquire into major transport security incidents or series of incidents that point to a systemic failure or possible weaknesses or vulnerabilities in aviation and maritime transport and security regulated offshore facilities. The Inspector of Transport Security will not be responsible for regulating transport security in this country as this role will remain with the Office of Transport Security in the Department of Transport and Regional Services. Labor supports this bill as far as it goes, but we are disappointed that the government did not agree to our amendments in the other place, which would have improved this bill greatly. It is clear by its actions in delaying this bill and then refusing to accommodate our amendments that the Howard government is not serious about improving Australia's transport security.

On 4 December 2003 the Howard government announced its intention to create the position of the Inspector of Transport Security. It is a sign of the Howard government's mismanagement and incompetence that it took more than two years after the September 11 terrorist attacks in the United States in 2001 to even accept the need for a senior inspector of our transport systems. In spite of repeated statements from various Howard government ministers seeking to score political points out of the current security situation, they did precious little about filling this important role. It was not until 23 November 2004 that former AFP Commissioner Mr Mick Palmer was appointed as the Inspector of Transport Security. That was nearly a full year after the announcement that the position would be created.

To make matters even worse, the position has existed for three years now without enabling legislation. On 23 May 2005 the then transport minister, Mr John Anderson, promised that Mr Palmer's position, Inspector of Transport Security, would have legislation to underpin it and define its powers. It is now the last sitting fortnight in 2006 and we are only now debating this legislation in the Senate. This is disgraceful and unacceptable, a delay in the face of a dangerous list of terror attacks overseas and flaws in our own system. Unfortunately, what a joke this government is. Not only has Mr Palmer's time as the officially unofficial acting Inspector of Transport Security been without enabling legislation, the then Minister for Transport and Regional Services, John Anderson, said on 23 May 2005:

Mr Palmer has temporarily stood aside to conduct an inquiry into the Cornelia Rau case, and it is expected he will resume his duties in the near future.

It took seven months for Mr Palmer to sort out the mess of the Howard government's disgraceful treatment of mentally disturbed people in our correctional facilities.

The minister claims this bill will provide a framework for independent inquiry and recommendations in relation to transport secu-
rity and offshore security matters. In fact the minister went so far as to say:

The strengths of the legislative framework to support the role of the Inspector of Transport Security include:

the independence of the inspector …

But, if you look at this bill, the truth is that the inspector has no power whatsoever to independently initiate an inquiry of his or her own. He or she can only investigate what the minister wants investigated, not what needs to be investigated. Under this bill, the inspector is not allowed to look at anything until the minister authorises it. And even after that the minister can withdraw that authorisation before a report is produced. You might as well make the inspector a ministerial staffer and put him in the minister’s office for all the independence he will have.

Let us imagine, for example, that the Inspector for Transport Security was concerned about the lax way foreign flag of convenience vessels were being issued single voyage permits to carry ammonium nitrate around the Australian coast and through Australian ports. And why wouldn’t he be? After all, the Howard government has a record of breaching the navigation regulations and its own ministerial guidelines regulating coastal shipping by failing to establish whether a licensed Australian vessel is available before issuing a permit to a foreign ship. The Labor Party have made it clear that ships that come to Australian ports should be obliged to provide the details of their crew and their cargo at least 48 hours before arrival. If they do not, then we should do exactly what the United States does: prevent their entry into our ports.

The Inspector of Transport Security might be just as concerned as the Labor Party that an independent review of this government’s administration of coastal shipping licences and permits for foreign vessels undertaken by KPMG found that: one in six permits for foreign vessels were granted without a signed application; data relating to one in five permits was incorrect or absent altogether; and the government was in breach of the navigation regulations and ministerial guidelines on the regulation of coastal shipping by failing to establish if a licensed Australian vessel was available before issuing a permit to a foreign ship.

Knowing this, the Inspector of Transport Security might link his concern with the recent example of the Pancaldo chugging around Australia’s coast loaded with ammonium nitrate. The Pancaldo was, after all, carrying over 3,000 tonnes of the stuff in and out of Australian ports and, as the Pancaldo sails under the Antiguan flag, the Howard government had no background knowledge of the crew whatsoever and there were no security checks done on any of the crew.

Knowing all this, it is not too hard to imagine that the Inspector of Transport Security might want to investigate this, but before he could, he would have to be directed to do so by the Minister for Transport and Regional Services, the honourable member for Lyne. To be frank, I do not have much confidence in the honourable member for Lyne’s ability to be aware of issues in his portfolio that require further investigation. This is the minister who apparently did not notice one of the greatest scandals in Australian parliamentary history, despite all of the cables his office got, which, of course, he never read—
or we are led to believe he never read. This is
the minister who, despite multiple warnings,
had no idea that $290 million was paid by an
Australian company run by National Party
mate Trevor Flugge to a bogus Jordanian
truck company, which handed it over to
Saddam Hussein’s bloodstained regime.

Given Minister Vaile’s ducking and weav-
ing over the wheat for weapons scandal, I
seriously doubt that he is going to say to the
Inspector for Transport Security: ‘Please in-
vestigate and report on what an incompetent
dill I am.’ And I am fairly sure that no Na-
tional Party minister is ever going to say:
‘Please investigate how my abuse of the sin-
gle voyage permit system in order to reduce
the export costs of my farmer mates is ex-
posing Australian ports to unnecessary secu-
ritv risks.’ Even if the minister directed the
Inspector of Transport Security to inquire
into that abuse of single voyage permits by
the Howard government and the Inspector of
Transport Security wrote a report recom-
manding that the carriage of highly danger-
ous goods, like ammonium nitrate, by for-
eign ships around our coastline must stop
now and the transport of high-consequence
dangerous goods around Australian coasts
must be done by Australian ships crewed by
Australian men and women who are subject
to appropriate security screening, the minis-
ter would have the power under this bill to
bury the report.

The National Party has been responsible
for the transport portfolio ever since this
government came to power. Ten long years
of National Party mismanagement of the
portfolio has left Australia’s maritime and
transport security in a parlous state. The cur-
rent Minister for Transport and Regional
Services, the honourable member for Lyne,
have been too busy of late trying to save his
political neck from the wheat for weapons
scandal. As a result, it seems that the Minis-
ter for Transport and Regional Services has
given less than his full attention to maritime
and transport security. But the truth of the
matter is that this is not a transport issue; it is
a national security issue, and it belongs with
a full-time minister for national security, a
minister for homeland security. All we have
at present is the Office of Transport Security
in the Department of Transport and Regional
Services. It is Labor’s view that maritime
security matters should be the responsibil-
ity of a minister for homeland security. But the
Prime Minister in his wisdom has chosen to
leave the maritime and transport security of
this nation to a succession of National Party
transport ministers who clearly have other
things to worry about.

The bill before the Senate today is a small
step forward, but a lot more needs to be
done. As a nation, we deserve better when it
comes to our national security and the pro-
tection of our transport systems. Labor sup-
ports this bill, but that should not be taken as
an endorsement of this lazy government’s
failure to act to protect the security of Aus-
tralians. Under a Labor government, Aus-
tralia will have a full-time minister for home-
land security, a full-time inspector of trans-
port security and a full-time professional
coastguard.

Senator IAN CAMPBELL (Western
Australia—Minister for the Environment and
Heritage) (1.30 pm)—I thank honourable
senators for their contributions to the debate
and I commend the bill to the Senate.

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

The Senate divided. [1.35 pm]
(The President—Senator the Hon. Paul Calvert)

Ayes............. 32
Noes............. 37
Majority........ 5

AYES
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.
Faulkner, J.P.  Forshaw, M.G.
Hogg, J.J.  Hurley, A.
Hutchins, S.P.  Kirk, L. *
Ludwig, J.W.  McEwen, A.
McCacas, J.E.  Moore, C.
Murray, A.J.M.  Nettle, K.
O’Brien, K.W.K.  Polley, H.
Ray, R.F.  Sherry, N.J.
Sterle, G.  Stephens, U.
Wong, P.  Wortley, D.

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

PAIRS
Campbell, G.  Mason, B.J.
Conroy, S.M.  Santoro, S.
Stott Despoja, N.  Kemp, C.R.

Question negatived.
Original question agreed to.
Bills read a second time.

In Committee

INSPECTOR OF TRANSPORT SECURITY BILL 2006

Bill—by leave—taken as a whole.

Senator O’BRIEN (Tasmania) (1.38 pm)—by leave—I move opposition amendments (1) to (25), (28) to (56) and (63) to (67) on sheet 5139 together:

(1) Clause 10, page 10 (lines 7 and 8), omit subclause (2), substitute:

(2) The Inspector may inquire into such matters in accordance with a direction from the Minister or in accordance with section 11A.

(2) Page 11 (after line 18), after clause 11, insert:

11A Inspector may decide to conduct inquiry

(1) Subject to this Part, the Inspector may decide to inquire into a transport security matter or an offshore security matter.

(2) If the Inspector decides to inquire into a matter, the Inspector must inform the Minister in writing of the subject of the inquiry.

(3) The Inspector is not subject to direction from the Minister in relation to the inquiry or direction in relation to any interim, draft or final report in relation to the inquiry.

(4) The Inspector is not subject to direction from the Secretary in relation to the inquiry, or direction in relation to any interim, draft or final report in relation to the inquiry.

(3) Clause 12, page 11 (line 23), after “Minister”, insert “or the Inspector”.

(4) Clause 12, page 12 (line 1), after “Minister”, insert “or the Inspector”.

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(5) Clause 13, page 12 (line 9), after “Minister”, insert “or the Inspector”.
(6) Clause 13, page 12 (line 19), after “Minister”, insert “or the Inspector”.
(7) Clause 14, page 12 (line 25), omit “The Minister must not direct the Inspector to”, substitute “The Inspector must not”.
(8) Clause 14, page 13 (line 11), omit “the direction is made”, substitute “the inquiry is initiated”.
(9) Clause 15, page 13 (line 15), omit “The Minister must not direct the Inspector to”, substitute “The Inspector must not”.
(10) Clause 15, page 13 (line 34), omit “the direction is made”, substitute “the inquiry is initiated”.
(11) Clause 16, page 14 (line 4), omit “The Minister must not direct the Inspector to”, substitute “The Inspector must not”.
(12) Clause 16, page 14 (line 29), omit “the direction is made”, substitute “the inquiry is initiated”.
(13) Clause 17, page 15 (line 2), omit “The Minister must not direct the Inspector to”, substitute “The Inspector must not”.
(14) Clause 17, page 15 (line 24), omit “the direction is made”, substitute “the inquiry is initiated”.
(15) Clause 18, page 15 (line 28), omit “The Minister must not direct the Inspector to”, substitute “The Inspector must not”.
(16) Clause 18, page 16 (line 30), omit “the direction is made”, substitute “the inquiry is initiated”.
(17) Clause 22, page 18 (after line 10), after subclause (1), insert:

1A The Inspector must not decide to inquire into a surface transport aspect of a transport security matter unless the Transport Minister of the State or Territory in which that aspect of the matter occurs has agreed to the scope of the inquiry into that aspect of the matter.

(18) Clause 23, page 18 (line 25), omit “The Minister must not direct the Inspector to”, substitute “The Inspector must not”.

(19) Clause 23, page 19 (lines 1 and 2), omit “direction is given”, substitute “inquiry is initiated”.
(20) Clause 23, page 19 (line 3), after “Minister”, insert “or the Inspector”.
(21) Clause 23, page 19 (line 8), after “Minister”, insert “or the Inspector”.
(22) Clause 23, page 19 (line 12), omit “The Minister may direct the Inspector to”, substitute “The Inspector may”.
(23) Clause 23, page 19 (line 15), omit “the Minister must not direct the Inspector to”, substitute “the Inspector must not”.
(24) Clause 23, page 19 (lines 22 and 23), omit “direction is given”, substitute “inquiry is initiated”.
(25) Clause 23, page 19 (line 24), after “Minister”, insert “or the Inspector”.
(28) Clause 32, page 24 (line 6), at the end of paragraph (a), add “or in accordance with section 11A”.
(29) Clause 32, page 24 (line 8), at the end of paragraph (b), add “or in accordance with section 11A”.
(30) Clause 35, page 27 (line 19), at the end of paragraph (1)(b), add “or in accordance with section 11A”.
(31) Clause 35, page 28 (line 9), after “11”, insert “or in accordance with section 11A”.
(32) Clause 35, page 28 (line 15), after “11”, insert “or in accordance with section 11A”.
(33) Clause 35, page 28 (line 34), at the end of subclause (8), add “or in accordance with section 11A”.
(34) Clause 36, page 29 (line 8), after paragraph (1)(b), add “or in accordance with section 11A”.
(35) Clause 36, page 29 (line 22), after “11”, insert “or in accordance with section 11A”.
(36) Clause 36, page 29 (line 28), after “11”, insert “or in accordance with section 11A”.
(37) Clause 36, page 30 (line 23), at the end of subclause (8), add “or in accordance with section 11A”.

CHAMBER
(38) Clause 37, page 30 (line 31), after “11”, insert “or in accordance with section 11A”.
(39) Clause 37, page 32 (line 4), after “11”, insert “or in accordance with section 11A”.
(40) Clause 37, page 32 (line 13), after “11”, insert “or in accordance with section 11A”.
(41) Clause 37, page 33 (line 3), at the end of subclause (9), add “or in accordance with section 11A”.
(42) Clause 48, page 40 (line 14), after “11”, insert “or in accordance with section 11A”.
(43) Clause 49, page 41 (line 9), after “11”, insert “or in accordance with section 11A”.
(44) Clause 49, page 41 (line 30), at the end of subclause (3), add “or in accordance with section 11A”.
(45) Clause 51, page 44 (line 5) after “11”, insert “or in accordance with section 11A”.
(46) Clause 51, page 44 (line 11) omit “The Minister”, substitute “If the inquiry has been conducted in accordance with a direction of the Minister under section 11, the Minister”.
(47) Clause 52, page 44 (line 21), after “Minister”, insert “or the Inspector”.
(48) Clause 52, page 44 (line 23), after “Minister”, insert “or the Inspector”.
(49) Clause 52, page 44 (line 26), after “Minister”, insert “or the Inspector”.
(50) Clause 52, page 45 (line 3), after “Minister”, insert “or the Inspector”.
(51) Clause 52, page 45 (line 8), after “Minister”, insert “or the Inspector”.
(52) Clause 52, page 45 (line 18), after “Minister”, insert “or the Inspector”.
(53) Clause 52, page 45 (line 24), after “Minister”, insert “or the Inspector”.
(54) Clause 52, page 46 (line 2), after “Minister”, insert “or the Inspector”.
(55) Clause 55, page 47 (line 20), after “Minister”, insert “or the Inspector”.
(56) Clause 59, page 51 (line 5), after “inquiry”, insert “conducted under section 11A or”.
(57) Clause 59, page 51 (line 5), after “inquiry”, insert “conducted under section 11A or”.
(58) Clause 67, page 58 (line 2), at the end of subclause (3), add “or conducted under section 11A”.

The first principle that we would seek to be enshrined in this legislation is a degree of independence vested in the Inspector of Transport Security. As I indicated in my contribution to the second reading debate, the framework for independent inquiry and recommendations in relation to transport security matters and offshore security matters is subject to authorisation by the minister. I understand that Minister Vaile has made some statements about this bill, but, frankly, he has not adequately dealt with the justification for the minister being in a position to limit the ability of the Inspector of Transport Security to conduct an inquiry. If we are passing legislation to empower the inspector, then the inspector, having been appointed, ought to have enough latitude to inquire into matters as he or she sees fit.

In our view the independence of the inspector would be dependent on the absence of such a limitation. Without these amendments we could, of course, see the Inspector of Transport Security, in dispute with the minister, wishing to inquire into significant matters affecting the security of Australian travellers while, for political reasons, the minister might wish to constrain the inspector. The opposition think that is bad principle. We think that, upon reflection, the government ought to change their view and empower the inspector—if they have any confidence in the position that they are creating—to conduct an inquiry into matters without the limitation that the bill currently contains.
So we will be persisting with these amendments, which, in effect, give the inspector the power to investigate on his or her own motion matters relating to the federal jurisdiction. We do think that, in relation to investigating matters in other jurisdictions, there ought to be an amount of consultation about those inspections, given that, of course, the issue of constitutional power may arise and the Commonwealth cannot exceed its constitutional capacity in this regard. We are unaware what issues the inspector might seek to investigate which might be within the realm of state power and we would not want to constrain the inspector from investigating those matters, subject to agreement by the state jurisdiction to such an inspection taking place. In a sense, that is the impact of the group of amendments which I have moved. I commend them to the Senate.

Senator IAN CAMPBELL (Western Australia—Minister for the Environment and Heritage) (1.44 pm)—The opposition have moved a series of amendments which would affect the bill and the government will be opposing them; however, I do want to respond briefly. We believe it is very much the minister’s responsibility—he is, of course, responsible to the parliament for his decisions—to initiate inquiries into major transport security issues, or even a series of minor incidents that may alert the minister to the possibility of a weakness in the system that it may be of public benefit to inquire into, or offshore security matters that may have implications for Australian transport and facilities security.

Apart from the fact that the minister is required under this bill to initiate the investigation by the inspector, the inspector is otherwise entirely independent as to how the investigation is conducted and as to the content of the report, which may of course be tabled in the parliament. The only reason it would not be tabled in the parliament is if the public interest test suggested that it was not in the public interest to have it tabled. That would seem, on the surface of it, to be a good out for a government that did not want to table it, but in many of these instances it would be very much in the public interest to have it tabled. In inquiries into either major domestic or major international transport security issues, I am sure that even the opposition would understand that there may well be public interest involved in not tabling some reports. The government is satisfied that ministerial initiation of these inquiries by the inspector is the appropriate way to go. As I said, the minister is responsible for bringing those decisions back to the parliament.

Senator O’BRIEN (Tasmania) (1.46 pm)—The opposition understand why the government might seek to maintain political control over these matters. We have seen how the government chooses to approve and not approve inquiries which are proposed to be initiated through this chamber. Clearly, it makes decisions based on what it sees as its political imperatives. It may be that it sees that as justified in this case but, frankly, we are dealing with an office appointed under the law of the parliament and with the responsibility to investigate flaws in our national transport system.

I have yet to hear anything which would indicate in specific terms the matters the inspector ought to be constrained from investigating. I have heard no examples of the sorts of things that would be inappropriate for the inspector to investigate. It may be, and we would concede, that any final report tabled in the parliament might have to have references to sensitive matters removed, although we believe there should be consultation between the government and the opposition about those sensitive matters in the way that I have outlined. We will deal with that further in relation to a confidential consultation process with the Leader of the Opposition in the
House of Representatives, for example, about these important security issues, with a clear commitment to confidentiality.

We do not understand why the minister should limit the inquiry power of the inspector. We do not understand what sorts of matters would be inappropriate for the Inspector of Transport Security to investigate and what its concerns really are about the provision that we propose. On the face of it, the only understanding that we can have of the government’s opposition to our amendments is that it wants to retain political power to prevent the inspector from inquiring into matters which might be politically embarrassing to the government. If those are the grounds then we would understand why that is what the government is putting forward. I do not think the Australian people will support that view, but at least we will understand it. But if the government has some other concern then we ask the government to place it on the record so that we and the Australian people can understand it.

Senator IAN CAMPBELL (Western Australia—Minister for the Environment and Heritage) (1.49 pm)—I will address the two points. Firstly, in relation to consultation with the Leader of the Opposition, the government has always taken the view that the Leader of the Opposition should be briefed on issues of national security, and that position will continue under this bill. On a further point, in relation to reports of the inspector, the bill already provides that the minister may provide the final report to any person, including the Leader of the Opposition. This judgement will be made on a case-by-case basis, taking into account the public interest. Once again, I make the point that this government has always taken the view that the Leader of the Opposition should be briefed on issues of national security. We know that is done on a confidential basis and that, with only one famous exception, that has always been abided by.

I should also add that, in relation to the issue of the initiation of investigations by the inspector, the answer to the question was in my first intervention in this debate. The minister will be responsible for his decisions. Under the Westminster system—which we are proud and lucky to live under in this country—he is responsible to the parliament for his decisions. He or she will front up here at question time and be accountable to the parliament. If there is a matter that any member or senator thinks should be investigated and is not being investigated, the minister is responsible. You cannot be more accountable than that.

If Senator O’Brien decides next March that the minister is not initiating an investigation into a security matter, then Senator O’Brien can ask me as the minister representing or he can get one of his comrades in the lower house to ask the minister himself. That is how this system works. It is ultimately accountable; it is not for the political benefit of the government. It is a system that is very accountable and it makes the minister responsible for the decision to task the inspector with an action under this legislation.

Senator O’BRIEN (Tasmania) (1.51 pm)—I understand, then, that the government’s position is to seek to maintain political control over these decisions if it is not prepared to indicate what sorts of inquiries would be inappropriate for the inspector to conduct. We understand that position. In relation to our amendment proposing new clause 64A, I heard the minister suggest that the government is disposed to brief the opposition on security matters. I fail to understand why the government is then not prepared to commit in the legislation to giving a copy of
each final report of the Inspector of Transport Security to the Leader of the Opposition. The amendment states:

... the Leader of the Opposition must not disclose any part of the report or information in a report that is not tabled in Parliament or that is not disclosed in a statement tabled in Parliament in accordance with paragraph 64(1)(c).

That seems to indicate that the government reserves the right to withhold from the Leader of the Opposition matters contained in such a report. Given the minister’s earlier statement, can the minister explain why the government will not be supporting at least that amendment?

Senator IAN CAMPBELL (Western Australia—Minister for the Environment and Heritage) (1.53 pm)—Because, as I have already explained, the status quo, the position as it stands now, allows the Leader of the Opposition to receive a final report. This government has always taken the view that the Leader of the Opposition should be briefed on issues of national security, and that position will continue with this bill. It does not need to be written into the law because it is the situation as it stands. This is what the government does and this is what previous governments have done. It is part of the protocol that exists. As I have said, it has only been breached, in any significant way that I can recall, by one Leader of the Opposition—and in quite spectacular fashion—a couple of years ago.

Question negatived.

The TEMPORARY CHAIRMAN (Senator Forshaw)—Senator O’Brien, please proceed to your next amendment.

Senator O’BRIEN (Tasmania) (1.54 pm)—I note the government do not support enshrining principles in legislation but are content to rely on custom and practice, which may change between governments—who knows. I move opposition amendment (27) on sheet 5139:

(27) Clause 25, page 21 (line 9), omit subclause (3), substitute:

(3) The Inspector must be appointed on a full-time basis.

It is a very simple amendment—that is, that the Inspector of Transport Security must be appointed on a full-time basis. The opposition do not believe this is or should be a part-time role. The opposition do not believe that this role should be tailored to the availability of any particular candidate for the office if they are not available on a full-time basis.

We think this is an important position and have done since the government announced that they would appoint someone, but then the government appointed someone who effectively works a day a week. We think it is important that the legislation is passed so that the person appointed to the position would actually have the authority of the parliament to conduct the inspector’s role. We are not satisfied with a sometimes active, sometimes passive, Inspector of Transport Security.

If we are to accept the government’s cautions about the nature of the terrorist threat to Australia and if we have regard to occurrences in other parts of the world where transport modes have been substantial targets for terrorism, what is the justification for this position not to be filled on a full-time basis? We have not heard such a justification from the government. If it is said that someone is to be appointed to a position which is less than full time because that is their wish, that in our opinion is not good enough. If the issue is that the government does not believe that the public purse should be stretched to pay for this position on a full-time basis, we think that is not good enough. There is no doubt that there is enough work in our transport sector to occupy an Inspector of Trans-
port Security on a full-time basis. Therefore, we do not believe that it should be open to appoint a person to this position on anything less. That is the basis of this amendment. If the government is fair dinkum with this legislation, we would expect it to support the amendment.

Senator IAN CAMPBELL (Western Australia—Minister for the Environment and Heritage) (1.57 pm)—The inspector is working very effectively on a part-time basis now. If the workload demands that he or a future inspector—who may in fact be a she—needs to work on a full-time basis, the legislation provides for that as well. Labor is saying, ‘Make sure you have a full-time person on full pay,’ when you actually do not need that. We are saying, ‘Let’s be flexible.’ Legislation as it is coined is appropriate.

Senator O’BRIEN (Tasmania) (1.58 pm)—The opposition do not accept that this position functions properly on a part-time basis. We have been critical of the fact that, in its current guise, the practice has been for the occupant of the position to be effectively conducting a public relations exercise and not inquiring into security and dealing with the problems of our security system. We think that is likely to continue with a part-time officer. We do not think that is good enough. We will be pursuing this matter and I am sure that our shadow spokesman for homeland security will be making statements about the lack of commitment this government has to the full-time filling of this position. The government is not fair dinkum in relation to the passage of this legislation. This is more spin by this government on the issue of security where it is not prepared to face up to the responsibility of appointing somebody on a full-time basis and making that a requirement in the legislation.

Question negatived.

Progress reported.

QUESTIONS WITHOUT NOTICE
Private Jacob (Jake) Kovco

Senator MARK BISHOP (2.00 pm)—My question is to Senator Ian Campbell, in his capacity as the Minister representing the Minister for Defence. Can the minister confirm that the Minister for Defence received the final report of the investigation into the death of Private Jake Kovco late last month? Hasn’t the report into Private Kovco’s death already been leaked to the media, even before his family was consulted and given a final copy of the report by Defence? What action has been taken to source the leaking of that report to the media? Was the Defence spokesperson reported in the media today correct in saying that no action would be taken to investigate how the leak occurred? Don’t the Kovco family, who are still dealing with the tragic death of their son, deserve to know the circumstances of how the report was leaked to the media and who leaked it?

Senator IAN CAMPBELL—I think the fact that the details of this inquiry are being spread out across the media must be absolutely the worst thing that could possibly happen to the Kovco family and his loved ones. I do not have information as to investigations into the source of the leak, but I know very well that the Minister for Defence would share my deep concern about the way the story is being treated and the fact that this information is being leaked out in a way that must be absolutely horrifying for the family and must be adding to the enormous pain that that family is going through.

Senator MARK BISHOP—Mr President, I ask a supplementary question. Can the minister clarify whose responsibility it is to publicly release the findings of the board of inquiry into Private Kovco’s death? Was Air Chief Marshal Houston correct when he told Senate estimates that the Minister for Defence was responsible, or was the minister...
correct when he subsequently laid responsibility with the Australian Defence Force? Will the government finally accept full responsibility not only for the public release of this report but also for the incompetence with which this tragedy has been dealt thus far?

**Senator IAN CAMPBELL**—I have a strong belief that the Minister for Defence has tried very hard to ensure that this incredibly sensitive matter has been dealt with appropriately. The leaking of the information, as I have said, is very regrettable for the reasons that I have already stated. I was handed a brief while Senator Bishop was asking his supplementary question. It makes the point that the story written by Mr Box that appeared in Monday’s paper could in its entirety have been written based on a close reading of the bureau of inquiry’s transcripts. The government’s plan is to release the report very soon, after the government has briefed the family.

**Broadband**

**Senator HUMPHRIES (2.03 pm)**—My question is to the Minister for Communications, Information Technology and the Arts, Senator Coonan. Will the minister inform the Senate as to how the government is expanding access to broadband? Is the minister aware of any alternative policies?

**Senator COONAN**—Thank you to Senator Humphries both for the question and for his interest in telecommunications services, particularly for people of the ACT. Despite some ill-founded criticisms that you hear from the Australian Labor Party, the news on broadband in Australia is positive. It is growing exponentially. Today Australia has the second fastest take-up of broadband in the OECD. There are now nearly four million premises—that is, homes, businesses, schools and libraries—connected to high-speed broadband.

More than 80 per cent of Australian households and small businesses have access to fast broadband speeds of up to eight megabits a second. Telstra’s new Next G mobile network will offer speeds of up to 14.4 megabits per second by next year. In addition, HFC cable networks, which pass around 2.7 million premises in major capital cities, can provide very fast broadband speeds of up to 17 megabits a second. More than a dozen ADSL2+ providers are supplying speeds of up to 24 megabits to their customers. Recognising that there are some Australians who cannot access multimegabit broadband, this government has committed more than $1 billion to ensure equitable access to broadband regardless of where people live.

I have been asked about alternative policies. Indeed, I am aware of one from the Labor Party. Senator Kemp will be interested in this: it is to tax broadband infrastructure. The ACT Stanhope Labor government has announced a new utilities land use permit tax which slaps a tax on each kilometre of new broadband cable laid in the Australian Capital Territory. The broadband proposition in the ACT is simple: the more broadband you roll out in the ACT the more you get taxed. Under this plan, telco companies will be charged rent for lands used for all telecommunications infrastructure. The ACT will extract $8 million in utilities tax from its hapless citizens next year and more than $16 million the year after. These costs will no doubt be passed on to the consumer, resulting in a tax on ordinary Australians using broadband in the territory.

I cannot help but wonder: where is the outcry from the federal ALP on this move? How can Mr Beazley say that broadband is his top infrastructure priority yet fail to demand that the Stanhope government reverse its broadband tax? For that matter, why has Senator Lundy not made the case to her ACT
comrades, demanding the exclusion of telecommunications companies, if not the abolition altogether of this regressive tax? This move by Labor to tax broadband infrastructure and, ultimately, broadband use, reveals the depths of Labor’s hypocrisy on telecommunications and its total lack of commitment to making critical infrastructure available to Australians. It really is time that federal Labor stopped wasting its energy on attacking the coalition on its positive broadband policies and turned its attention to its own backyard.

DISTINGUISHED VISITORS

The PRESIDENT—Order! I draw the attention of honourable senators to the presence in the President’s gallery of a parliamentary delegation from the United Kingdom, led by Mr Barry Sheerman MP, Chairman of the House of Commons Education and Skills Committee. On behalf of all senators, I welcome you to Australia and, in particular, to the Senate.

Honourable senators—Hear, hear!

QUESTIONS WITHOUT NOTICE

Oil for Food Program

Senator FAULKNER (2.08 pm)—My question is directed to Senator Minchin, representing the Prime Minister. Is the minister aware that, between 1998 and 2004, there were a number of reports of unassessed intelligence highlighting that Iraq was circumventing United Nations sanctions through the use of inflated contracts under the oil for food program? Did these intelligence reports identify the use of Jordanian trucking companies as one means of bypassing the UN sanctions regime? Minister, in the light of the Cole report, will the government now seek an explanation from ONA as to why it disregarded these intelligence reports and why they were not deemed important enough to alert the Department of Foreign Affairs and Trade to potential consequences?

Senator MINCHIN—That question, if I interpreted it correctly, goes to the role of the ONA in this matter. I have not had the luxury of reading all of the Cole report—though I have some of the volumes here and I look forward to reading it all. I am not sure what reference Cole makes or does not make—

Senator Chris Evans interjecting—

Senator MINCHIN—Yes, I have lots of reports to read at the moment. As I said, I am not sure what reference Cole makes or does not make to the role of the ONA, but I am happy to come back to Senator Faulkner with information on the question of whether or not there is any reference in the Cole report to the ONA and its role in the whole matter. I am happy to do that.

In relation to the matter as a whole, I think, as Senator Faulkner would understand, the Cole inquiry has been thoroughly exhaustive. This has been a year-long, expensive, diligent and very thorough inquiry—the most thorough inquiry conducted anywhere in the world in response to the UN’s Volcker inquiry into the finding that some 2,200 companies in some 66 countries may have been involved in breaches of the oil for food program. We are the only country in the world to have instigated a fully independent and transparent inquiry into the role of the Australian company named in the Volcker report.

Senator Robert Ray interjecting—

Senator Ian Campbell interjecting—

The PRESIDENT—Order! Senator Ray and Senator Ian Campbell, come to order.

Senator Robert Ray interjecting—

Senator Ian Campbell—Say that outside, Senator Ray, you gutless wonder!

The PRESIDENT—Senator Ian Campbell, withdraw that remark.

Senator Ian Campbell—I withdraw.
Senator MINCHIN—As I was attempting to say, Mr President, the Volcker inquiry revealed potential corruption on the part of 2,200 companies in some 66 countries around the world while Saddam Hussein was in power and in relation to the UN’s oil for food program. It was a massive indictment of that program.

In relation to the Australian companies named—most particularly, AWB—we were the only country in the world to set up a fully fledged commission of inquiry, which examined in great detail what went on and made recommendations, and we will act upon those recommendations. There is argument from the Labor Party about the terms of reference. I think those allegations are scotched by Commissioner Cole’s own statements with respect to the terms of reference—that is, that we made it clear that if he sought a widening of the terms of reference, they would be widened. We amended the terms of reference on five separate occasions in accordance with Mr Cole’s requests. If he had requested any further terms of reference changes, we would have granted them.

Commissioner Cole has vindicated the role of the Prime Minister, the Deputy Prime Minister and the Minister for Foreign Affairs in this matter. He has cleared them of any implications, any knowledge of these matters. He has indicted AWB for its deliberate misleading of everybody involved—the UN and the government—in relation to these matters. We are moving quickly to establish a task force, with the appropriate legislation that we will need, in the next two weeks. I presume the opposition will fully support that legislation to ensure that charges can be brought where appropriate. As to the particular role of the ONA, as I said, I am happy to get back to Senator Faulkner as to whether there is any reference to that in the report or any information I can give him.

Senator FAULKNER—Mr President, I ask a supplementary question. I note that the minister spent most of his answer not answering the questions that I asked. Nevertheless, I do acknowledge that the minister has given a commitment that he will come back and answer the substantive question that I asked. I would ask the minister if he could do that as quickly as possible—and certainly, I would hope, before the close of business today.

As a supplementary question, I ask that the minister also seek advice—if he is unable to answer in question time today—as to whether, given that the Department of the Prime Minister and Cabinet and Department of Foreign Affairs and Trade are key customers for ONA reporting, the government will now assess whether ONA alerted them in a full and timely manner about concerns relating to the oil for food program.

Senator MINCHIN—Obviously I do not have information to hand on that matter. I will add it to the request that I have previously accepted.

Drought

Senator FERGUSON (2.14 pm)—My question is to the Minister for the Arts and Sport, Senator Kemp, representing the Minister for Families, Community Services and Indigenous Affairs. Will the minister update the Senate on government programs to assist communities experiencing the social consequences of drought?

Senator KEMP—I thank Senator Ferguson for raising this very important question, which is of great interest to many Australians in regional and rural Australia. There is no doubt that the current prolonged and severe drought is having a significant effect on communities. At times like this, local communities need to be supported and opportunities need to be identified to develop new
skills, to support children and their families and to foster proactive communities.

In response to this need, the coalition government has announced a special $10 million round of our successful Local Answers grants program, entitled Strengthening Drought Affected Communities. This program specifically targets areas declared to be in exceptional circumstances or areas that can demonstrate hardship as a result of the drought. Applications for the Strengthening Drought Affected Communities initiative opened on Friday, 24 November, and will close on 20 December 2006. Advertisements seeking applications to the program appeared in last weekend’s press. The initiative is designed to strengthen communities by funding local, small-scale, time-limited projects to help communities to build skills and social supports. Organisations can apply for funding of between $3,000 and $300,000 for each project for a period of up to two years.

The Australian government is committed to listening to local communities and using their knowledge and experience to develop effective, practical solutions specific to local communities and their needs in time of drought. The funding under the Local Answers program is in addition to the $1.2 billion of Australian government funds already spent on drought assistance measures to date. The government has announced an additional $1.1 billion in drought assistance measures in the last two months alone. This brings the Australian government’s total package of measures to help communities and individuals through this very difficult time to more than $2.3 billion.

During October and November 2006, the government announced an additional $910 million to support farmers and their families and an additional $200 million for small businesses. This represents an average of $7.3 million in assistance each week. The government has also reintroduced exceptional circumstances assistance to all eligible farmers in 58 declared areas across Australia until 2008, irrespective of what they produce. The government recognises that the prolonged drought is affecting not only farmers but also the small businesses that service them. More than 5,000 small business operators—from contract harvesters to feed producers and fertiliser suppliers—may now be eligible for income and business support. Other measures that this government has recently introduced to support rural communities include grants of $5,000 to farmers in EC-declared areas to obtain professional, business and planning advice; an increase in the Farm Management Deposits scheme cap; and an increase in the non-primary production income test threshold for Farm Management Deposits.

The Australian government will continue to support farmers throughout the drought until they have had the opportunity for a sustained recovery. We want to maintain the long-term viability of our farming families and communities. The Australian government will continue to review the assistance we provide to drought-affected farmers to ensure that it meets their needs and provides the support necessary to manage these prolonged dry conditions. (Time expired)

Oil for Food Program

Senator SHERRY (2.18 pm)—My question is to Senator Coonan, representing the Minister for Revenue and Assistant Treasurer. I refer the minister to the $300 million in kickbacks that AWB paid to the former Iraqi regime. Can the minister confirm that AWB were able to claim so-called ‘facilitation payments’ as a tax deduction? Doesn’t that mean that Australian taxpayers subsidised AWB’s bribes to Saddam Hussein to an amount of $90 million? Hasn’t the government’s failure to align the definition of ‘fa-
ciliation payments’ in the tax act and the Criminal Code allowed this to happen and placed legal doubt on the ATO’s power to reassess AWB for $90 million in unpaid tax? Given that the Commissioner of Taxation has now called for the law to be clarified, will the government reverse its position and support changes to the tax act to ensure that AWB-type payments are not tax deductible in the future?

Senator COONAN—I thank Senator Sherry for the question. The government is of the view that the income tax law in this particular area is clear. I appreciate that Labor argues that tax law should mirror the Criminal Code and specify that facilitation payments need to be minor in both nature and value; however, we think it is clear. Facilitation payments are allowed only if they do not breach the law of the foreign country and are designed solely to speed up or secure a routine, minor government action.

The amount paid as a facilitation payment is a factor in determining if a payment is minor in nature. The Commissioner of Taxation’s comments at Senate estimates acknowledged that there may be scope for someone to argue, otherwise, that a large payment could be considered minor. However, the tax office’s view, on my advice, is and has always been that a payment of a substantial amount would not fall within the definition. The tax office is, on my advice, working on guidelines regarding facilitation payments, with a view to collecting information as part of next year’s returns. Investigations are a matter for the tax office, and it certainly would not be appropriate—certainly not in question time—for the government to comment. The ATO’s new guidelines for auditors will help them to distinguish between facilitation payments and illegal bribes. The tax office will also be checking businesses with particular international profiles to ascertain if they are maintaining appropriate systems to detect international facilitation payments so that deductions for expenses and input tax credits are properly claimed. The tax office is also proposing to include a new label on the 2007 company income tax return that will require reporting of facilitation payments.

In summary: we think that there are clear and limited circumstances where facilitation payments may be tax deductible. To repeat, for the benefit of anyone in doubt: facilitation payments are allowed only if they do not breach the law of the foreign country and are designed solely to speed up or secure a routine, minor government action.

Senator SHERRY—Mr President, I ask a supplementary question. Given the minister’s confidence, will she guarantee that the $90 million in bribes and back taxes will be paid to the Australian Taxation Office? Why didn’t the government support Labor amendments to the tax act on 27 February this year which would have removed any doubt that a facilitation payment is in fact a bribe? If the penalties in the Tax Administration Act were now able to be applied properly, wouldn’t AWB now be liable for a tax debt of $250 million? Hasn’t this $250 million been put in jeopardy by the government’s failure to take action to clarify and clear up the anomalies and doubts about this issue and to stop AWB’s bribes to Saddam Hussein being able to be claimed as a tax deduction?

Senator COONAN—I am touched that Senator Sherry feels that I can give a guarantee as to what investigations the tax office is going to be carrying out. Secondly, Senator Sherry is of the view that it is entirely appropriate for a taxpayer to be slugged retrospectively—and I make no comment whatsoever—

Opposition senators interjecting—

Senate
The PRESIDENT—Order! Senator Ray, Senator Evans and Senator Sherry, shouting across the chamber is disorderly.

Senator COONAN—I was in the course of saying—mid-sentence—that I make no comment as to the appropriateness or otherwise of what may happen in respect of investigations by the tax office of AWB payments. It clearly may raise different considerations, but investigations are a matter for the tax commission. It would certainly not be appropriate for me to comment on behalf of the government on this matter. As I have said very clearly, the ATO has said that it regards the matter as clear, and it is implementing guidelines—(Time expired)

Climate Change

Senator RONALDSON (2.24 pm)—My question is to the Minister for Fisheries, Forestry and Conservation, Senator Eric Abetz, and it relates to the current bushfire season. Minister, what threats do bushfires pose to both atmospheric carbon dioxide levels and to water supplies? What actions can be taken to mitigate these threats?

Senator ABETZ—I thank Senator Ronaldson for his question and note his interest, both in his capacity as a senator for Victoria and as a member of the Senate committee that looked into these matters. Bushfires are a fact of life in Australia and they pose a significant risk to life, to property and to livelihoods. But, as Senator Ronaldson has alluded to, they also pose a significant threat to atmospheric carbon dioxide levels and to water supplies. Let us start with carbon dioxide emissions. Guess what the biggest single CO2 emission event in recent history in Australia was.

Senator Milne interjecting—

Senator ABETZ—Silly Senator Milne says ‘regeneration burns’. In fact, it was the massive 2002-03 bushfires of north-east Victoria and south-east New South Wales, which burned some three million hectares of forest, releasing 130 million tonnes of carbon dioxide into the atmosphere. That is around one-quarter of Australia’s annual carbon dioxide emissions emitted in just a few weeks. Funny, you never hear the Greens over there talking about that.

What about the impact of bushfires on water supplies? According to the Institute of Foresters, it is very significant. Those very same 2003 bushfires, which decimated the alpine catchments of the Murray River, mean reduced inflow to that river, as a result of regrowth forests, of 430 billion litres of water per year for the next 50 years. Let us put that into context. Campaigning for the disastrous Greens result at Saturday’s Victorian election, the Wilderness Society claimed that sustainable harvesting in the Thomson catchment would reduce inflow by 20 billion litres per year, something for which I note I have seen no evidence.

What I do know for sure, though, is that 40 per cent of Melbourne’s very same catchments are 1939 Black Friday bushfire regrowth, which continues to have a far greater effect on inflows to water storages than the minuscule amount of catchment harvesting. So how can we mitigate these threats? By actively and sustainably managing our forests, not by simply locking them up. By harvesting a mere 60,000 hectares, on average, of forest per year in Australia, not only do we supply a vital human resource; we also mitigate the burning of millions of hectares of forests by creating firebreaks, by building access roads and by reducing fuel loads. We create instead much smaller and localised impacts on water supplies and we reduce the risk of massive carbon dioxide emissions caused by widespread bushfires.

The simple fact is that forestry in this country is sustainable. It is good for the environment and it reduces bushfire risk. It is
about time the Greens acknowledged this fact. As we approach this fire season, can I invite the Greens for once to dispense with their kooky, nut-bag policies, to adopt commonsense instead and to support sustainable forestry and thereby reduce the risk of catastrophic fires around the country.

Environment: Queensland Dams

Senator BARTLETT (2.29 pm)—My question is to the Minister for the Environment and Heritage, Senator Ian Campbell. I refer to his upcoming decision regarding the processes to be used to assess the environmental impacts of the Traveston and Wyaralong dams in south-east Queensland. The minister has indicated in correspondence to me and to others that ‘the environmental assessment must be carried out in accordance with procedures outlined in the bilateral agreement with the Queensland government’. I ask the minister: is it not the case that section 8 of that agreement states that it does not create contractual or other legal obligations between the governments, and section 9 does not preclude an assessment being done other than one accredited by the Queensland government? Given the importance of these projects, the major consequences, the enormous public interest and the high level of public mistrust about the accuracy and completeness of the information and processes followed to date by the Queensland government, will the minister ensure a full public inquiry is held into the impacts of these projects on matters of national environmental significance, as he is empowered to do under the EPBC Act?

Senator IAN CAMPBELL—The two major dam proposals that the Queensland government has initiated both trigger the federal Environment Protection and Biodiversity Conservation Act. I am happy that the Queensland government has referred both of those proposals. They are both, in fact, required to be assessed under the EPBC Act because there are federal triggers involved and the assessment processes will be the subject of that law and the subject of the bilateral agreement that we have in place with Queensland.

It is a very important aspect of the federal environmental law that we have, after years of proposals for development around the country having to, quite often, go through three, four or five approval processes, developed a law and arrangements with most of the states. I urge the other states to come on board with bilateral arrangements, particularly under, hopefully, the reformed environmental law that will go through this place in the next 10 days, because we can get the sort of situation that we have in Queensland.

As Senator Bartlett has pointed out, the law does allow a full public inquiry for the two dam proposals. I make it very clear that the proposal to build these dams is a Queensland government decision. They have primary responsibility for ensuring that the water needs, particularly of south-east Queensland, are met. The Commonwealth government has no role in deciding the water policies of Queensland except through the National Water Initiative in a cooperative way. The Queensland government have made a decision to build these dams. They are both major proposals. They can have environmentally significant impacts and they will be assessed thoroughly under the appropriate laws.

As to the need for a full public inquiry, we are not at that decision making point yet. It is very rare to use the full public inquiry process. I am very aware, because of the substantial interest, undertakings and submissions made to me by my colleagues, such as the Hon. Warren Truss and the Hon. Alex Somlyay in the other place and by Queensland senators who—as you have, Senator Bart-
Senators Bartlett—have come to me and lobbied me on the same matter, that this is a matter of very deep concern. I am very aware of the environmental significance of the projects. I am very aware of the community concern expressed by you and coalition colleagues on this side of the chamber and by colleagues in the other place. Whether or not a public inquiry is the best process, I am yet to be convinced.

Let it be said that, under the alternative processes, there will be a full public disclosure period and opportunities for any member of the public, community group or scientist to be engaged. There is huge interest in these projects from the scientific community right around the world because of the potential impact on the lungfish, as you would know, Senator Bartlett. That opportunity exists and a process that allows full public engagement without the formal public inquiry process is available. I am yet to determine whether there will be a formal public inquiry process. I am taking a very close interest in it and I am very happy to keep liaising with you on the process and the decision-making process as we move down that track.

Senator Bartlett—Mr President, I ask a supplementary question. I thank the minister for his answer. Could I ask him to confirm that it is not compulsory for the federal government to follow that bilateral agreement process if the minister believes that a full public inquiry is necessary? Acknowledging, as he has said, that this is a Queensland government decision and a Queensland government owned and constructed process, how can people have confidence in an assessment process accredited and run by a state government that has said that it is intending to build these dams no matter what? I also ask the minister whether he was aware that, when the Queensland government submitted the Cedar Grove Weir on the Logan River—the same river system as the proposed Wyaralong dam—earlier this year, they stated that that the Wyaralong dam may only be considered in the year 2060, and they did not mention the other proposed Tilleys Bridge dam at the time and said there were no other relevant and interdependent developments? Given this sort of misleading material provided by the Queensland government in past applications, how can we have confidence in any role they have in any future developments?

Senator Ian Campbell—I think it is only appropriate that the Commonwealth works on the basis that we treat the proposal coming from the Queensland government on its merits and that we work in partnership with the Queensland government on a process that we have agreed and that the full force of the federal Environment Protection and Biodiversity Conservation Act will not be in any way undermined. The full force of that law will be brought to bear on this project. But I think we have to act on the basis that the Queensland government will bring fairness to this process. I know that it is easy for others to treat that cynically but, as two governments, we have to work on the basis that their government will deal with this process as agreed through the bilateral agreement. I reiterate that it is the Queensland government’s decision to build these dams. There are nationally significant environmental issues, including the lungfish and the Mary River cod, as I understand it. They will get the full protection of the law. (Time expired)

Distinguished Visitors

The President—Order! I draw the attention of honourable senators to the presence in the chamber of two parliamentary delegations. The first is from New Zealand, led by Ms Stephanie Chadwick MP, Chair of the Local Government and Environment Select Committee. The second, in the Presi-
dent’s Gallery, is from the National Assembly of the Republic of Bulgaria led by Mr Svetoslav Spassov MP, Chair of the Children, Youth and Sports Affairs Committee. On behalf of all senators, welcome to our Senate and to Australia.

Honourable senators—Hear, hear!

QUESTIONS WITHOUT NOTICE

Climate Change

Senator HEFFERNAN (2.37 pm)—My question is to the Minister for the Environment and Heritage, Senator Ian Campbell. Will the minister advise the Senate of the vital role clean coal technology will play in the battle against climate change, and is the minister aware of any alternative policies?

Senator IAN CAMPBELL—Thank you to Senator Heffernan for a question about climate change and the importance the coal industry will play in Australia in addressing dangerous climate change. It is tremendous to have our friends from Bulgaria and from New Zealand here. They are two countries that stand shoulder to shoulder with Australia in the fight to maintain the moratorium on the slaughter of whales, so thank you to both of your governments.

In relation to climate change, on which Bulgaria and New Zealand work very hard alongside Australia to address this truly global issue, I send my regards to Minister David Parker, because he made such a sensible contribution to the work to create a post Kyoto protocol, a new Kyoto—something that Mr Parker is very excited about. He is also very excited about the Asia-Pacific partnership and other proposals of the coalition government here. He is very much at odds with his Labor comrades over on this side of the Tasman, but he understands, as I do, that you will not address climate change unless you use all of the technologies available.

Mr Parker also understands, as I do and you do, Senator Heffernan, that you will not address climate change globally unless you address the issue of coal. Coal will form a substantial part of the world’s energy source for the next 40 to 50 years, according to the International Energy Agency. As much as Mr Beazley and the rest of the Labor Party and the Greens would geosequester their heads in the sand, bury their heads in the sand, and pretend that you can solve climate change by signing up to the old Kyoto, the reality is that you need to clean up coal if you are going to address climate change.

Overnight we had a decision by a court in New South Wales to effectively stop the approval of substantial new coalmining in New South Wales. This was encouraged by the Greens and Labor in this place and encouraged by the silence of Mr Beazley. Twenty days after the Labor Party’s Newcastle City Council voted to stop coalmining and the expansion of coalmining; some months after Kelly Hoare, the member for Charlton, wrote me a letter saying that her electorate in the Hunter Valley is home to a rapacious coalmining industry, an industry that she thinks should be brought to end; a few months after Labor senators voted for a Greens motion effectively putting in jeopardy the Queensland Isaac Plains and Sonoma coalmines; and some weeks after Labor and the Greens dominated the Waverley Council in Sydney and voted to do all they could to prevent the Anvil Hill mine—what did we hear from Mr Beazley on coalmining along with any of those people? There was absolute deathly silence.

This week in the Senate, Labor can make up their mind on coal. They can support an anti-coal amendment to the environment protection law, which would bring the Anvil mine provision under federal law. The Greens’ proposal and Anthony Albanese’s proposal to put a greenhouse trigger into the
environment law in this place is an anti-coal amendment. We will see where Mr Beazley stands on coalmining when Labor senators are asked to vote on the Albanese-Bob Brown amendment—the anti-coal amendment—to the federal environment law.

Aged Care

Senator McLUCAS (2.41 pm)—My question is to Senator Santoro, the Minister for Ageing. Can the minister confirm reports that an approved provider of aged care has allowed a person convicted of fraud to be involved in the day-to-day operation of a number of nursing homes? Wasn’t this person jailed for defrauding the Commonwealth in 1999 over nursing home payments to the same nursing homes? To this day, don’t she and her husband continue to own and profit from those nursing homes, and did so even while she was in jail? Separate to any action against her, which is a matter for the DPP, what action will the Department of Health and Ageing be taking against the approved provider in relation to this case? Will the provider have its right to operate nursing homes revoked?

Senator SANTORO—I note that Senator McLucas did not name the provider in this chamber. The reason why I think Senator McLucas did not name the provider is because, as she knows, and as I have advised both her and the Senate as a whole, the matter is under very active police investigation. However, I did expect the question, and I will therefore reject Senator McLucas’s comment, as reported in the press, that the department adopts any lax procedure. The act does not prevent persons who are disqualified individuals from beneficial ownership of an approved provider or from being employed by an approved provider in a role that is not considered a key personnel position. I have said that previously in this place, but I again iterate it for the benefit of senators who may have forgotten it.

Returning very specifically to the question asked by Senator McLucas, the Australian Federal Police executed a search warrant at Peninsula Aged Care Service at Kippa-Ring in Brisbane on Tuesday, 21 November 2006. The execution of the search was part of an ongoing investigation into allegations that the person is involved in or taking on the management or executive decision making of an approved provider, Peninsula Aged Care Service, in contravention of the Aged Care Act 1997.

There is no suggestion that the care provided at Peninsula Aged Care Services or any other services operated by Peninsula Care Pty Ltd is not meeting the standards required under the Aged Care Act. The Department of Health and Ageing has advised that those conducting the search were briefed thoroughly on the need to be sensitive to residents and their families and the need to allow staff to maintain the normal care routines. The investigation did not involve the
taking or examination of any resident’s records or personal details. As Senator McLucas is fully aware, as this matter is the subject of a continuing investigation it would be inappropriate for me to comment any further, and I do not intend to do so.

Senator McLucas—Mr President, I ask a supplementary question. The minister has avoided answering the most significant part of the question, which is: what action will the department be taking against the approved provider in relation to the case? Weren’t the two individuals in this case only exposed through media reports? What action has the minister taken to ensure other nursing homes are not being operated by disqualified individuals? Will the minister now get back to the chamber, as he has twice promised to do, in June and October, on the outcome of the review he ordered into the process for checking on key personnel?

Senator Santoro—I have answered questions in relation to the specifics within Senator McLucas’s questions as comprehensively as possible can. The department will continue to do its job in terms of investigating any allegations that are brought to its attention concerning inappropriate behaviour by key personnel. If Senator McLucas has any information in relation to any other key personnel who are behaving inappropriately, I suggest that she does not even bother giving it to me but that she provides it to the department, and certainly that will be taken care of. In terms of the specific issue as to whether it was brought to the attention of the department by media reports, that is possibly a very legitimate way for the department to learn about it. If there is a whistleblower who informs the media, and the department becomes aware of it, so be it. What happens is that the department diligently investigates, as it has done in this case. I again stress to Senator McLucas that we are on pretty dangerous ground, not because I want to avoid scrutiny, but because it is before the courts, it is before the law. (Time expired)

Climate Change

Senator Milne (2.47 pm)—My question is to the Minister for the Environment and Heritage, Senator Ian Campbell. Does the government agree with leading scientists that we have a window of only 10 to 15 years—that is until approximately 2020—to take steps to avoid crossing a catastrophic climate tipping point beyond which we have little hope of stabilising greenhouse gas emissions below 550 parts per million, a level already associated with significant risk?

Senator Ian Campbell—I have never argued with the consensus of the science. I believe that—

Senator Bob Brown—What is your answer?

The President—Order, Senator!

Senator Ian Campbell—It is good to get a question from Senator Milne, who I think does care about climate change and actually does a bit of research, as opposed to Senator Brown, who spends most of his time asking questions and writing policies to make drugs more freely available for young Australians, making drugs available at venues, and coming up with policies to tax the family home. At least Senator Milne is a Green who cares about the environment.

Senator Bob Brown—I rise on a point of order, Mr President. Mr President, you know that the minister is misrepresenting me. Whatever the minister thinks, the Greens policies diminish the availability of drugs to children but will save the future of children if only he would do something about climate change.

The President—What is your point of order?

Senator Bob Brown—He should answer the question, as you know, Mr President.
The PRESIDENT—Return to the question, Senator Ian Campbell.

Senator Abetz—On a point of order, Mr President: time and time again we in this chamber have to put up with the nonsense of Senator Brown deliberately abusing standing orders, pretending to make a point of order when he is not making a point of order.

Senator Chris Evans—What is your point of order?

The PRESIDENT—What is your point of order?

Senator Abetz—Mr President, the point of order very simply is—and if Senator Evans were to stop interjecting on behalf of his Greens-Labor accord mate, he would learn—that this sort of disruption to question time should not be allowed.

The PRESIDENT—Order! Points of order should be short and there should be no debating. In this case both alleged points of order were rather long and disrupted question time. My job is to ensure that question time is carried out in an orderly manner, and I ask the minister to return to question.

Senator IAN CAMPBELL—Mr President, I apologise to you and the Senate because I know that whenever I mention the Greens’ ‘soft on drugs’ policy and their policy to tax family homes, Senator Brown gets to his feet. It upsets him enormously. He is deeply embarrassed, and so he should be. Senator Milne at least cares about the environment and does a bit of work. We probably disaggree on some of the responses. We probably disagree on some of the policies to address climate change but what we do not disagree on is that it is an incredibly important issue for Australia and for mankind and for the ecosystems of the world. We do not disagree on that; we agree on that.

We agree that about a trillion tonnes of carbon dioxide have been pumped into the atmosphere over the past 150 years and that if mankind do not change what we are doing, about another trillion tonnes will be pumped there in the next 50 years. We know that the world is going to demand about a 100 per cent increase in the energy that it consumes over the next 40-odd years. I suspect Senator Milne and I would believe that it is not a bad thing that you expand the amount of energy that is provided to the world so that the people who are starving and dying of malnutrition in Africa and the 300 million people in China who live below the poverty line can get distributed energy. I think that we agree that if we keep pumping carbon dioxide into the atmosphere at the rate we are doing at the moment, and at the rate, I might say, that it is occurring during the first commitment period of the Kyoto protocol—a 40 per cent increase under the Kyoto protocol—there can be dangerous climate change.

Within a few months, the Intergovernmental Panel on Climate Change will be producing a report on the science as it stands at the moment. That report is likely to show that temperatures across the world have increased by just over 0.6 of one degree in the past 100 years. It will show that the warming is roughly double that rate at the poles, which has implications for the melting of ice that is on top of, for example, the Antarctic continent and therefore has ramifications for sea level rises.

The report will show that sea level rises have occurred and that the oceans are warming. It will be no surprise to Australia, because the government invests over $30 million in climate change science to ensure that Australians are well aware of this. As environment minister, I have ensured that all of the scientific reports and all of the investment that we make in science is made available to the Australian public. So when Professor Will Steffan from the Australian National University was given a grant by the
Australian Greenhouse Office, the first dedicated climate change office established in the world, I released that report and Professor Steffan put into the public domain his assessment of where the science is.

We do not disagree with Senator Milne that climate change is very serious and needs to be addressed. That is why we are investing $2 billion in a range of measures across a portfolio of solutions to address climate change, one of the largest public sector per capita investments anywhere in the world. That is why we are one of the few countries in the world that is on track to meet our Kyoto target.

(Time expired)

Senator MILNE—Mr President, I ask a supplementary question. I thank the minister for acknowledging the science and the critical 10 to 15 years that we have got before we approach this catastrophic tipping point. I ask the minister: has the government estimated how many tonnes of greenhouse gas emissions will be avoided by its pilot carbon capture and storage programs and its nuclear power proposals by 2020 in this critical 10- to 15-year period? What are the best- and worst-case scenario predictions for these two technologies in that period? If the government has not done that estimate, when will it admit that carbon capture and storage and nuclear power will not make any significant contribution to achieving emission reductions in the critical 10- to 15-year period up to 2020 before we reach this critical tipping point?

Senator IAN CAMPBELL—I believe that carbon capture and storage is one of the technologies that you absolutely must have. I was happy to announce a $60 million grant to the Gorgon partners for their proposed development off the Pilbara coast of Western Australia to bury three million tonnes of carbon. As Eileen Clausen from the Pew Center, President Clinton’s chief climate negotiator, said to me last year, ‘Of all of the technologies you need, I agree that you need renewables, I agree you need energy efficiency, I believe the world will need nuclear—

Senator Bob Brown—Mr President, I rise on a point of order.

The PRESIDENT—What is the point of order?

Senator Bob Brown—The point of order is that the question is not being answered. It was about the avoided volumes of greenhouse gases, not about the opinion of other people.

The PRESIDENT—There is no point of order.

Senator IAN CAMPBELL—You need all of those technologies and, in terms of carbon capture and storage, the Greens want to have a climate change policy that does not have nuclear, does not have carbon capture and storage, and today Senator Siewert has said that she does not want North West Shelf gas to be exported to China, which gives you a 50 per cent reduction in greenhouse gas emissions. So the Greens want us to address climate change with two hands tied. (Time expired)

Aviation Security

Senator O’BRIEN (2.56 pm)—My question is to Senator Ian Campbell, representing the Minister for Transport and Regional Services. I refer the minister to the decision by the Civil Aviation Safety Authority on 25 November to suspend the air operator’s certificate of the Lockhart River tragedy airline, Transair, meaning that all its flights are grounded effective yesterday, 27 November, for five days. I also refer the minister to Senator Abetz’s answer on his behalf on 6 November this year with regard to CASA’s scrutiny of Transair, when he said:

The director of aviation safety has assured himself that there is no imminent threat which
would prevent Transair flights continuing at this time.

Will the minister now identify the ‘serious and imminent’ risk to air safety which is noted in the suspension notice? Why were such risks not identified until after 6 November, and can the minister also give an assurance that the Civil Aviation Safety Authority will apply to the Federal Court to ensure that the airline remains grounded?

Senator IAN CAMPBELL—I am sure that Senator Abetz, who was representing the Minister for Transport and Regional Services, provided the Senate with very accurate information from a brief prepared in consultation with CASA at the time. I am sure that between 6 November and 27 November things have probably changed, because I am absolutely certain that Senator Abetz’s information to the Senate at that time would have been accurate.

Transair has ceased operations today as a result of a decision by CASA to suspend their air operator’s certificate with immediate effect. CASA was recently provided with new and credible information relating to the safety of Transair’s operations, and CASA’s attempts to verify this information were resisted by Transair. That is what has happened between 6 November and 27 November, and that is why Senator Abetz was absolutely accurate then and this response, to the best of my advice, will be accurate now.

Pending further investigation, CASA has formed the view that continued operation by Transair would pose a serious and imminent risk to air safety. CASA’s decision to suspend the Transair air operator’s certificate takes immediate effect and remains in effect for five business days. CASA has five business days—that is, until Friday 1 December—to make an application to the Federal Court for an order to continue the suspension to allow for further investigation.

Until the suspension of its air operator’s certificate, Transair operated Big Sky Express services via Sydney to Inverell, Gunnedah, Grafton and Taree. Transair also operated aircraft on behalf of Aerotropics providing services to Far North Queensland. The government is concerned about the impact of the grounding of Transair on regional services in New South Wales and Queensland, and I urge the aviation industry to look at putting in place alternative arrangements. Transair is not contracted by the Australian government to provide air services to remote communities under our Remote Air Service Subsidy Scheme. Aviation safety must, as always, be the primary concern for all.

Senator O’BRIEN—Mr President, I ask a supplementary question. I again ask the minister to give an assurance that CASA will apply to the Federal Court to ensure that this airline remains grounded under the provisions of the act, as it can. Isn’t it the case that the Civil Aviation Safety Authority has repeatedly refused to listen to claims about Transair’s risky operations? Apparently now they have started to. Doesn’t this backflip by CASA demonstrate why Australians are losing confidence in the aviation safety regulator?

Senator IAN CAMPBELL—I do not think that Australians are losing confidence, as much as Senator O’Brien works most of his time trying to undermine confidence. I think that we have a very good civil aviation regulator in place and the people who work there are very dedicated Australian public servants who care deeply about the safety of the people who fly around Australia’s skies. They know, as I do, that regional Australia exists on the back of a sound aviation sector which is properly regulated. They have acted properly in this area. They will make their decision about Federal Court action. They are entirely the appropriate people to do that.
Senator Minchin—Mr President, I ask that further questions be placed on the Notice Paper.

QUESTIONS WITHOUT NOTICE: ADDITIONAL ANSWERS

Oil for Food Program

Senator MINCHIN (South Australia—Minister for Finance and Administration) (3.01 pm)—Senator Faulkner asked me a question today about the ONA and any role it may have had in this matter. I undertook to get back to him with some further information. I refer Senator Faulkner to volume 4, page 101, of the Cole report, ‘Conclusion and summary’. At paragraph 30.240, Commissioner Cole refers specifically to the issue of intelligence and refers specifically to the ONA. Specifically, he says:

... the information provided in the unassessed intelligence reports and secret exhibit 4 was not regarded as being of sufficient importance to be the subject of a specific assessment report by the intelligence assessment agencies (such as the Office of National Assessments) and did not specifically relate to AWB or its wheat sales to Iraq.

I invite Senator Faulkner to contemplate those conclusions.

Senator Chris Evans—Mr President, I rise on a point of order. I indicate to Senator Minchin that Senator Faulkner had read the report, had read those sections and was after specific information in terms of the government’s response to those issues. I would ask him to meet his earlier commitment to actually answer the question. I am glad he has now read a section of the report, but I can assure him that Senator Faulkner had also read it. That is why he asked the question.

Senator MINCHIN—I undertook to find out what further information I could, and I will do that. But I just thought I should put on record the reference in the report to the ONA.

Aged Care

Senator SANTORO (Queensland—Minister for Ageing) (3.02 pm)—Yesterday during question time Senator McLucas asked me a question regarding the accreditation of Upper Jindalee Nursing Home in Canberra. I would like to add to the answer I gave to Senator McLucas by providing the following information.

A site audit was conducted on 16 and 17 May, and it was assessed against all 44 outcomes. It is crucially important to note that this included an assessment against expected outcome 4.7, ‘Infection control’, against which the Upper Jindalee Nursing Home was found to comply. The assessment team which carried out the site audit did recommend—and I stress ‘recommend’—noncompliance in a number of outcomes but did not recommend any noncompliance in any of the expected outcomes in the standard relating to health and personal care of residents or the standard relating to residents’ lifestyle.

I am advised by the Aged Care Standards and Accreditation Agency that, in this case, the agency’s senior decision makers considered that further information was required in order to make a proper decision. As a result, a further support contact was scheduled. The information from this visit provided further and more contemporary information about the home’s performance in those areas. This additional information was added to the information in possession of the decision maker, who also received a substantial submission from the home.

Taking all of these factors and sources of information into account, the agency decision maker decided that the Upper Jindalee Nursing Home complied with all 44 expected outcomes of the accreditation standards at the time of the decision, which was five weeks after the audit, and that the period of accreditation would be three years. I again
remind Senator McLucas that it is not unusual for agency decision makers to come to a different view to that of the assessment team, and that the assessment teams make recommendations only, not decisions.

Senator McLucAS (Queensland) (3.04 pm)—by leave—I remind the minister that yesterday I asked about information to do with the follow-up visit that was recommended within three months. I recognise that there was a support contact after the original May audit, but I am seeking advice about the subsequent support contact which was recommended to occur some three months later.

QUESTIONS WITHOUT NOTICE:
TAKE NOTE OF ANSWERS
Oil for Food Program

Senator LUDWIG (Queensland—Manager of Opposition Business in the Senate) (3.05 pm)—I move:

That the Senate take note of all answers given by ministers to questions without notice asked by opposition senators today, relating to the oil for food program.

Let me state at the outset that the $300 million wheat-for-weapons scandal has revealed a pattern of negligence on the part of Howard government and its ministers and several attempts to cover up the outcome. The result has been a financial cost to Australia’s wheat industry and farmers—and a cost to its international trading reputation. That is what is put at the feet of the Howard government. They have to accept that is the outcome.

What they have done, though, is to ensure that the commissioner’s findings have been straitjacketed by his terms of reference. We now have a position where, even despite the straitjacket they placed on the commissioner, the inquiry still concluded that DFAT did very little in relation to the allegations or other information it received. It also found that DFAT did not have in place any systems or procedures in relation to how its staff should proceed in response to allegations relating to the breach of sanctions. When you look at the terms of reference, they were confined or straitjacketed in such a way that Commissioner Cole only examined criminal breaches. He made it clear, though, that he was not required to consider whether there had been more general failings on the part of the government. He said:

It is immaterial that the Commonwealth may have had the means or ability to find out that the information was misleading, or that it ought reasonably to have known that the information was misleading.

This government has not only trashed our international trading reputation but also damaged the reputation of wheat farmers themselves. Regarding our international standing, the argument is simple: did Australia have an obligation under international law to implement the UN sanction regime against Iraq? That is the primary question: did Australia have an obligation? The answer is: yes, we did have an obligation. On 6 August 1990, the United Nations Security Council, responding to the armed conflict after Iraq invaded Kuwait, implemented resolution 661, reaffirming earlier demands for a withdrawal of Iraqi troops.

Under article 25 of the charter, all member states of the UN are obliged to carry out the recommendations of the United Nations Security Council. So adherence to both resolution 661 and resolution 986 was required. Did the Australian government implement the resolutions into domestic law? The answer again is yes. According to a joint legal opinion sought by Commissioner Cole, the Australian government made attempts to implement the United Nations Security Council resolutions into Australian domestic law. But the full details of the resolutions were not expressly placed in primary legislation and were instead given effect through regulation.
So the short answer is that the government did seek to implement the sanctions regime and to implement the resolution into domestic law. But did the Australian government properly fulfil its obligations to implement the sanctions regime? This is a more difficult question. The answer to that is no, the Australian government did not properly fulfil its international obligations to implement the sanctions regime—on three grounds. Firstly, the international binding sanctions regime as outlined in paragraph 4 of resolution 661 requires, in part, that member states:

... shall prevent their nationals and any persons within their territories ... from remitting any other funds to persons or bodies within Iraq or Kuwait ...

It was not done. Further, if you consider that the Australian government failed to prevent the corrupt transfer of some US$320 million of aid from the UN escrow account, you can then say prima facie that it did not implement that resolution. Secondly, AWB was, prior to privatisation in 1998, an Australian government entity. This means that the Australian government failed not only in the second instance as a regulator but also, in the primary instance, it wilfully breached the sanctions as a member state and party to the UN charter.

(Time expired)

Senator SCULLION (Northern Territory)
(3.10 pm)—The single thing I will concede from listening to the last speaker is that it is a sad day indeed for Australian wheat growers. I guess it is also a very sad day indeed for the Australian Labor Party, because clearly it was the hope and wish of the Australian government that Commissioner Terence Cole’s inquiry would in fact lead to the justification of their outrageous allegations during the period of the inquiry that there was some corruption or knowledge of corruption at a government level. It is very interesting that Senator Ludwig would refer continuously to the terms of reference: if only the commissioner had had the capacity to look further, then it would all have been different! That again flies in the face of the facts of the matter and the capacity of his terms of reference.

It is useful to go through the process of events leading to the inquiry to once again inform the Australian public and the Senate of what actually happened, not what was the fantasy or on the wish list of the Labor Party. These events continually amplify this government’s transparency and credibility in this matter. It has to be remembered that it was always the United Nations’ role to approve oil for food contracts, not the role of the Australian government. The Department of Foreign Affairs and Trade did not approve oil for food contracts; the UN did that through the resolution 661 committees. That is well known and on the record. So any allegation that the Australian government was somehow complicit in these matters is absolute rubbish.

The full nature of the oil for food scandal came about, as we know, after the fall of Saddam Hussein some 3½ years ago. The toppling of that dictator and that outrageous regime obviously gave an opportunity not only for a number of freedoms in that country but also for the United Nations to forensically examine, through the Volcker inquiry in April 2004, a whole range of documents from the Iraqi government that unveiled what we now know was widespread corruption. That widespread corruption occurred across 2,200 companies from 22 countries, such was the nature of the entrenched corruption.

The government moved very decisively. We immediately responded to the UN report by setting up an open and public inquiry with royal commission powers. You could not ask for a government to move with more speed, transparency and propriety than we did in this matter. The Cole commission has proved
through its deliberations and report that it is the most rigorous, independent and transparent inquiry in the world into matters arising from the Volcker inquiry. I will repeat that: it is the most rigorous, independent and transparent inquiry that has yet been conducted into these matters.

I could go on about the rigour of the Cole inquiry—it worked tirelessly over a full year with 76 days of hearings, hundreds of witness statements and tens of thousands of pages of documents. Commissioner Cole did not resile from that. Those opposite have continued to contend that the terms of reference stymied their fantasy of having the Australian government branded as corrupt. On no fewer than five separate occasions, three of which related to a reporting date and two of which related to the ambit of the inquiry, those terms of reference were changed—and they were changed straightaway. There was absolutely no delay in that.

The attitude of the Australian Labor Party in this was amplified and reflected upon on 2 February when Mr Beazley said on 3AW: ‘We don’t want to see the AWB simply emerge as a scapegoat in this.’ There is plenty of mischief there—plenty of mischief for wheat farmers. But on this day, like on so many others, Labor have missed the mark. They have besmirched Australian wheat growers and continued to pursue a government which has acted with propriety and completely transparently on this matter. The government should be applauded instead of being denigrated in the way that those opposite have done.

Senator McEwen (South Australia) (3.15 pm)—I also rise to take note of answers by Senator Minchin, Minister representing the Prime Minister. How Senator Minchin—and, just now, Senator Scullion—can stand in this place and pretend that the government and its ministers have come out of the Cole commission process squeaky clean is extraordinary. We have witnessed one of the biggest scandals in Australia’s federal history, and the behaviour of the government is just testament to the incredible deception and incompetence that it continues to foist on the Australian people. This government lied about ‘children overboard’, lied about weapons of mass destruction in Iraq, committed us to a disastrous war and then, when they knew that the dirty dealings in Iraq were going to become public, they ensured that the terms of reference for the Cole commission were framed to protect ministers—Ministers Downer, Vaile, Truss and the rest—who knew, or should have known, what was going on in Iraq. As we know, Commissioner Cole himself has said in writing that, under the terms of reference set by the government, he had no power to make determinations on whether ministers breached their legal obligations under Australia’s prohibited export regulations.

The government is engaging in its usual arrogant trickery, saying that the government did not get its hands dirty, when the issue of ministerial culpability was not even looked at by the commission the government set up. But the Australian people, I am pleased to say, will not be duped by this piece of trickery and they will not believe Senator Minchin’s weasel words today. They know it was Minister Downer who was merrily signing off and approving the 41 dodgy contracts that Australia entered into with the Iraqi government over a period of five years. The Australian people will not be duped. They have seen the monumental expose of corruption, the paying of $300 million of Australian money in bribes to Saddam Hussein—a mass murderer—and the breaching of international sanctions. All of this occurred on this government’s watch and this government did everything it could to cover up an appalling breach of international obligations. It did
everything it could to cover up the shameful, disgraceful corruption and incompetence that has now placed in jeopardy our $3.3 billion worth of wheat exports. At a time when Australia’s wheat growers are facing the worst drought in our history, this government’s incompetence has compounded their troubles and destroyed Australia’s reputation in international trade.

The government, when it privatised the Australian Wheat Board, gave AWB a monopoly power and then failed to hold AWB accountable. It failed to ensure that it did not abuse its monopoly power and failed to put in place any measures in any government department or relevant authority to make sure that AWB was doing the right thing by Australia’s farmers. Not only did it fail in that regard but, when the smell of corruption and bribe-paying started to emanate from AWB, the government also ignored the 35 separate warnings its officers and departments received about AWB’s activities in Iraq. There were 35 warnings from 1998 to 2003. Ten of those warnings occurred in the period after we sent our troops into Iraq to support the Americans’ war. When we were sending our men and women to a war that we cannot win, we were funding the enemy against whom we were fighting. When rotting of the UN’s oil for food program was happening, Australia was the biggest rorter of them all.

This was not some one-off aberration; this was a long-term, systematic abuse of our international obligations. The failure of the government to be accountable and the reckless way in which it failed to act because it was afraid of upsetting its doormat friends in the National Party has made Australia subject to international scrutiny for all the wrong reasons. How humiliating to read in the Cole report the results of this government’s reckless failure to manage our participation in international affairs. As Commissioner Cole, in his opening remarks, said:

The consequences of AWB’s actions ... have been immense ... Shareholders have lost half the value of their investment. Trade with Iraq worth more than A$500 million per annum has been forfeited ... Some entities will not deal with the company. Some wheat farmers do so unwillingly but are, at present, compelled by law to do so. AWB is threatened by law suits both in Australia and overseas—lawsuits that we believe to be to the value of around $1 billion. All of this was on this government’s watch. (Time expired)

Senator McGauran (Victoria) (3.20 pm)—One of the features of this inquiry of some 12 months with regard to the wheat scandal—and it is a scandal; it is properly dubbed one of Australia’s worst corruption scandals—has been the Labor Party’s shift from allegation to claim to assertion, and the previous speaker epitomises that. When each one was proven false along the way, they have found another reason to whip up an issue, exaggerate—indeed, slur—give false witness and, in fact, lie all along the way. The previous speaker, who is in great denial—

The DEPUTY PRESIDENT—Senator McGauran, I think you should withdraw that.

Senator McGauran—That she is in denial?

The DEPUTY PRESIDENT—‘Lie’.

Senator McGauran—The Labor Party—

The DEPUTY PRESIDENT—Just withdraw.

Senator McGauran—I withdraw and replace it with: many untruths were given and false witness was borne by the Labor Party along the way during this 12-month inquiry. As I said, the previous speaker epitomises all of this. We will have a different opinion, no doubt, about how the Australian
people will judge this. I have no doubt that the Australian people have not been fooled by the shrill other side over the past 12 months and will not be fooled now that the report has been handed down.

What the Australian people demand of any government is transparency. The establishment of a commission of inquiry was the government’s bona fides in relation to this issue. The Volcker inquiry established that over 2,000 companies in 66 countries prima facie had been rorting the UN oil for food program. So the government acted. Only three countries established an inquiry. No other country, only Australia, established an inquiry with the powers of a royal commission. Australia stands alone in having established an inquiry with the greatest powers of investigation of any.

This claim that the inquiry did not have the terms of reference to rope in the government, if you like, is absolute rubbish. The Cole inquiry changed the terms of reference some five times along the way, and Mr Cole said that he was not constrained by the terms of reference from investigating the government’s and the department’s involvement in all this. Have you conveniently forgotten all of that? Is that why you have dropped it out of your speeches today? I repeat: Mr Cole said clearly that he was not constrained by the terms of reference from investigating the government’s, any minister’s or any department’s apparent involvement in this oil for food scandal. Moreover, the Prime Minister, the Minister for Trade and the Minister for Foreign Affairs all fronted the Cole inquiry—voluntarily, I should add—to answer questions.

From the time the Volcker inquiry set up a prima facie case with regard to corruption, this government has continued to act with transparency and vigilance right up to the release of the recommendations today. Rest assured, the recommendations handed down by the Cole inquiry will be acted upon speedily and vigorously implemented.

We know the Labor Party never found their smoking gun during the last 12 months, and now they have the audacity, as shown by the previous speaker, to still try and link the government with this corruption case, regardless of what Mr Cole himself has put in writing. I wonder if they have even read the report. They do not want to read it. I recommend that the other side read the findings of the Cole inquiry. If they do, they will find, quite clearly, quote after quote—like those I have before me—that the government did not, in the words of Mr Cole, ‘turn a blind eye’. In fact, at no time did AWB tell the Australian government or the United Nations of the true arrangements: they were deceived. They are the words in the findings of the Cole royal commission. (Time expired)

Question agreed to.

Private Jacob (Jake) Kovco

Senator MARK BISHOP (Western Australia) (3.26 pm)—I move:

That the Senate take note of the answer given by the Minister for the Environment and Heritage (Senator Ian Campbell) to a question without notice asked by Senator Bishop today, relating to Private Jacob (Jake) Kovco.

I want to take note of the answer of Senator Ian Campbell to the question about the leaking of the report by the board of inquiry into the death of Private Kovco. It must be said at the outset that this is another embarrassing leak for the government—on top of the admitted scandal plaguing the government arising out of the inquiry into AWB. In respect of the inquiry into AWB, it is fair to say that that whole sorry saga was a debacle motivated solely by greed. That is not the case in respect of the matter I am addressing: the leaking of the report of the board of inquiry into the death of Private Kovco—that, I say
with regret, was a debacle occasioned by incompetence. The question necessarily arises of where the blame for that incompetence lies. The answer can be found in one place: the office of the Minister for Defence, Dr Nelson.

It seems that the leaking of that report has given rise to a number of issues that Minister Campbell refused to address in his response today but which the government needs to answer to give some degree of solace and comfort to the loved ones of that dead soldier. Firstly, the issue that needs immediate resolution and proper investigation is how that material was leaked and where from. Secondly, we need resolution of the confusion about who has responsibility for the carriage and release of the eventual report. Is it the Chief of the Australian Defence Force, Air Vice Marshal Houston, as Dr Nelson’s office informed the media yesterday? Or is it the responsibility of Dr Nelson, as was suggested at estimates some weeks ago? Thirdly, we need to get on top of why there are so many inquiries going on into various elements relating to the death of Private Kovco and why none of them are coming to any firm conclusions. There is increasing concern in the public domain about the different answers coming from different arms of government, yet there is no final, proper response to the matter.

That leads to a fourth point. In this area of military justice, with the Australian military forces having sole responsibility for investigations into deaths and suicides and allegations of improper practice, it really is time for the government to grasp the nettle and say it is no longer good enough for Caesar to be appealing to Caesar in Caesar’s courts on matters that Caesar has engaged in. Those days are past, and it is appropriate for there to be an independent, civil role that is remote, one step away, from the role of the military in these terrible matters that need some to take responsibility.

Finally, some nine or 10 months after Dr Nelson has been appointed Minister for Defence, he needs to take responsibility for the growth in the number of mess-ups that are occurring in his office and his department on the procurement side and on the personnel side. Increasingly, in areas of public concern the public needs to be satisfied and family members need to be assured that their government has their interests as its primary concern. Unfortunately, Minister Nelson is not prepared to take that ministerial responsibility for the proper functioning of his department and his office.

We all remember some two or three years ago when Minister Vale was the Minister for Veterans’ Affairs that there was a leakage of some material relating to her portfolio. The government was aggrieved by that and immediately commissioned an investigation by the Australian Federal Police arising out of that leaking of material from the minister’s office. A public servant was sacked, later reinstated, and two journalists were charged. (Time expired)

Question agreed to.

Answers to Questions

Senator BARTLETT (Queensland) (3.31 pm)—I move:

That the Senate take note of the answers given by the Minister for the Environment and Heritage (Senator Ian Campbell) to questions without notice asked today.

There are a number of answers and I refer briefly to an answer that Senator Bishop referred to fleetingly. It cannot be put on the record often enough how disgraceful it was that the findings about Private Kovco were leaked to the media before the family were informed. I think we can all imagine how hurtful that would have been, but it has the wider consequence of further decreasing
faith in the military justice system, something which is an ongoing problem and which harms the recruitment and retention rate of our entire Defence Force.

Other answers Senator Campbell gave in his own capacity as Minister for the Environment and Heritage I found particularly interesting. My own question to him went to the issue of how he will use his powers under the Environment Protection and Biodiversity Conservation Act to deal with the assessment process to be used for the two major dams proposed for south-east Queensland. Another question to him was about coal. Senator Campbell is on record today in the media as ruling out comprehensively and categorically the federal government ever supporting a greenhouse trigger in the federal EPBC Act. It may not seem to be that significant a statement, because the government has always refused to put in place an EPBC trigger, but to categorically rule it out in such a clear-cut way is a significant step backwards for this government. At least the rhetoric from previous environment ministers, particularly Senator Hill, both at the time of the passage of the EPBC legislation in 1999 and subsequently, was that the government were making efforts to incorporate a greenhouse trigger in the federal environment protection act. The cover they were using for not doing it, because they always had the power to do it, was that they were seeking to negotiate with the states about the best way to do it.

Discussion papers were released and the issue was raised at ministerial council meetings. The minister made a number of comments in this chamber and elsewhere saying that the government was still pursuing the option. Of course, it is no surprise that states like my own state of Queensland—those states that are very dependent on coal—were very cold on the idea and certainly would not give it their support. That, combined with antagonism within the wider coalition about anything that acknowledged the reality and the seriousness of climate change, meant that the federal government and the federal environment minister never followed through on their commitment to implement a greenhouse trigger in the federal environment laws.

To now come out and categorically say that the federal government, as a matter of policy, will never put in place a climate change trigger I think is a serious concern, a major step backwards and another indication of the unnecessary stubbornness involved here. It needs to be recognised that putting in place a climate change trigger in the federal environment act does not mean that anything that triggers it will be stopped. It does not mean that all coalmines will cease. It does not mean that everything will be stopped. It means that the impacts will be assessed. That is a very different thing, but it should be a minimal thing.

Surely, at the very time when even the Prime Minister is finally acknowledging that climate change is serious and a major problem that needs to be addressed, even if we accept the potential for geosequestration—I am not sure clean coal is ever a phrase that I would like to accept, but there are some arguments that say geosequestration may deliver some benefits—what is the problem with assessing what the actual impact will be of undertaking certain developments? It is this continual desire to refuse to confront reality and to just leave the debate at the level of spin. That is a serious problem and it is an unnecessary stubbornness from the federal government and the environment minister. It is quite possible to run some of the lines that he is running without being so totally blatantly focused on blocking out everything that might not go with the spin of the day.

I would follow that by referring to the minister’s other answer about the dams in
Queensland, which do in themselves have greenhouse emission implications that should be assessed, along with implications for threatened species. The suggestion that we can just accept the Queensland government’s good faith on face value is extraordinary. Given the record in this area, I find the minister’s statement rather disconcerting. Frankly, once he looks at what has happened to date and the deceit that has been involved time after time, he will need to reconsider how much trust he can put in the way in which the Queensland government engages in this assessment process.

Question agreed to.

CONDOLENCES

Mr Norman Kenneth Foster OAM

The DEPUTY PRESIDENT (3.36 pm)—It is with deep regret that I inform the Senate of the death, on 19 November 2006, of Norman Kenneth Foster OAM, a member of the House of Representatives for the division of Sturt, South Australia, from 1969 to 1972.

PETITIONS

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

Child Abuse

The Australian Government should do all it can to combat the production and transmission of material depicting child abuse and child pornography. Transmission of such material by post is a serious offence but is not recognised as such under Commonwealth law, and offenders do not receive the penalties they should.

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

This petition of certain citizens of Australia draws to the attention of the Senate, the lack of a specific offence covering the transmission of child pornography and child abuse material via mail within Australia.

Your petitioners therefore ask the Senate to make laws that:

- Create a new offence of transmission by mail of child pornography and child abuse material, with a maximum penalty of ten years imprisonment.

by The President (from 59 citizens).

Jandakot Airport

We, the undersigned, residents of the local community, totally disagree with the proposal of the Lessees, of the Commonwealth land at Jandakot Airport. Jandakot Holdings now controlled by Ascot Capital, to relocate Jandakot Airport; to Hopelands Road, North Dandalup Western Australia.

We request the Parliament Assembly to REJECT the unsolicited proposal of a Land Swap, of valuable Commonwealth land hosting a metro community Airport, for a rural Swampy Paddock.

by Senator Adams (from 332 citizens).

Petitions received.

NOTICES

Presentation

Senator Chapman to move on the next day of sitting:

That the Parliamentary Joint Committee on CORPORATIONS AND FINANCIAL SERVICES be authorised to hold public meetings during the sittings of the Senate on the following days:

(a) on Thursday, 30 November 2006, from 5.30 pm, to take evidence for the committee’s continuing oversight of the operations of the Australian Securities and Investments Commission; and

(b) on Friday, 1 December 2006, from 9 am, to take evidence for the committee’s inquiry into the exposure draft of the Corporations Amendment (Takeovers) Bill 2006.

Senator Heffernan to move on the next day of sitting:

That the time for the presentation of reports of the RURAL AND REGIONAL AFFAIRS AND TRANSPORT COMMITTEE be extended as follows:

(a) water policy initiatives—to 5 December 2006; and
(b) Australia’s future oil supply—to 7 December 2006.

**Senator Murray** to move on the next day of sitting:

That, in view of:

(a) the instances of developers being identified in investigations into corrupt influence in local government, and other levels of government;

(b) public and media perceptions of improper conduct and influence by developers; and

(c) calls for donations, loans, gifts and favours from developers to be prohibited,

the Senate calls on the Prime Minister (Mr Howard) to put this matter before the Council of Australian Governments with a view to designing amendments to all federal, state and territory electoral laws by 1 July 2007 prohibiting donations, loans, or gifts by developers, either directly or indirectly, to candidates or political parties at any level of government.

**Senator Allison** to move on the next day of sitting:

That the Senate—

(a) notes that recent research of Drs Raupach and Fraser from the Commonwealth Scientific and Industrial Research Organisation’s Marine and Atmospheric Research group found that:

(i) 7.9 billion tonnes of carbon were emitted into the atmosphere as carbon dioxide in 2005 and the rate of increase is accelerating,

(ii) between 2000 and 2005, carbon dioxide emissions rose by more than 2.5 per cent a year,

(iii) in 1990 emissions were less than 1 per cent a year, and

(iv) on the current path it will be difficult to rein in carbon emissions enough to stabilise the atmospheric carbon dioxide concentration at 450 parts per million; and

(b) calls on the Federal Government to act urgently to reduce greenhouse gas emissions and:

(i) ratify the Kyoto Protocol, and

(ii) introduce a carbon price signal.

**Senator Robert Ray** to move on the next day of sitting:

That the Senate—

(a) notes:

(i) the further statement by the Minister for Justice and Customs (Senator Ellison) on 27 November 2006 in response to Senator Ray’s question without notice on 7 November 2006, asking the Minister when he first became aware of a potential breach of 4QA of the Customs regulations in regard to the importation of goods from Iraq without the written permission of the Minister for Foreign Affairs (Mr Downer) or his delegate,

(ii) that the Minister is hiding behind a current investigation into the matter by the Australian Federal Police (AFP) to avoid answering a process question that goes to how long he has known that goods imported into Australia from Iraq in 2000 may not have complied with the Australian Customs Service approval procedures established to meet Australia’s obligations to enforce United Nations (UN) sanctions against Iraq,

(iii) that the Minister’s position is bogus because, as AFP Commissioner Keelty informed the estimates hearing of the Legal and Constitutional Affairs Committee on 31 October 2006 that no government minister is under investigation in regard to the matter, and

(iv) that this is yet another attempt by the Government to conceal its inaction and incompetence in failing to ensure that Australian companies trading with Iraq fully complied with the requirements of the UN’s Oil-for-Food Programme; and
(b) calls on the Minister for Justice and Customs to state clearly the date he first became aware that Customs regulations may have been breached in regard to the import of goods from Iraq in 2000, between when he was appointed as the Minister for Justice and Customs on 30 January 2001 and the referral of the matter to the AFP from the Department of Foreign Affairs and Trade through him on 23 February 2006.

Senator Ellison to move on the next day of sitting:


Senator Bartlett to move, contingent on the Copyright Amendment Bill 2006 being read a second time:

That it be an instruction to the committee of the whole that:

(a) the committee divide the Copyright Amendment Bill 2006 to incorporate Schedule 12 in a separate bill; and

(b) the committee add to that separate bill enacting words and provisions for titles and commencement.

Withdrawal

Senator Watson (Tasmania) (3.37 pm)—On behalf of the Standing Committee on Regulations and Ordinances, and pursuant to notice given at the last day of sitting, I shall now withdraw business of the Senate notice of motion No. 1 standing in my name for nine sitting days after today.

Postponement

The following items of business were postponed:


General business notice of motion no. 638 standing in the name of Senator Stott Despoja for today, relating to the International Day for the Elimination of Violence Against Women, postponed till 29 November 2006.

General business notice of motion no. 640 standing in the name of the Leader of the Australian Democrats (Senator Allison) for today, proposing the establishment of a select committee on mental health services, postponed till 5 December 2006.

AVOIDING DANGEROUS CLIMATE CHANGE (KYOTO PROTOCOL RATIFICATION) BILL 2006 [NO. 2]

First Reading

Senator Carr (Victoria) (3.38 pm)—I move:

That the following bill be introduced: A Bill for an Act to ratify the Kyoto Protocol to the United Nations Framework Convention on Climate Change, and for related purposes.

Question agreed to.

Senator Carr (Victoria) (3.38 pm)—I move:

That this bill may proceed without formalities and be now read a first time.

Question agreed to.

Bill read a first time.

Second Reading

Senator Carr (Victoria) (3.39 pm)—I move:

That this bill be now read a second time.

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

The speech read as follows—

Today I rise to introduce the Avoiding Dangerous Climate Change (Kyoto Protocol Ratification) Bill 2006.

If this bill is passed, the Australian government will be required to ratify the Kyoto Protocol and become part of the international solution to climate change.

Climate change is real and it is happening right now.

The last four years has seen an unprecedented rise in the global level of carbon dioxide in the atmosphere.

The CSIRO chief scientist, marine and atmospheric research division, recently reported that 2005 recorded the highest ever growth of artificial greenhouse gases, up by 5.3 percent.

The CSIRO said 2005 ‘was a record for increases in greenhouse gas heating, the main driver of increasing surface temperature.’

Last year was the hottest year on record.

Five of the six hottest years have occurred in the past five years.

This century will see global average temperature rise by between 2 and 4.5 degrees.

The most recent northern winter has seen record areas of the Arctic Ocean failing to freeze. The Arctic temperature is rising twice as fast as the rest of the planet, threatening wildlife and the entire ecological stability of the region.

With the recovery of the ice in winter no longer able to amply compensate for the increased melting in summer, the Arctic is now locked into a cycle of irreversible climate change.

Within our lifetime there will be summers with no Arctic sea ice at all.

Closer to home we can already see the kinds of impacts that will only get worse as warming advances: the long-term drought in New South Wales, Kakadu being flooded by salt water, and coral bleaching of the Great Barrier Reef.

The recent destruction caused by Cyclone Larry is a reminder of the severe weather events we must prepare for at home as our planet warms.

If for no other reason, Australia’s self-interest dictates we immediately ratify the protocol and engage with the global effort to avoid dangerous climate change.

If passed, this bill will require the Australian government to do several things.

First, it must ratify the Kyoto Protocol within 60 days of the commencement of the act.

Second, it must ensure Australia meets its greenhouse emission target set out in the protocol—108 per cent of 1990 levels.

Only Iceland has a higher target.

Third, the Minister for the Environment and Heritage must develop a national climate change action plan setting out our national strategy for meeting our greenhouse emission target.

Fourth, the minister must establish an annual greenhouse gas inventory and publish these results.

Fifth, the minister must also develop a framework for involvement in the international trading of carbon.

This would include emissions trading but also clean development mechanism projects in developing nations.

Given that Australia is on track to meet our emission target, there is no drawback to Australia ratifying Kyoto today.

If passed, the bill will enable Australia to be a part of the global market benefits harnessed by the other 150 signatories to the protocol.

A recent report by the Australia Institute confirms that the Howard Government’s arguments for refusing to ratify the protocol are fundamentally flawed.

The Australia Institute’s report confirms that the Howard Government’s policy locks Australia out of emerging carbon markets.

Howard Government policies retard the development of new, clean industries and fail to preserve the competitiveness of coal exports, this country’s biggest earner.
If we are to meet the challenges and harness the benefits of a carbon constrained economy, planning is key.

We need to act now for the future of Australian business.

This bill sends a clear message to all Australians that we must start working actively on climate change because it is an issue affecting Australia’s future prosperity.

It signals to business we are taking a planned approach to shifting Australia towards a modern, clean-energy economy.

The chairman of Rio-Tinto Mr Paul Skinner has recently affirmed calls by business and industry groups for the introduction of market mechanisms as part of the global solutions to combating climate change.

Mr Skinner confirmed that ‘ultimately, the challenge for the global political leadership was how the two components—technology and market mechanism—could be brought together for a long term solution’.

Just as science and technology have given us tools to measure and understand the dangers of climate change, so too can they help us deal with them.

The potential for innovation and business investment is immense.

It is about providing the market based stimulus for the deployment and transfer of clean energy technologies, the transfer of which the International Energy Agency has estimated at $27.5 billion dollars worth of carbon credits.

By not ratifying, Australia is giving the world a jump-start in this new dynamic global marketplace.

Australian companies are already being disadvantaged now by our exclusion from carbon markets and from the developing renewable energy technology markets. The investment is simply going elsewhere. Our technology and our know-how are heading to China instead of creating jobs at home.

In recent months the Roaring 40s company announced a $300 million deal to provide three wind farms to China.

More and more our isolation on this issue is becoming an international embarrassment.

The Kyoto agreement was hailed by the Prime Minister back in 1997 as a ‘win for the environment and a win for Australian jobs’. The PM got it right then but he is wrong now.

Despite signing the agreement at the time, the Howard government has had a change of heart, claiming it is flawed, even though 150 countries including the EU have subsequently ratified the protocol. Of industrialised nations only Australia and the United States remain on the outside looking in.

This situation is illogical. It makes no economic sense and jeopardises our future prosperity.

Labor takes a more sensible, practical approach on this issue.

We acknowledge that the nature of such agreements is that they are a product of compromise and, like almost every international agreement Australia is part of, we do not say it is perfect.

We also need to think beyond 2012, but by not ratifying Kyoto we are excluding ourselves from the negotiating table of future agreements.

Labor believes the Kyoto protocol is important for the economy, for jobs and for the environment.

Kyoto harnesses the power of the market by putting a price on the use of carbon. This trading market will be worth billions of dollars.

By staying outside the framework Australia is excluded from a range of opportunities.

We cannot leave future generations the escalating carbon liabilities of bad decisions made today.

We must ratify Kyoto immediately; speedy passage of this bill will provide for that.

I commend this bill to the Senate.

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

Leave granted; debate adjourned.

NUCLEAR ENERGY

Senator MILNE (Tasmania) (3.39 pm)—I move:
That the Senate—
(a) notes the draft report of the Uranium Mining, Processing and Nuclear Energy Review Taskforce appointed by the Prime Minister (Mr Howard); and
(b) calls on the Government to reject:
(i) any proposals for the deployment of nuclear power in Australia,
(ii) the construction of nuclear reactors on or offshore around Australia,
(iii) the construction of nuclear waste dumps in Australia, and
(iv) any proposal for the development of nuclear enrichment facilities in Australia.

Question put.
The Senate divided. [3.44 pm]
(The President—Senator the Hon. Paul Calvert)

AYES
Allison, L.F. Bartlett, A.J.J.
Brown, B.J. Milne, C.
Murray, A.J.M. Nettle, K.
Siewert, R. *

NOES
Adams, J. Barnett, G.
Bernardi, C. Bishop, T.M.
Brandis, G.H. Brown, C.L.
Calvert, P.H. Chapman, H.G.P.
Colbeck, R. Crossin, P.M.
Eggleston, A. Ferguson, A.B.
Ferris, J.M. * Fierravanti-Wells, C.
Fifield, M.P. Forshaw, M.G.
Heffernan, W. Hogg, J.J.
Humphries, G. Hurley, A.
Hutchins, S.P. Johnston, D.
Joyce, B. Kemp, C.R.
Kirk, L. Ludwig, J.W.
Marshall, G. McEwen, A.
McGauran, J.J. McLucas, J.E.
Moore, C. Nash, F.
O’Brien, K.W.K. Parry, S.
Patterson, K.C. Payne, M.A.
Polley, H. Ray, R.F.
Ronaldson, M. Scullion, N.G.
Sherry, N.J. Stephens, U.
Sterle, G. Troeth, J.M.
Trood, R.B. Watson, J.O.W.
Webber, R. Wong, P.

* denotes teller

Question negatived.

MACQUARIE ISLAND

Senator MILNE (Tasmania) (3.48 pm)—
I move:
That the Senate—
(a) notes:

(i) Australia’s obligation under the World Heritage Convention to protect the World Heritage-listed Macquarie Island that provides nesting habitat for nearly 4 million seabirds, and provides Environment Protection and Biodiversity Conversation-listed ‘Critical Habitat’ for two nationally threatened albatross species, the wandering and grey-headed albatross,

(ii) that the feral rabbit population on Macquarie Island has exploded since the late 1990s from 10,000 to more than 100,000 as a result of reduced effectiveness of myxomatosis, eradication of feral cats and climate change resulting in increasing rabbit breeding success, and

(iii) that recent landslips have wiped out hundreds of king penguins and that the grey-headed albatross faces immediate risk of extinction in Australia due to the destruction by rabbits of the birds’ only known Australian breeding site on Macquarie Island; and

(b) calls on the Government to take immediate action to fund and implement the eradication plan for rabbits and rodents costing at $15 million so work can start immediately to ensure on-ground baiting can start in winter 2008.

Question put.
The Senate divided. [3.52 pm]
(The President—Senator the Hon. Paul Calvert)

Ayes………… 30
Noes………… 32
Majority……… 2

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

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

PAIRS
Campbell, G. Boswell, R.L.D.
Comroy, S.M. Ellison, C.M.
Evans, C.V. Mason, B.J.
Faulkner, J.P. Parry, S.
Lundy, K.A. Macdonald, J.A.L.
Stott Despoja, N. Eggleston, A.

* denotes teller

Question negatived.

KYOTO PROTOCOL

Senator ALLISON (Victoria—Leader of the Australian Democrats) (3.54 pm)—I move:

That the Senate—

(a) notes that:

(i) the global carbon market is worth almost $40 billion a year,

(ii) the World Bank reports that the global carbon trading market was worth approximately $28 billion in the first 9 months of 2006, compared with $13 billion in 2005,

(iii) the Kyoto Clean Development Mechanism (CDM) market was valued at $2.9 billion for the first three quarters of 2006, and

(iv) the United Nations Framework on Climate Change Executive Secretary, Mr Yvo de Boer, recently said the Kyoto CDMs could generate annual investment of $133 billion in ‘green investment flow to developing countries’;

(b) recognises that joining the Kyoto Protocol now could give Australian business the chance to get early mover advantages in the booming global carbon trading market; and

(c) calls on the Federal Government to ratify the Kyoto Protocol now, and work within the framework to encourage the United States of America to also ratify the Protocol.

Question put.

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

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**AYES**
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- Bishop, T.M.
- Brown, C.L.
- Crossin, P.M.
- Forshaw, M.G.
- Hurley, A.
- Kirk, L.
- Marshall, G.
- McLucas, J.E.
- Moore, C.
- Nettle, K.
- Polley, H.
- Sherry, N.J.
- Stephens, U.
- Webber, R.
- Wortley, D.

**NOES**
- Abetz, E.
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- Campbell, I.G.
- Colbeck, R.
- Ferguson, A.B.
- Fierravanti-Wells, F.
- Heffernan, W.
- Johnston, D.
- Kemp, C.R.
- Macdonald, I.
- Minchin, N.H.
- Patterson, K.C.
- Ronaldson, M.
- Scullion, N.G.
- Trood, R.B.
- Watson, J.O.W.

* denotes teller

**Question negatived.**

**ENVIRONMENTAL PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999**

**Senator SIEWERT** (Western Australia)
(3.58 pm)—I move:

That there be laid on the table by the Minister for the Environment and Heritage, no later than 3.30 pm on Wednesday, 29 November 2006, the report on the review of matters of national environmental significance made under section 28A of the Environmental Protection and Biodiversity Conservation Act 1999.

**Question put.**

The Senate divided.  [4.00 pm]

(The President—Senator the Hon. Paul Calvert)

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- Moore, C.
- Nettle, K.
- Polley, H.
- Sherry, N.J.
- Stephens, U.
- Webber, R.
- Wortley, D.

**NOES**
- Abetz, E.
- Barnett, G.
- Brandis, G.H.
- Campbell, I.G.
- Colbeck, R.
- Ferguson, A.B.
- Fierravanti-Wells, F.
- Heffernan, W.
- Johnston, D.
- Kemp, C.R.
- Macdonald, I.
- Minchin, N.H.
- Patterson, K.C.
- Ronaldson, M.
- Scullion, N.G.
- Trood, R.B.
- Watson, J.O.W.

* denotes teller
Heffernan, W. 
Johnston, D. 
Kemp, C.R. 
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Ronaldson, M. 
Scullion, N.G. 
Trood, R.B. 
Watson, J.O.W. 

Heffernan, W. 
Joyce, B. 
Lightfoot, P.R. 
McGauran, J.J.J. 
Nash, F. 
Payne, M.A. 
Santoro, S. 
Troeth, J.M. 
Vanstone, A.E. 

PAIRS

Campbell, G. 
Conroy, S.M. 
Evans, C.V. 
Faulkner, J.P. 
Lundy, K.A. 
Stott Despoja, N. 

* denotes teller

Question negatived.

RENEWABLE ENERGY

Senator ALLISON (Victoria—Leader of the Australian Democrats) (4.02 pm)—I move:

That the Senate—

(a) notes that:

(i) in 2000, Germany introduced a solar scheme requiring electricity companies to buy back electricity generated from household panels connected to the grid at premium price rather than at the normal wholesale electricity rate,

(ii) the German scheme has meant approximately 400 000 households have now installed solar panels,

(iii) the German scheme has lead to a boom in the photovoltaic (PV) industry with revenues expected to be $25 billion in 2006, increasing to $100 billion by 2010,

(iv) Germany’s success with the scheme has led to Spain, Italy, France, Greece and Canada introducing almost identical schemes,

(v) in 2004, Germany passed a new law that guaranteed people who built solar parks a minimum price for each kilowatt of electricity that was two to three times the market price, for example, a German pig farmer struggling with drought took advantage of the scheme and covered his 200 acre farm with 10 050 solar panels, which at full capacity could supply power to all 7 000 residents of the local village resulting in the farmer making more than $600 000 a year from the sale of this electricity, and

(vi) California has developed the ‘Million Solar Roofs’ plan that will provide 3 000 megawatts of additional solar generation by 2018 using a combination of regulatory and market mechanisms;

(b) notes that an Australia-wide feed-in tariff could increase the number of PV units in Australia from 10 000 to 150 000 by 2010; and

(c) calls on the Federal Government to work with state governments to introduce a solar scheme similar to that in Germany.

Question put.

The Senate divided. [4.04 pm]

(The President—Senator the Hon. Paul Calvert)

Ayes…………… 8
Noes……………… 52

Majority………. 44

AYES

Allison, L.F. 
Brown, B.J. 
Milne, C. 
Nettle, K. 

NOES

Adams, J. 
Bernardi, C. 
Brandis, G.H. 
Calvert, P.H. 
Colbeck, R. 
Crossin, P.M. 
Ferris, J.M. 
Fifield, M.P. 
Heffernan, W. 
Humphries, G. 

Barnett, G. 
Bishop, T.M. 
Brown, C.L. 
Chapman, H.G.P. 
Coonan, H.L. 
Ferguson, A.B. 
Fierravanti-Wells, C. 
Forshaw, M.G. 
Hogg, J.J. 
Hurley, A.
Question negatived.

MIDDLE EAST

Senator ALLISON (Victoria—Leader of the Australian Democrats) (4.06 pm)—I move:

That the Senate—

(a) notes that the undersigned Members of the European Parliament recently returned from a fact finding mission to Israel and Palestine, shocked and appalled by what they saw and experienced in Gaza, saying:

i. Due to economic sanctions, almost all public institutions have shut down. The hospitals are overcrowded and receive neither money nor sufficient medicine. The public employees have not been paid for months. The doctors told us that some deadly injuries are not caused by traditional weapons but most likely by new experimental chemical weapons. More amputations than ever are necessary. They have not had the time to examine the dead bodies yet as they are busy dealing with the wounds of those who have survived.

ii. The closure of Rafah and Karni crossing for people and goods has turned Gaza into an open air prison. Recently, Gaza has seen horrible carnage.

iii. We call upon Israel to stop the violation of human rights and repeated breaches of the Geneva Convention.

iv. We call for a complete ceasefire by Israel, an immediate withdrawal of troops from Gaza and an end to the military incursion in the West Bank.

v. We strongly object to the description by Israel of those it has killed as "terrorists".

vi. We call and insist that the EU [European Union] should review the association agreement and consider imposition of sanctions on Israel unless it ceases the killing of civilians and the violation of human rights, thus complying with article 2 of the association agreement.

vii. We urge Hamas and Fatah and all the democratic Palestinian forces, even under these circumstances, not to stop their efforts to form a Unity Government as already agreed on the document of national reconciliation which recognizes the 1967 borders of the state of Palestine and Israel and to take every possible measure to halt the firing of Qassam rockets.

viii. We call upon the EU to open dialogue with all the Palestinian national institutions and to put pressure on the Israeli government to release the tax revenues confiscated from the Palestinian government.

ix. We ask the UN and the quartet to send international forces to protect the Palestinian and Israeli civilian populations, while calling for an international conference with all the parties involved reaching a comprehensive and just peace for the area.

MEP Luisa Morgantini (Italy), GUE/NGL

MEP Vincenzo Aita (Italy), GUE/NGL

MEP Allesandro Battilocchio (Italy), N.I.

MEP John Bowis (UK), EPP-ED
MEP Chris Davies (UK), ALDE
MEP Jill Evans (UK), GREEN/EFA
MEP Hélène Flautre (France), GREEN/EFA
MEP Gyula Hegyi (Hungary), PES
MEP Miguel Portas (Portugal), GUE/NGL
MEP Karin Resetarits (Austria), ALDE
MEP Alyn Smith (UK), GREEN/EFA
MP Norman Paech (Germany), Die Linke; and
(b) calls on the Minister for Foreign Affairs (Mr Downer) to visit Palestine and Israel in the near future and to consider backing the requests of the European Parliamentary delegation in an effort to bring peace to the region.

Question negatived.

Senator Bob Brown—Mr President, could you record the support of the Greens for the motion on Israel and Palestine?

The PRESIDENT—Done.

GREENHOUSE GAS EMISSIONS

Senator ALLISON (Victoria—Leader of the Australian Democrats) (4.07 pm)—I move:

That the Senate—

(a) notes that:

(i) Californian Republican Governor, Mr Arnold Schwarzenegger, has signed the Californian Global Warming Solutions Act of 2006,

(ii) the Act aims to reduce carbon emissions by 25 per cent, to 1990 levels, by 2020 and by 2050 will reduce emission to 80 per cent below 1990 levels, and

(iii) the Act requires the Californian Air Resources Board (CARB) to:

- Adopt mandatory reporting rules for significant sources of greenhouse gases by January 1, 2009.
- Adopt a plan by January 1, 2009 indicating how emission reductions will be achieved from significant greenhouse gas sources via regulations, market mechanisms and other actions.
- Adopt regulations by January 1, 2011 to achieve the maximum technologically feasible and cost-effective reductions in greenhouse gas emissions including provisions for using both market mechanisms and alternative compliance mechanisms.
- Convene an Environmental Justice Advisory Committee and an Economic and Technology Advancement Advisory Committee to advise CARB.
- Ensure public notice and opportunity for comment for all CARB actions; and

(b) calls on the Federal Government to follow California’s lead and legislate to set greenhouse gas reduction targets, introduce caps on emissions and introduce market and regulatory mechanisms to achieve reductions.

Question put.

The Senate divided. [4.07 pm]

(The President—Senator the Hon. Paul Calvert)

Ayes…………. 7
Noes…………. 51
Majority………. 44

AYES

Allison, L.F. Bartlett, A.J.J. *
Brown, B.J. Milne, C.
Murray, A.J.M. Nettle, K.
Siewert, R.
I move:

That the Senate—

(a) notes that:

(i) the Australian Council of Social Service (ACOSS), the peak council of the community services and welfare sector, is celebrating 50 years of representing that sector and advancing the interests of disadvantaged Australians, and

(ii) ACOSS was established in 1956, with the aim of reducing poverty and inequality by developing and promoting socially, economically and environmentally responsible public policy and action by government, community and non-government organisations which provide assistance to vulnerable Australians; and

(b) congratulates ACOSS on 50 years of outstanding community service.

Question agreed to.

COMMITTEES

Public Accounts and Audit Committee

Meeting

Senator WATSON (Tasmania) (4.12 pm)—by leave—I move:

That the order of the Senate of 9 October 2006, authorising the Joint Committee of Public Accounts and Audit to hold public meetings during the sittings of the Senate, be varied as follows:

Paragraph (b), omit “Thursday, 30 November 2006, from 10 am to 1 pm”, substitute “Thursday, 7 December 2006, from 10 am to 1.30 pm”.

Question agreed to.

AUDITOR-GENERAL’S REPORTS

Report No. 12 of 2006-07

The ACTING DEPUTY PRESIDENT (Senator Crossin)—In accordance with the provisions of the Auditor-General Act 1997, I present the following report of the Auditor-General: Report No. 12 of 2006-07—Performance Audit - Management of family tax benefit overpayments.

CHILD SUPPORT LEGISLATION AMENDMENT (REFORM OF THE CHILD SUPPORT SCHEME—NEW FORMULA AND OTHER MEASURES) BILL 2006

Returned from the House of Representatives

Message received from the House of Representatives agreeing to the amendments made by the Senate to the bill.
ABORIGINAL AND TORRES STRAIT ISLANDER HERITAGE PROTECTION AMENDMENT BILL 2005 [2006]

Returned from the House of Representatives

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

ANTI-MONEY LAUNDERING AND COUNTER-TERRORISM FINANCING BILL 2006

ANTI-MONEY LAUNDERING AND COUNTER-TERRORISM FINANCING (TRANSITIONAL PROVISIONS AND CONSEQUENTIAL AMENDMENTS) BILL 2006

Report of Legal and Constitutional Affairs Committee

Senator NASH (New South Wales) (4.15 pm)—At the request of the Chair of the Legal and Constitutional Affairs Committee, Senator Payne, I present the report of the committee on the provisions of the Anti-Money Laundering and Counter-Terrorism Financing Bill 2006 and a related bill, together with the Hansard record of proceedings and documents presented to the committee.

Ordered that the report be printed.

INSPECTOR OF TRANSPORT SECURITY BILL 2006

INSPECTOR OF TRANSPORT SECURITY (CONSEQUENTIAL PROVISIONS) BILL 2006

In Committee

Consideration resumed.

INSPECTOR OF TRANSPORT SECURITY BILL 2006

(Quorum formed)

Senator O'BRIEN (Tasmania) (4.19 pm)—by leave—I move opposition amendments (26), (62) and (68) on sheet 5139:

(26) Clause 25, page 21 (after line 6), after subclause (1), insert:

(1A) Before appointing a person to be the Inspector of Transport Security, the Minister must consult with the Leader of the Opposition in the House of Representatives.

(62) Page 55 (after line 27), after clause 64, insert:

64A Final report must be given to Leader of Opposition

The Minister must give a copy of each final report to the Leader of the Opposition in the House of Representatives, but the Leader of the Opposition must not disclose any part of the report or information in a report that is not tabled in Parliament or that is not disclosed in a statement tabled in Parliament in accordance with paragraph 64(1)(c).

(68) Page 71 (after line 9), after clause 80, insert:

80A Leader of Opposition to be kept informed

The Inspector shall consult regularly with the Leader of the Opposition in the House of Representatives for the purpose of keeping him or her informed on transport security matters and offshore security matters considered by the Inspector.

These amendments deal with what we suggest should be matters of right pertaining to information provided to the Leader of the Opposition. For example, amendment (26) seeks to insert a new subclause which pertains to a process to be undertaken prior to the appointment of the Inspector of Transport Security requiring the minister to consult with the Leader of the Opposition in the House of Representatives.

Amendment (62) relates to the provision by the minister of a copy of each final report of the Inspector of Transport Security to the Leader of the Opposition, specifying that it is the duty of the Leader of the Opposition not to disclose:
... any part of the report or information in a report that is not tabled in Parliament or that is not disclosed in a statement tabled in Parliament in accordance with paragraph 64(1)(c).

Amendment (68) would insert a new clause 80A. It specifies that the Inspector of Transport Security—not the minister—would:

... consult regularly with the Leader of the Opposition in the House of Representatives for the purpose of keeping him or her informed on transport security matters and offshore security matters considered by the Inspector.

It is important that the holder of this important position maintain the confidence of the opposition as well as the government in relation to the performance of the inspector’s functions and in relation to the office. It would certainly be important that the sort of communication that the new clause 80A would require would be kept between the inspector and the Leader of the Opposition to ensure that there was confidence that the task was being performed as the parliament would expect. One would have thought that any holder of the office would be very keen to ensure that he or she retained the confidence of the parliament, not simply the executive government, in the performance of their task. We think that that is a very important and useful provision—useful, in fact, for the holder of the office in conducting their function on an ongoing basis.

We have already touched on the proposed new clause 64A, but the opposition believes it is critically important that the full final report by the Inspector of Transport Security be provided to the Leader of the Opposition, and we are very happy to specify that that be subject to the Leader of the Opposition having a duty to maintain in confidence any part of the report that is not tabled in parliament or not disclosed in the statement tabled in accordance with paragraph 64(1)(c). The government says that it follows a practice of keeping the opposition briefed about security matters. So what better practice than to keep the Leader of the Opposition in the loop about the Inspector of Transport Security’s reports and statements made to the parliament arising from the reports, in a way that is not censored by the executive government but is the subject of the embargo on publication or release by the Leader of the Opposition of any information that is not tabled in the parliament?

In amendment (26), the proposed new subclause 25(1A) requires the minister to consult with the Leader of the Opposition prior to appointing a person to be the Inspector of Transport Security. Again, this is a provision which is squarely aimed at ensuring that there is maintained confidence of the parliament in the position and confidence in the process of appointment so that this position is not seen as a partisan position and one which is subject to the discrediting that occurs when any party in this system seeks to appoint people to positions, firstly, without consultation and, secondly, without regard for the proper qualifications and standing of the person being appointed to the position.

We believe that these amendments, taken together, form a consistent approach to the appointment, performance and processes of the Inspector of Transport Security—making sure that the opposition can maintain confidence in the position. We think it is in the interests of the overall effectiveness of the position for that confidence to be maintained. We think the government should seriously consider accepting the amendments, as they would do absolutely no harm to the legislation and would, in fact, enhance it.

Senator COONAN (New South Wales—Minister for Communications, Information Technology and the Arts) (4.26 pm)—I have listened to Senator O’Brien’s comments. Of course, we do agree that it is important that the opposition and, indeed, all members of
the public have confidence in this process. Dealing with Senator O’Brien’s points: as I understand it, the opposition would like to see the Leader of the Opposition consulted on the appointment of the Inspector of Transport Security. I understand that the basis for proposing this amendment is that the opposition has likened the role of the Inspector of Transport Security to that of the Inspector-General of Intelligence and Security. But they are very different roles. The Inspector-General of Intelligence and Security oversees Australia’s intelligence agencies; the Inspector of Transport Security will conduct no-blame investigations. On my advice, the role of the Inspector of Transport Security is more akin to the role of the Australian Transport Safety Bureau, which conducts no-blame investigations into safety incidents. The government has always taken the view that the Leader of the Opposition should be briefed on issues of national security—and that position will continue in relation to this bill. Senator O’Brien now has that on the record.

Lastly, I think the opposition would also like to see all final reports tabled in parliament. I acknowledge the importance of public accountability in relation to the activities of the Inspector of Transport Security—and Senator O’Brien makes a perfectly valid point about it. I cannot on behalf of the minister or the government guarantee that, in every possible instance, it will be appropriate for a final report to be tabled in parliament. Therefore, the public interest test that allows a report to be tabled in parliament is, I think, an appropriate test. It is already in the bill and, in our view, it should remain.

The government takes the view that, whilst some of the comments made by Senator O’Brien in support of his amendments are valid, they are really unnecessary amendments, and we do not propose to support unnecessary amendments. I do want to place on the record the fact that the government is appreciative of the opposition’s support for the bill. I do look forward to its passage when we get through the rest of the amendments.

Senator O’BRIEN (Tasmania) (4.28 pm)—The minister’s latter comments about the provision to require the tabling of reports is in the next block of amendments—and I will come to that. In relation to the analogy that the minister makes of this position being somewhat akin to the role of the Australian Transport Safety Bureau—if I heard her correctly—my understanding is that the bureau does not make reports subject to a determination by the minister as to whether they are published. Whilst they do go through a process, and there is a consultation process, the reports are made public without a decision by the minister as to whether they are public or not. In other words, the decision about what is in the report is finally in the hands of ATSB, and the reports are, in fact, all published. That is my understanding. We do not take that position.

What we say about reports being published I will deal with in the next amendment, but we do say that there ought to be consultation about the reports in full. We acknowledge that there may well be sensitive matters in reports which may not be appropriate to be published—for example, matters which disclose gaps in Australia’s transport security regime. The government, I presume, would be equally of the view that they should not be published so that those who would seek to make use of them to the detriment of the public do not have that information. Those matters are self-evident to the opposition; nevertheless, we do believe that those aspects of any reports by the Inspector of Transport Security, for example, ought to be conveyed to the Leader of the Opposition with the caveat that they not be publicly revealed. That is the position we take.
I hear what the minister says about the analogy we drew earlier, but I would say equally—or perhaps on an even greater basis—that the analogy that the minister draws with ATSB is not one which justifies resistance to the position we take. We would not equate this position to the Australian Transport Safety Bureau, because we know of no reasons why that bureau should not publish its findings. In fact, we think it is very important that ATSB do publish its findings so that the travelling public can be aware of how their interests are being looked after and any issues which they should expect the government or its agencies to act upon to improve the safety of the travelling public. We do not have exactly the same expectation of the Inspector of Transport Security. We think that, as far as possible, these matters should be drawn to the public’s attention, but we do concede that some matters would not be appropriate to be drawn to the public’s attention.

We do believe that, for full confidence in this position to be held by the parliament, there should be full disclosure to at least the Leader of the Opposition, and that is why we press our amendment. I reject the analogy that the minister made. I urge the government to embrace what would be a requirement rather than a practice, and I do remind the government that one does not know who will be in government in this country in the future. It would be better, in our view, if this were a requirement rather than the fiat of a particular executive as to what they would or would not do in relation to a security circumstance. We think it would be much better if these matters were prescribed in the legislation. A Labor government would be quite happy to be constrained by such provisions. We put them forward on the basis that we would be happy to live by them and be bound by them, and we suggest to the government that they do no harm in the legislation, particularly if the government feels that, in a sense, they would do that anyway.

Senator COONAN (New South Wales—Minister for Communications, Information Technology and the Arts) (4.34 pm)—Briefly, I should say that the similarity with ATSB that I alluded to in my earlier comments was meant in the sense that, in that process, there is no blame. It is a no-blame inquiry process. The focus here is on making recommendations to improve transport security. That is the entire focus of it—not to attribute blame. To repeat my earlier assurance, if I could put it in those terms, the government has always taken the view that the Leader of the Opposition should be briefed on issues of national security. That position will continue, so far as this government is concerned, in relation to the matters that are the subject of this particular bill. The government is of the view that it adequately deals with the opposition’s view that the Leader of the Opposition should be briefed.

Question negatived.

Senator O’BRIEN (Tasmania) (4.35 pm)—by leave—I move opposition amendments (57) to (61) on sheet 5139:

(57) Clause 64, page 55 (lines 2 to 4), omit sub-clause (1), substitute:

(1) Subject to this section, in relation to each final report the Minister receives, the Minister must table in the Parliament a copy of:

(a) the final report; or
(b) a part of the final report; or
(c) if the Minister thinks that it is, on balance, not in the public interest to table the final report or a part of the final report—a document concerning the final report prepared and signed by the Inspector setting out such details as the Inspector thinks, on balance, it is in the public interest to present to the Parliament.
We think we have balanced this provision appropriately, giving some discretion to the minister but requiring some information be published indicating the work of the Inspector of Transport Security and the sorts of issues being investigated. We believe that, if the public were made aware of the work being done and that work was substantial, they would feel more comfortable about the transport security regime that they travel within and that affects their lives. So we think it is vital that the reports prepared detailing the work of the inspector be, insofar as is appropriate, made available to the public.

I cannot imagine why an Inspector of Transport Security would not be happy to do that. It is a responsible position. I would think the inspector would want the public to know that they were carrying out their position to the best of their ability in areas clearly relevant to the concerns of the public in terms of transport safety. I cannot think of a better way for this information to be made available.

The other amendments go to the same point. The substantial amendment is the one I have outlined, amendment (57), and consequential amendments are contained in amendments (58) to (61) on sheet 5139. It sounds as though the decision has been made that none of these amendments put forward—constructively, I might say—by the opposition meet favour with the government. As the government has the majority in this chamber, the government is able to defeat these amendments. The opposition has put these all forward on the basis that we think we would be improving the regime the government is proposing. Of course, if the government uses its numbers to defeat the amendments, we nevertheless will support this legislation on the third reading.
We have been waiting a very long time for the government to bring this legislation before the parliament. The longer it has taken, the more we have wondered about the seriousness of the government with regard to the position of Inspector of Transport Safety and the regime that has been talked up by the government, although up until now very little has actually been done about it. We still have concerns in relation to provisions which will allow this position to be filled on a part-time basis but, as I said, we have approached this on the basis of trying to obtain the best possible regime for this position.

Clearly, the position is important, although, if it continues to be filled on an occasional or part-time basis, if the officer appointed to the position under this legislation continues to be seconded to other work, leaving the position vacant, if the government continues to appoint temporary position holders who clearly do not perform the same work as the Inspector of Transport Safety, then that will no doubt weaken, in our minds—and certainly in the public’s mind—the way that the position is seen and the importance that we believe the government attaches to the position.

I urge the government to support these amendments, although I must say I do not have a great hope that it will. As I said, we will support the legislation nevertheless, but we think it will be inferior legislation for the lack of these amendments.

Senator COONAN (New South Wales—Minister for Communications, Information Technology and the Arts) (4.42 pm)—I am sorry, I got ahead of myself during my last comments; for some reason I did not have a running sheet. Obviously, my comments have been taken on board by Senator O’Brien because he has now addressed them in moving these amendments. The public interest test does allow a report to be tabled in parliament. That is already in the bill. The legislation does not preclude tabling of reports. Of course, other forms of accountability do apply to activities of the Inspector of Transport Security. And ministers have to turn up and answer questions that may be asked about the inspector’s activities at any time, including in the parliament. Public accountability is important. We think that the public interest test will allow a report to be tabled in parliament when it is appropriate and that the bill adequately deals with the opposition’s point.

Question negatived.

Bill agreed to.

INSPECTOR OF TRANSPORT SECURITY (CONSEQUENTIAL PROVISIONS) BILL 2006

Bill—by leave—taken as a whole.

Bill agreed to.


Third Reading

Senator COONAN (New South Wales—Minister for Communications, Information Technology and the Arts) (4.45 pm)—I move:

That these bills be now read a third time.

Bills read a third time.


Second Reading

Debate resumed from 11 October, on motion by Senator Coonan:

That this bill be now read a second time.

(Quorum formed)
Senator CHRIS EVANS (Western Australia—Leader of the Opposition in the Senate) (4.48 pm)—I rise to speak on the Families, Community Services and Indigenous Affairs and Veterans’ Affairs Legislation Amendment (2006 Budget Measures) Bill 2006, which is a mouthful but is an omnibus bill which implements two of the government’s budget commitments and proposes a series of new measures to crack down on social security fraud and improve information exchange between social security agencies.

Labor supports the budget measures contained in the bill which will make changes to the assets test for people of pension age living in rural and regional areas and implement changes to crisis payment provisions. We also support the proposals to improve information exchange between social security agencies. I notice that the government has now circulated in the chamber an amendment to the bill which seeks to oppose its own schedule 2 in the bill. I am very pleased to see that it has done that. This gives effect to Minister Hockey’s public announcement. That schedule proposed giving Centrelink officers search and seizure powers to raid the homes of social security recipients, which of course includes nearly every family in Australia, given the family payments system. It was bad law and terrible policy and I am pleased to see the government has recognised this.

In terms of schedule 1, Labor believes in a retirement income system which is secure, stable, simple and fair. We remain strongly committed to a means-tested age pension system which guarantees a decent retirement income to older Australians on the basis of need. We recognise there are problems in the existing system, in particular under the existing assets test, which disadvantage pensioners or potential pension recipients who are living on the land. Under the existing assets test many older Australians living on farms or large rural residential blocks find themselves unable to support themselves in retirement. This is because the value of the property their home is on excludes them from the pension. Many of these older Australians have been forced to sell their land and their family homes in order to support themselves. That is clearly not desirable.

Labor believes that older Australians should not have to sell their family homes, where they have spent the best part of their lives, in order to fund their retirement. So we support these government changes to the assets test. We think they are an improvement and will exempt property on the same title as the primary residence from the assets test. They will do so in cases where there is a long-term attachment to that land and where it would be unreasonable to realise the value of the land by selling or leasing it. The government is promoting this as an equity measure to address concerns that people of pension age living on farms and rural residential properties are unfairly excluded from receiving the age pension. People living in urban areas whose properties have substantially increased in value may remain exempt by virtue of the property being the primary residence. So I think the proposition is reasonable.

There is an issue that I will be taking up by way of an amendment to this bill, which is to address a concern that has been raised by my constituents in Western Australia that is largely as a result of the skills crisis in this country. A number of pensioners who have approached me are disadvantaged under the current assets test as a result of the Howard
government’s failure to properly address the skills shortage. Under the current arrangements, a person has 12 months to sell their existing home and construct a new home before the proceeds of the sale of the existing home become an assessable asset. Because of the huge skills shortage, and therefore the delay in building completion dates—particularly in states like Western Australia, which are enjoying enormous economic growth—a number of people have been unable to get their home completed within the 12-month time frame. Their stories of waiting for tradesmen to turn up are legendary. I know it is an issue in Canberra as well, although not with a pensioner; one member of my staff moans long and loud about those problems. We are concerned about the impact on pensioners if that delay forces them to be caught up by the assets test. I will be moving an amendment about that in the committee stage, to try to get government support for that proposition. I hope the government considers the issue seriously because it seems to me to be a growing problem.

While Labor support schedules 1, 3 and 4, we could not have supported the passage of schedule 2 of the bill, given the damning evidence presented at the Senate Standing Committee on Legal and Constitutional Affairs inquiry into this part of the bill. I am glad to see the government, too, will be opposing that part of their bill. The committee would have given Centrelink officers the power to enter and search premises, including the homes of social security recipients, and seize material relevant to offences committed against social security law. Frankly, this measure should never have come before the parliament. It was bad policy and it would have been even worse law. The Senate legal and constitutional committee’s report, handed down last week, was damning of how poorly thought through this part of the legislation was. I would like to thank Senator Ludwig, who on behalf of the Labor opposition sought to forensically go through the arguments for this schedule and, I think, by virtue of his questioning and research prove that the case was not made.

The committee found that the proposed measures were unsupported by clear evidence and disproportionate to the likely degree of intrusion which would have been likely to result from the powers. The committee also found that many fundamental aspects of the supporting framework to the powers had not been fully considered before the legislation was introduced. The committee considered that issues had not been adequately thought through, and these included issues of training and recertification of officers exercising the powers and the absence of governance, accountability and oversight mechanisms and procedures for handling evidence and other operational guidelines.

Further, the committee was of the view that powers of entry, search and seizure are most appropriately exercised by the AFP, yet the inquiry heard that FaCSIA and Centrelink had not bothered to consult the AFP about the proposals to provide these powers for Centrelink officers. In its submission and evidence to the inquiry, FaCSIA claimed that one of the reasons Centrelink officers needed these powers was that the AFP was too busy to help out with social security cases. This turned out to be complete nonsense, and the AFP disputed FaCSIA’s claim in its evidence to the inquiry.

To back up their claim for unusual additional powers, the agencies were relying on a letter written by the Commissioner of the AFP five years ago which noted that terrorism was the priority work area. I agree that terrorism is the priority work area for the AFP, but that does not justify this sort of legislative proposal. The agencies had not both-
ered to consult with the Federal Police in recent times, and the AFP told the inquiry that they could meet their obligations to enforce social security requirements. This was not important to the government, which brought on this legislation seeking substantial new powers despite a range of flaws, a lack of planning or demonstrated need, and without proper accountability and oversight provisions. The committee’s report also expressed concerns that adequate information about schedule 2 had only been made available by FaSCIA and Centrelink ‘after persistent questioning by the committee’. Moreover, when this information was provided, the committee was hampered in its work by ‘the brevity and, in many cases, contradictory nature of much of the information provided’.

The committee also expressed concern at the apparent inability of FaCSIA and Centrelink to provide accurate statistics and background information to support their arguments. I want to make it clear that this was not a partisan view; this was a view expressed by all members of the committee. There was concern about how the executive was acting in seeking to get legislative support for a case that was not made.

I think the affair reflects very badly on the government, on its incompetence and, I think, growing contempt for the legislative process. I am particularly concerned that this reflects a trend that we are starting to see in the Senate, where the government’s recognition that it has the Senate numbers is leading it to put up more and more poorly thought through, poorly drafted and poorly constructed legislation because it knows it can drive it through the chamber. We have had a number of instances recently where legislation which would not meet the most basic of tests has been brought before the parliament, most of it rammed through on the basis of the government’s numbers. Its legislation would never have passed the previous Senate, not because of the politics of the issues but because of the Senate’s view that the legislation would have needed to be justified and effective, and we would have made sure it was tested against proper requirements for legislation.

I think the government is growing lazy and complacent in dealing with legislation given its control of the Senate and that is now creeping into the bureaucracy’s view of what is achievable. Any seemingly half-baked idea now seems to get presented as legislation before the Senate. Much of it is unjustifiable and poorly drafted. So I think it is an issue that the Senate ought to take very seriously, not just on this occasion.

I pay tribute to the coalition members of the Senate Legal and Constitutional Committee who, on this occasion, were prepared to say, ‘Hang on, this is a nonsense. This is not justifiable and it ought not be supported.’ Unfortunately, on many occasions coalition senators have not been able to express those views, even when honestly held, because of their commitment to the government. I understand the pressures they are under but I think that they too are starting to realise that they are being asked to rubber-stamp legislation that should not be passed by the Senate, and I think that a number of them are feeling constrained in their roles as a result of what the executive is asking them to support.

Schedule 2 was so bad that government senators joined with opposition senators in making it clear that it should not be supported. I think it is important that the Senate continues to play that role and that all senators take that role seriously. I think that should act as a warning to the government, particularly following on from the Crimes Amendment (Bail and Sentencing) Bill 2006, which allegedly was to deal with Indigenous people using a cultural defence. Again, we
saw that that was quickly and poorly drafted legislation where the government had a publicity idea, reflected it in a hastily drafted bill, were in the embarrassing position of being in the chamber arguing for the removal of customary defences by all persons using customary or cultural defence and then found that they had only removed it from two sections of the bill, not all three. That is how slapdash it was. So I think that we have to ensure that the Senate does exercise great caution over the bills that we are asked to pass, and I urge coalition senators to continue to take that role seriously.

Labor supports the rest of the measures in the bill, including those to deal with crisis payments. Those payments are currently available to victims of domestic or family violence if they are forced to leave their home and establish a new home as a result of the violence. Extending eligibility for crisis payments to those who remain in their own home after the perpetrator has left or has been removed, recognises that violence may trigger financial crisis even when the victim remains in the home.

The bill also proposes a series of changes to social security legislation to enhance information sharing between agencies, and we would support that. However, we do believe that the changes to information exchange arrangements should be implemented in consultation with the federal Privacy Commissioner. We note that Centrelink is currently not required to inform people when their carers payment is about to be cut off and we believe that they should be required to do so. We also question the government’s projected savings of $131.8 million from this measure. The extent to which these savings will be realised is questionable, given the government’s savings projections of this nature are notoriously unreliable. It seems that alleged social security fraud savings come up every year—it seems to be a bottomless pit of savings—but I am certainly getting a bit cynical about it.

In conclusion, Labor supports the measures in the bill. We think they are worthy of support by the Senate. We are very pleased that the government has backed down over the search and seizure powers. I pay credit to the members of the Legal and Constitutional Committee for their work in bringing the government to the realisation of how poor their proposals were and, because of the government’s support for opposing scheduled 2, Labor will be supporting the bill.

Senator BARTLETT (Queensland) (5.04 pm)—On behalf of the Democrats, I indicate that we support the legislation once the amendment is put through to remove schedule 2 from it. I concur with much of what Senator Evans has just said. I would want to make two key points in regard to the process that has been followed to date. Firstly, I think there does need to be a particular recognition of and congratulations to the Senate Legal and Constitutional Committee. It was a brief Senate inquiry and a brief committee hearing but it was sufficient to clearly draw out ample evidence that the proposal contained in schedule 2 of the legislation was badly thought through, improperly justified and, frankly, quite dangerous.

It is a tribute to all members of the committee, including the government members of the committee and its chair, that the committee not only pointed those matters out in its report but, indeed, was also sufficiently diligent in its questioning to draw these facts out in the committee hearing process. My understanding—and I am almost certain of this as a member of the committee—is that the relevant minister, Minister Hockey, indicated his decision to withdraw this schedule from the bill before the Senate committee report even came down. Normally it takes the strength of a unanimous Senate commit-
tee report, with the government members included, to create sufficient awareness, pressure and recognition for the government to move necessary amendments. It does not mean it always follows that the government will move those amendments, of course, but usually that is the way it works. If there are going to be amendments as a result of Senate inquiries, they are proposed usually once the committee has done its report and attention has been drawn to the strength of the concerns. In this instance the evidence was so strong, so clear-cut, so problematic at the hearing itself that the minister indicated before the report had even come down that he would be withdrawing schedule 2.

That leads me to the second point I want to make. There does need to be congratulations given to the minister, Minister Hockey. The easy thing to do when you have the numbers in the Senate is to just insist on going ahead anyway. I can certainly think of some other ministers who, I suspect, in similar circumstances would have dismissed all the concerns and bulldozed straight ahead anyway, enforcing their will, if you like, on their colleagues most probably because of the nature of parliamentary discipline. They would have got that accepted and we would have ended up with an extremely bad and dangerous law. Probably anybody who expressed concern about it would have been dismissed as being soft on welfare fraud or something like that.

So it is worth while paying tribute to Minister Hockey. Obviously, any time a minister withdraws a section of a bill in the face of criticism they leave themselves open to being accused of backdowns, backflips and the like. A small amount of that happened, as is understandable. But to have the guts to stand up and say, ‘No, actually this is wrong. We’ll take this out and have another look at it. We won’t insist on proceeding. We won’t force this through. We won’t inflict bad law on the people of Australia,’ takes a bit of backbone. It might seem like common sense, but it is not automatic and I think it needs to be commended when it happens.

Having said that the decision of the minister needed to be acknowledged and congratulated, I nonetheless have to express great concern that the provision was put forward in the first place. I do not know whose idea it was. Centrelink and social security legislation span a few different portfolios. I do not know whether it came from a ministerial or departmental level, or where it came from, but it is a dangerous idea. To reinforce what the relevant schedule of the bill sought to do—or seeks to do, before it gets removed: it sought, or seeks, to introduce for social security, family assistance and related student assistance payments provisions for entering and searching of premises, and copying and seizing of material relevant to pursuing these investigations.

I note that the justification given initially was that these provisions would mirror provisions that are already available to other agencies such as the Health Insurance Commission, the Australian Taxation Office, the Child Support Agency and the Department of Immigration and Multicultural Affairs. It is important to note that that justification was used because it is literally an example of the slippery slope. That is why there is good reason to raise concerns on principle about expanding powers such as search and seizure—law enforcement types of powers that would normally be associated with police type agencies—to other general government agencies, public servants and officials. The reason is that, once it is done for one agency, it is very easy, common and understandable for ministers that might want that power for some other thing to say, ‘We already do this in this area. There’s no problem. We’ll do it for this other section as well.’
I think that the social security area has quite significant distinctions to the tax office, the Health Insurance Commission and the immigration department in particular. As the Welfare Rights Network pointed out in their evidence to the committee inquiry, issues relating to enforcement for those agencies usually relate to people avoiding the agencies, whereas, with Centrelink, if you want to keep getting paid, you need to retain contact. There are many ways that Centrelink can require contact with people to enable basic payments to continue, so it is quite different even from that point of view.

The other difference, as the committee pointed out, is that in most instances with those agencies when these sorts of search and seizure operations occur, it is at business premises, not private residences, where many of the sorts of raids would occur when you are talking about social security and Centrelink payments. It is a reminder of how this sort of justification, this sort of creeping effect, once the powers are given more widely, is used to spread it out to other officials for all sorts of other reasons. So it is good that the line in the sand has been drawn on this occasion, and I hope that continues to be the case.

The other part of this situation which is worrying and which I think needs to be emphasised is the flimsiness of the justifications that were given. Senator Evans has read out some of the conclusions of the unanimous committee report—I was a member—and they should set a few alarm bells ringing, frankly. We are, in this place, as are the general public, reliant on taking the word of agencies when they put forward arguments to justify why certain actions or changes are needed. The arguments put forward by Centrelink officers once they were explored by committee members fell apart quite quickly. That is a matter of concern. I am not suggesting there was deliberate deceit undertaken; I suspect it was a belief that took hold amongst some in Centrelink that a certain situation was occurring and they needed to do something about it. They just continued on their way and did not put a lot of time into talking to, in particular, the Federal Police to determine whether their belief was valid and whether there might be ways to solve it. They immediately went to the end of the process to their preferred solution and decided that they might like search and seizure powers themselves.

The suggestion and the justification made by Centrelink officers that there were delays in the process of obtaining and executing warrants and that their inability to act promptly jeopardised their capacity to get evidence were not able to be backed up. Also, they stated that there had been an increase in the number of times that the AFP had rejected referrals for them to become involved in Centrelink activities when the AFP was able to provide data that quite clearly proved the opposite: there has actually been a decline in the number of cases rejected by the AFP in recent years, including since 2000. Indeed, the decline has been quite dramatic in the number of cases rejected by the AFP.

It should always raise a concern when a rationale is put forward by a government agency as to why a quite significant power is required and then, when you do the tiniest bit of digging, you discover that that rationale is not actually backed up at all and is undermined by the basic facts. That does not engender confidence and it is a concern. I think it is a sign of what Senator Evans referred to as the government’s growing arrogance.

There is a growing view that, with the government’s control of the Senate, they feel ‘We have got the power, we want to do this, we know it needs to be done and we should be allowed...
to do it.’ Again, it is a tribute to the Senate committee that they were able, even in that short hearing, to expose the problem.

I should also note the work of another Senate committee, which does not get terribly much notice but also does a good background job of exploring not the partisan policy issues but some of the basic principles—that is, the Senate Standing Committee for the Scrutiny of Bills. It also looks at the principles of whether legislation that gives extra powers to government or government officials is justified. We are, of course, always talking about balancing principles. No one is arguing—I am certainly not—that under no circumstances should any non police officer, public servant or official ever be able to conduct search and seizure type operations; clearly, that would be unreasonable and inflexible.

But we do need to balance-up giving extra enforcement powers that will obviously help with compliance with the law, which is always in the public interest, with the potential for those powers, firstly, to infringe upon people’s dignity with arbitrary invasions of their property and privacy and, secondly—and potentially worse, of course—the potential for them to be misused. With an agency as large and dispersed as Centrelink, I do not think it is casting unfair aspersions on the public sector in general to say that unless you have an extremely good training regime—something else that had not been worked out when these proposals were put forward—the chances of the powers being misused will likely be quite significant.

I found the evidence of the Welfare Rights Network very convincing. They deal with the difficult cases—not the day-to-day cases. The day-to-day cases are the ones that nobody notices because they are the ones where everything goes right. That is the vast majority, and that is good. But the ones where there are appeals, the ones where there are disputes, the ones where there are complaints—the ones where things go wrong—are the ones that people at the Welfare Rights Network deal with every day of the week. They get to see the flaws. Dealing with nothing but flaws day after day can tend to cull your judgment a bit, perhaps; you can assume that these practices or problems are more widespread than they are. But the simple fact is that the Welfare Rights Network do have that practical experience of how badly things can go wrong and of how internal processes are not always sufficient to resolve problems.

I used to work in the predecessor of Centrelink, the Department of Social Security, back in 1989 or 1990—I think it was around that time. Things have obviously changed a great deal since then, but I was a social worker and also dealt to some extent with some of the more difficult cases, rather than the run-of-the-mill ones. I would sometimes be playing an intercession type role when there were disputes in the compliance and enforcement area. It is not casting aspersions to say that sometimes people can get overzealous in that area. They are human beings and that is sometimes human nature in those sorts of circumstances. It can happen not even within a whole organisation but with individual officers, or in units or teams. In any particular region a culture can develop that can be overzealous.

I certainly saw examples of that in my time. It was only occasionally; not very often. It is a very difficult job, of course—particularly in the compliance area, which is very delicate. I am not in any way suggesting it is a walk in the park. But I have no doubt that already in the compliance area there are practices that are less than ideal. Expanding powers to such a dramatic extent as being able to get warrants to enter premises to search and seize material and question peo-
ple is a very big step. I certainly do not think it is one that should be taken without very strong justification and a lot of preplanning.

Having made all those complaints about that section of the bill, I am obviously very pleased it is not going to stay in there. But I think we need to note that it did make it all the way through until the Senate committee drew attention to those problems. I hope, and I am sure and would expect, that the minister and ministers would be looking into how it got through—how it happened that such a poorly thought through provision could have almost entered into law. I will repeat that I think credit must go to the minister for accepting the mistake and withdrawing it—if you like, for taking the short-term hit for the long-term benefit of the administration of this particular area of the law and, obviously, for those in the community that have experience with it. It is worth repeating that there are, of course, millions and millions of Australians that have some form of contact with Centrelink each year. In that sense, I suppose, it is a positive sign that there are perhaps so few complaints. The area of Centrelink complaints is, I think, the biggest area of complaints for the Ombudsman. That is perhaps not surprising given the enormous number of Australians that have contact with Centrelink.

The other provisions of the bill, which will stay, are ones that the Democrats support. Senator Evans spoke about an amendment; I will listen to the arguments on that. The case he put forward for his amendment seemed valid to me, but I am happy to hear any other arguments to the contrary before determining a position on it.

Senator LUDWIG (Queensland) (5.21 pm)—I rise to speak on the Families, Community Services and Indigenous Affairs and Veterans’ Affairs Legislation Amendment (2006 Budget Measures) Bill 2006. Perhaps hereafter we can call it ‘the bill’. The bill was introduced into the Senate on 11 October 2006. It was referred to the Senate Standing Committee on Legal and Constitutional Affairs. That is unusual because these types of bills usually go to the community affairs committee or another committee.

The bill went to the Senate Standing Committee on Legal and Constitutional Affairs principally because of schedule 2. In short, schedule 2 contains proposed entry, search and seizure powers. Schedule 2 would amend the A New Tax System (Family Assistance) (Administration) Act and a number of other acts to provide Centrelink investigative officers with a wide range of powers. In short form, those powers can be explained as powers to enter premises with the consent of the occupier; apply to a magistrate personally, by telephone or by electronic means for a warrant; execute the warrant to enter premises with assistance and using reasonable force as needed; search the premises for evidential material; take photographs or video recordings; use equipment to process items found in the search; operate electronic equipment at the premises to obtain and copy data; and obtain an order requiring a person to assist in accessing a computer and copying its data. Quite a wide range of powers, in fact, are being sought in schedule 2.

Principally, as I understand it, it was sent to the legal and constitutional committee, to have a look at those powers, because of the very nature of those powers and the use that investigators from Centrelink could in fact then put those powers to. The remaining parts of the bill are relatively uncontentious. But you do question why the government in this instance put an omnibus bill together which contains relatively uncontroversial changes to this area but also includes schedule 2 within all of that, which provides quite wide-ranging powers for investigative officers of Centrelink.
When examined by the committee a little bit further, it did become a bit plainer, if that is a reasonable way of putting it. Most of the submissions—in fact, the key submissions—were all opposed to the inclusion of schedule 2 in this bill but particularly to the powers that would be conferred on Centrelink investigative officers. There is a need for Centrelink officers to investigate fraud and to ensure that payments to people are appropriate. Centrelink have a range of powers already. They have a system of administrative breaches. I will not go into great detail about that. But they do have significant powers as it is.

Investigative officers in Centrelink, I am sure, play a vital role in combating both administrative breaches and fraud. In fact, if you look at the statistics, something in the order of 20,000 cases are investigated by Centrelink officers in combating fraud. The overall framework that we work within in this area is the fraud control guidelines promulgated by the Commonwealth. In short, the guidelines provide that fraud which is serious and complex be referred to the Australian Federal Police for investigation, as you would expect. Usually, under the fraud control guidelines, minor fraud or fraud which does not meet that criterion is required to be dealt with in-house. What that means is that the relevant agency or department should include within its overall administration a method to ensure that fraud is dealt with in an appropriate way—in other words, it should have proper processes and administrative procedures in place. That is the general framework that you would expect.

What is sought in this bill is in fact the movement of significant powers to Centrelink investigative officers to assist them in matters that are not being referred to the Australian Federal Police or which would not meet the case categorisation and prioritisation model that the Australian Federal Police use to assess serious and complex fraud cases, which they will then pick up. Of the 20,000 cases that Centrelink investigates, about 4,000 end up being referred to the Commonwealth Director of Public Prosecutions to be dealt with. For most of those, guilty pleas are usually entered. Of those, there is a significant or at least a very high guilty verdict rate. In other words, a quarter of the cases that they investigate and move towards completion obtain a guilty verdict.

You would have to say that, on the statistics they have provided to the committee, many of those fall within the areas that you would expect. Those are areas such as the employment sphere, marriage like relationships, education and the like. Without going to the particular detail of that, Centrelink does have a program in place. What has happened, by the look of it, is that a range of budget measures have sought to increase the focus of Centrelink on this area. To that end, the Department of Human Services put forward a series of measures under the headings Better Compliance and Better Service. One of these measures was an enhanced focus on serious social security fraud. I am sorry; my mobile phone is ringing. You occasionally get that, unfortunately.

Senator Joyce—Now you have to take the call.

Senator LUDWIG—That occasionally happens when you get called to the chamber.

Senator Vanstone—I honestly do not recall that happening!

Senator Joyce interjecting—

The ACTING DEPUTY PRESIDENT (Senator Forshaw)—It is disorderly to interject and to answer the phone. Could you continue your remarks please, Senator Ludwig.
Senator LUDWIG—Thank you. I thought that, if I tried to draw the least amount of attention to it as possible, we might skate through.

The ACTING DEPUTY PRESIDENT—I think we are all waiting to hear, actually, what the call was about.

Senator Vanstone—I note that you checked who it was from!

Senator LUDWIG—One has to be careful about these things. I am sorry, Acting Deputy President. We have a case where, in the overall scheme, you have Centrelink seeking a way of meeting that enhanced focus on serious social security fraud and, in doing so, they have moved to an end point. Effectively, that end point was to find a way to enhance the investigative functions of Centrelink investigators by utilising a range of powers such as search and seizure powers, which are articulated in schedule 2.

What they did not do is look at a range of ways to achieve compliance and deal with minor fraud and then interact more effectively with the Australian Federal Police to ensure that the overall target, which was an improved or enhanced focus on serious social security fraud, was the end gain. In fact, what became the end gain was increasing the powers of Centrelink investigative officers—which, in truth, was the wrong direction. It may be necessary to look at the investigative powers of Centrelink officers to ensure that they have sufficient powers to effect the outcomes that they are seeking, but the first step in the process is to consult the area identified as the problem, at least during the Senate committee hearings—that is, the Australian Federal Police.

In looking at the range of submissions that came forward from the various parties, we found that there was great concern about how these powers would in fact be used and perhaps abused, although it is not necessary to go that far. A range of submitters were very concerned as to whether these powers would be utilised appropriately by Centrelink investigative officers. At a Senate committee hearing it was demonstrated that there was a concern. Centrelink lacked the ability to demonstrate to the committee that they had appropriate systems in place to deal with the increased powers and that they had insufficient training in place. Centrelink’s response was: ‘We have a lead time and we will put those in place.’ From Labor’s perspective, it does not meet the case categorisation-prioritisation model. That means that there was a point at which Centrelink came to a conclusion that the Australian Federal Police were not investigating, or at least not picking up, the cases. The committee hearing found, and the evidence demonstrated, that Centrelink’s conclusion was misplaced. The Australian Federal Police were able to argue and demonstrate quite conclusively that they were taking up the cases which were referred to them from Centrelink as serious and complex and that their refusal rate was within at least a reasonable margin.

One of the interesting points the Australian Federal Police raised was that the Centrelink agency had also not bothered to consult the Australian Federal Police about these powers in the first place. They had understood that the consultative process was to be undertaken by the parent agency, or the Attorney-General’s Department. In questioning the Attorney-General’s Department, their response was: ‘It is the agency’s responsibility.’ So, in fact, they sheeted the consultative process straight back to where it should have been in the first place—that is, with Centrelink.

In looking at the range of submissions that came forward from the various parties, we found that there was great concern about how these powers would in fact be used and perhaps abused, although it is not necessary to go that far. A range of submitters were very concerned as to whether these powers would be utilised appropriately by Centrelink investigative officers. At a Senate committee hearing it was demonstrated that there was a concern. Centrelink lacked the ability to demonstrate to the committee that they had appropriate systems in place to deal with the increased powers and that they had insufficient training in place. Centrelink’s response was: ‘We have a lead time and we will put those in place.’ From Labor’s perspective, it
was an unconvincing attempt to indicate that they would be able to deal with those powers in a reasonable way.

The Australian Federal Police in their submission also stated a great concern: these types of powers are usually held and used by law enforcement agencies, which Centrelink is not. Their submission and evidence indicated that, having not been consulted by Centrelink, they remained concerned about how these powers would in fact be utilised. What Centrelink finally offered, which they seem to have now picked up, was to undertake reasonable consultation to improve communication. Had they started that process some time ago, we may not have got to this position of having schedule 2 in an omnibus families bill before the Senate committee. We might have been able to avoid that through reasonable consultation. If you look at the size of Centrelink, it is disappointing that they did not undertake that action in the first place.

The arguments that were put forward, such as the proportionality between objects to be achieved by the use of these powers and the degree of intrusion, is significant because, as the Scrutiny of Bills Committee noted:

It is often said that empowering ... authorities to enter and search private premises involves striking a balance between two competing public interests. There is a public interest in the effective administration of justice and government. However, there is also a public interest in preserving people's dignity and protecting them from arbitrary invasions of their property and privacy ...

It is important to ensure that any use of these powers is reasonable and appropriate.

Centrelink were unable to demonstrate clearly that these powers were, in truth, necessary. It was a matter on which Mr Joe Hockey took a reasonable and pragmatic approach. We found that there was a complete lack of persuasive argument by Centrelink for these powers, and Mr Hockey took a pragmatic approach and has now sought to withdraw the schedule from the bill. We congratulate him for his courage in recognising that there was no persuasive argument for the inclusion of these powers. It now appears that Centrelink will be encouraged to at least consult with the Australian Federal Police in greater detail to ensure that they have appropriate procedures as well as a memorandum in place.

It is also a salutary lesson for Centrelink. If you go back and unpack their answers to many of the questions that were asked, you will find that they were the arguments that were in their primary submission and that their follow-up answers bordered on the misleading. If you look at their arguments and the responses given by the Australian Federal Police, they do not coincide, not even a little. The arguments put forward by Centrelink, as I have indicated, were unpersuasive. As an example, they said the case categorisation and prioritisation model had changed and had made it harder for the Australian Federal Police to pick up their cases. The Australian Federal Police indicated that the model had not changed and in fact Centrelink were wrong. Clarity about that could have been achieved if Centrelink had consulted with the Australian Federal Police in the first place.

One wonders what Centrelink were doing between the time the legislation was drafted and when it was brought forward. Instead of taking what could be called a hopeful approach in achieving these powers, they should have taken a pragmatic approach and spoken to the Australian Federal Police about achieving some of the aims that they wanted to achieve.

There is still significant work to be done by Centrelink to ensure that current fraud within Centrelink is tackled and tackled appropriately. The onus is now on Centrelink and associated agencies to use the fraud con-
trol guidelines, to work with the Australian Federal Police to identify and combat fraud which is not referred but which is their responsibility and to also work with the Commonwealth Director of Public Prosecutions to ensure a reasonably fair outcome and that they do not move to one extreme—that is, using extreme powers such as those which the AFP recognised were powers that only law enforcement agencies would usually have. The justification Centrelink put forward for these powers also bordered on the mischievous when they said they were analogous to other powers held by other similar agencies. That argument was unpacked and shown not to be based on the complete truth either. When you look at those other powers in those other agencies, you will see that they are specific powers for specific purposes. Centrelink were asking for wide powers across the field that they would deal with in their own way through training and programs. Without taking any more of the Senate’s time, as I have indicated, with more diligence from Centrelink and Mr Hockey, and of course the cabinet ministers who approved this bill in the first place, this could have been avoided and work on the real issue of how the government identifies fraud could have been undertaken.

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural Affairs) (5.41 pm)—I thank all honourable senators for their contribution. I do not want to say much more—just two things. All senators whom I have heard speak on the Families, Community Services and Indigenous Affairs and Veterans’ Affairs Legislation Amendment (2006 Budget Measures) Bill 2006 referred to the government agreeing to an amendment to schedule 2 of the bill to remove in its entirety the search and seizure provision. A new service level agreement is being developed between Centrelink and the Federal Police. Therefore, the provision is no longer necessary and the government amendment will remove schedule 2 from the bill. The amendment will need to be moved during the committee stage, and hopefully we will do that soon. In addition, Senator Evans’s amendment, which I expect he will move, will not be supported by the government—just to give some advance knowledge of that—as it is not, in our view, comprehensive enough and does not address all of the issues or consequential amendments necessary for that to happen. I will discuss that amendment more when we get to the committee stage. There is some sympathy for where Senator Evans is trying to go; there is just disagreement on what it will actually achieve in terms of the current amendment. I thank senators for their contribution.

Question agreed to.

Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural Affairs) (5.43 pm)—I table a supplementary explanatory memorandum relating to government amendments to be moved to this bill. The memorandum was circulated in the chamber on 28 November. I move government amendments on sheet QJ314:

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

(2) Schedule 2, page 26 (line 1) to page 83 (line 26), to be opposed.

The TEMPORARY CHAIRMAN (Senator Forshaw)—The question is that government amendment (1) on sheet QJ314 be agreed to.

Question agreed to.

The TEMPORARY CHAIRMAN—With respect to government amendment (2) on that sheet, the question is that schedule 2 stand as printed.
Senator CHRIS EVANS (Western Australia—Leader of the Opposition in the Senate) (5.45 pm)—I understand that schedule 2 will be opposed by the government. I just want to be clear on this, Mr Temporary Chairman: you will put that schedule 2 stands as printed, the government will oppose it and Labor will join them in opposing it for the reasons outlined earlier in the debate.

The TEMPORARY CHAIRMAN—I am glad that you are clear on that, Senator Evans. I cannot say precisely what the government will do, but I understand that is the course of events that will occur. The question is that schedule 2 stand as printed.

Question negatived.

Senator CHRIS EVANS (Western Australia—Leader of the Opposition in the Senate) (5.46 pm)—I move opposition amendment (1) on sheet 5094:

(1) Schedule 1, page 9 (after line 3), after item 14, insert:

14A After subsection 1118(2A)

Insert:

(2B) If:

(a) a person sells the person’s principal home; and
(b) the person is unable within 12 months to acquire another residence that is to be the person’s principal home; and
(c) in the Secretary’s opinion the delay in acquiring another residence that is to be the person’s principal home is because of circumstances beyond the person’s control; and
(d) the person is likely, within 24 months, to apply the whole or a part of the proceeds of the sale in acquiring another residence that is to be the person’s principal home; then so much of the proceeds of the sale as the person is likely to apply in acquiring the other residence is to be disregarded during that period for the purpose of this Act (other than Division 1B of Part 3.10).

In moving these amendments I indicate, as I did in my second reading debate contribution, that there is a particular issue that has been raised with me in Western Australia by constituents regarding the current 12-month limit that is placed upon people from when they sell their own home until they acquire a new one if they want to remain eligible for a pension. As I indicated earlier, with the economic buoyancy in Western Australia—and, I believe, in some of the other states—getting a new home completed inside that 12-month period has proved very difficult for a number of people. There are skill shortages and long delays in getting homes completed.

A number of people have come to me raising their concerns about this because they have been brought into the assets test when in fact they are just seeking to move into a new home. Often they are downsizing into something more appropriate, but the delay in finishing the home has meant that they have fallen into assets test problems with the funds that they have reserved to pay for the new home. A number of Commonwealth officers, when confronted with this issue, have been sympathetic to the constituents but have said that they have been unable to do anything because there is no discretion. I seek, in moving this amendment, to provide for the secretary to have that discretion—to provide the flexibility that would allow for people in genuine circumstances to seek to have a discretion exercised for a period of 24 months.

The point is to allow the discretion to be exercised by the secretary or their delegate to deal with those people who have very real problems in complying with the current provisions. I do not think it is a particularly political issue; I think it is about providing a
solution for people who are getting caught in an unintended way. I gather the minister has indicated she has some sympathy for the amendment. We have raised with the government previously the need to do something about this. I would hope that the minister, if she has a problem with my amendment, will come back with her own constructive proposal to fix it.

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural Affairs) (5.48 pm)—Senator Evans is right: this is not seen as a particularly political issue. There is some merit in the proposal. The government has been considering issues in relation to other situations in which people might not be able to build within 12 months—for example, following Cyclone Larry where people on income support are unable to rebuild their homes within 12 months. I do not think Perth is necessarily the only place where it happens. I know some people who sold their house three years ago in order to build their dream home—it was not a downsize but an upsize—but, three years later, they have not moved in. Were they people who were in need of welfare, that would be a difficult situation. It relates to the capacity to get builders and a whole range of other matters.

In any event, while we agree that something might need to be done, you nonetheless have to get it right. We understand the principle of the amendment. It is our view that it is not comprehensive. It does not address all the issues. I have been told there are some consequential amendments. I have not been told what they are, just to save you asking me, but they are inevitable. I am further advised that, while your proposal addresses the impact of the assets test on sale proceeds, it does not align the homeowner definition, to ensure the person continues to be assessed as a homeowner until their home is finished. That is just one issue that has been raised.

So, while the government are sympathetic to this proposal, we will not be supporting this amendment. But we will ensure that Senator Evans is personally apprised of our future consideration in relation to this matter.

I make the point that this government, which was described by Senator Bartlett, who is now back in the chamber, as being arrogant and taking its numbers for granted, recognises that someone is putting forward an idea that might be reasonable and is committing to having a look at it and getting it right. Senator Bartlett, I take the opportunity now that you are back in the chamber to point out just one aspect of your speech that I did not quite get. There was a portion which said that we are an arrogant government who do not listen to anybody, but it was within the context of the bill being debated, as a consequence of a range of opinions put to the government that a whole schedule has been removed. So I sort of got lost in that part of your speech. I am not inviting argument about it. I am just making the point that I think the conduct on this bill—in the removal of the schedule and in the agreement that Senator Evans has something that he wants to raise and which we will get back to him on—is an indication of quite the opposite; that is all.

Senator CHRIS EVANS (Western Australia—Leader of the Opposition in the Senate) (5.51 pm)—I thank the minister for her response. I do not want to be churlish, but looking at it and getting back to me does not quite provide the level of satisfaction that I would like. I know that may not concern the minister, but I really would like to get a sense of what we are going to do about it. The problem has been around for a while. It has been raised with the government. The government is aware of it. Its own officers are aware of it. If there are inadequacies in my amendment, I am happy to accept that. It is not quite clear to me what they are, and I
am always a bit wary of being told that when there is not a satisfactory explanation. But I am happy to concede that there may be inadequacies—I do not want to argue about that. If we can do it better, we should do it better.

But the question is: why don’t we fix it now? Why don’t we provide relief for those people now? Why don’t we delay the bill until tomorrow so that you can bring in the amendment and we can fix it? It seems to me that, if you can see there is a problem, this is an opportunity for us to fix it. As I understand it, we have the time to fix it, so let us fix it. I think that in this situation people do not want to be told that the government concede there is a problem but that they will look into it and will apprise them of their view later on. This is an opportunity inside the relevant piece of legislation to fix it. I was not aware of the Cyclone Larry issues, but that obviously makes a lot of sense. As I said, officers of the department told constituents of mine that they were sympathetic to their plight and that they would like to get the situation fixed but they cannot, so I would like some reassurance about when we are going to fix it. I would also like to know why we cannot just fix the problem now.

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural Affairs) (5.53 pm)—The reason we cannot ‘just’ fix it now is that it is apparently an amendment that requires policy approval. From what I have been told, I infer that that means probably either prime ministerial tick-off or cabinet approval—probably the latter. The other point I make is about a remark made to me once by Dame Margaret Guilfoyle, who used to hold the portfolio that this legislation comes out of. She described it as ‘pick-up sticks’ in that every time you touched one bit, all the other sticks in the pile moved. From my own experience in this portfolio, while we can look at individual things and say, ‘I think we ought to do this,’ the process of deciding that is perhaps not difficult. The work involved in ensuring what other flow-on effects there might be—and I do not mean just consequential amendments—as a consequence of what you do, needs to be considered.

As you know, this is not my portfolio, so the best I can do is to give you the advice I have been given by the minister: that the government is looking at it and you will be kept informed. I can and will ask the minister to give you in the next couple of weeks an indication of the timetable for consideration of this. I cannot give you that because I am not the minister, but I can ask the minister for it.

Senator BARTLETT (Queensland) (5.54 pm)—The proposal put forward by Senator Evans is, as I said in my speech in the second reading debate, one that has merit. It seeks to address a genuine problem and I think he deserves credit for raising it, as does the minister for making a commitment to pursue the issue. It is one of those issues where there is merit in what both sides are saying. I can understand Senator Evans being less than satisfied as to whether we will get back the minister’s approach, but I can also understand the minister saying that she does not really have much of an option at the moment. But I do think it is one that needs to be followed up.

The complexity of this area of legislation is certainly a problem and means that any time something is changed you always have to look at the flow-on effects, but that is not a reason in itself for not doing something. This government makes monumentally major changes to this area of legislation—sometimes within very short time frames—with a lot of unintended consequences. I think that when groups in the community are clearly being disadvantaged through no fault
of their own we should not drag the chain indefinitely. However, I appreciate that the minister is not in a position to do anything about that in the current situation.

Let me assist the minister with her previous comments, because she did indicate that she was a bit lost in the intent of what I was saying. I should indicate that one of the reasons I was out of the chamber is that at the time the Senate was debating this legislation, a Senate committee was also holding public hearings. That is a continual problem, particularly if you are on the crossbench, where you have a range of different responsibilities. Frankly, I think it is a problem—if I could take the opportunity to mention it on the side—that we need to look at again, because a significant number of committees hold hearings during sittings of the Senate. That not only makes it difficult for senators to be in two places at once but also means that the public who provide evidence to and appear before Senate committees can get short-changed by not having the full focus and attention of the senators that they would otherwise get. That is a separate point.

With regard to my comments, I attempted to make it reasonably clear in my speech in the second reading debate that I thought Minister Hockey deserved to be congratulated for acknowledging that this is a problem and removing it. I thought I made that point more than once; I am quite happy to repeat it again. In the current circumstances, it is quite easy for ministers to just persevere regardless and insist on pushing things through and slagging off anybody who criticises them for being soft on welfare cheats and the like. Senator Hockey deserves credit for that. I have said that, and I am quite happy to say it again. It inevitably means that he will cop a bit of a comment or two about backdowns, backflips and the like, but it is certainly much better to acknowledge that there is a problem and to take it out and to look at it again rather than persevering regardless because you do not want to admit a mistake.

The point I was making is that that attitude is not universal amongst government ministers. The fact that it happened on this occasion and that it stood out perhaps shows that it is rarer than one would like. I am not going to go through and give a scorecard on every individual minister, but it is appropriate to draw attention to the fact that, while it is good that the minister recognised a problem and withdrew it from the legislation, it is bad that it got in there in the first place and was so quickly found to be unjustified once it came under some scrutiny. That, I think, is an indication of a culture that can develop. Again, it is not a personal attack on any one individual or anything particularly partisan about the coalition; it is human nature—it is a mindset that develops when you are used to being able to get things through when the levels of scrutiny diminish and you do not do your homework as much because you assume you do not need to. That is the problem I am drawing attention to—whether you want to call it arrogance, hubris or whatever. I think it is appropriate to give the bouquet but that it is also appropriate to point to the flaw being put in there in the first place. There are two different concepts in there. Hopefully, they can be conceptualised at the same time without too much difficulty. That is the point I was trying to get across.

**Senator CHRIS EVANS** (Western Australia—Leader of the Opposition in the Senate) (5.59 pm)—After listening to Senator Bartlett trying to straddle the competing interests, I want to make the point that I can count and that I appreciate that the minister has been as frank as she can given her responsibilities, but the arguments about complexity are a bit thin given that we are asking to extend the secretary’s discretion. We are not asking for major amendments to the act;
we are asking why, among the many discretions of the secretary, we cannot provide the discretion for this matter.

We ought to focus again on the impact on the individual. This is about people losing their pension as a result of a provision we all agree is not fair in this circumstance. The department is telling people that it cannot help them, that it would like to help them but it cannot. I think we ought to focus on that rather than on the needs of bureaucracy and policy advice. It is interesting that a major provision to do with search and seizure powers—a quite major part of this legislation—was able to be dropped within 11 days of the committee hearing. Policy advice was sought and obtained, a ministerial decision was made and a whole schedule of the bill disappeared. It shows that bureaucracy and policy decision processes can move quickly when it suits. I fail to understand why we cannot move more quickly on this occasion.

As I say, I do not think there is anything in the bill that would prevent us from deferring it for a few days to fix this problem. I really do think it would be preferable to fix it now because, while we say, ‘People will get back to me and we’ll get a policy decision et cetera,’ somebody will lose their pension in the meantime through no fault of their own in the application of the assets test rules. If we can save one person from that, it will be a good thing. Given that we are all in agreement, I urge that we find a way to fix it rather than to allow it to disappear back into the bureaucratic decision-making processes that may not reach fruition for some time.

Question negatived.

Bill, as amended, agreed to.

Bill reported with amendments; report adopted.

Third Reading

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural Affairs) (6.03 pm)—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

INDEPENDENT CONTRACTORS BILL 2006

WORKPLACE RELATIONS LEGISLATION AMENDMENT (INDEPENDENT CONTRACTORS) BILL 2006

Second Reading

Debate resumed from 13 September, on motion by Senator Abetz:

That these bills be now read a second time.

Senator WONG (South Australia) (6.03 pm)—I rise to speak on these two bills, which deal with independent contractors. Before I proceed with my speech in the second reading debate, I want to make the point that, some time after four o’clock today, a significant number of amendments—40-odd pages worth—to supplementary explanatory memoranda were tabled by the government. It is difficult when dealing with legislation in this place for the opposition and the minor parties—in fact, for all senators—to be clear about the actual impact of legislation when we are presented with amendments at such a late stage and so close to the time of the matter being debated.

Some might recall in the context of the Work Choices legislation that, within 40 minutes of the debate commencing, we were provided with some 337 amendments—it was over 300, in any event—which certainly did not leave much time for consideration of the substance of those amendments. I suggest to the government that, apart from treating the chamber in this way and not enabling senators to get across various amendments,
this is probably not the best way to legislate. If you are amending at a late stage, subsequent to a Senate committee inquiry, the chances of there not being errors in legislation—in fact, as has been indicated, there has been some further discussion of the amendments to the Work Choices legislation—or issues which need to be remedied are probably not the best. I make that point to start with.

Labor opposes the Independent Contractors Bill 2006 and the associated Workplace Relations Legislation Amendment (Independent Contractors) Bill 2006. The bill and the associated bill flow on from the government’s so-called Work Choices legislation—its extreme industrial relations legislation. In that act, we have seen an attack upon rights, an attack upon entitlements, an attack upon conditions and an overall attack upon the living standards of Australian workers. The bills now before the chamber are yet a further attack upon rights, conditions, entitlements and protections in Australian workplaces and upon living standards generally.

The government has sought to mask this fact by saying that this legislation is good for contractors and for small business, but the Howard government is effectively saying to small business and independent contractors: ‘You’re on your own. In an unequal bargaining position with a contract partner who has more economic power, you will now effectively be on your own, with limited or no access to state based protections, no access to unfair contract provisions, no access to employee deeming provisions.’

The government’s legislation covers five key areas. They are: state laws dealing with employee deeming provisions; state transport owner-driver laws; the state unfair contracts jurisdiction; outworkers in the textile, clothing and footwear industry; and the so-called sham arrangement provisions. Despite the government’s continued assertion that the legislation is intended to protect independent contractors, it does no such thing. As with so many areas of Howard government policy, one has to examine what they do and not what they say, because there is often a vast difference.

The bills place a layer of additional complexity on top of an already complex industrial relations legal system brought to us courtesy of the Howard government. Its provisions are highly prescriptive and technical and introduce a confusing array of concepts. These include pre-reform commencement contracts, continuation contracts, related continuation contracts, remedy contracts, test contracts and a contractor test designed to clarify the continued application of state contractor law in relation to relevant service contractors. In addition, some types of contracts entered into after the commencement of the bills will be subject to relevant state laws while others will not, depending on the satisfaction of certain technical requirements. It reminds us of the transitional provisions in the Work Choices legislation, which were extraordinarily confusing to some of the most experienced legal practitioners in Australia in this area.

There are two basic concepts which the government legislation establishes. First, under the guise of so-called independent contractors, the legislation will allow vulnerable employees to be pushed out of a genuine employer-employee relationship and be established as so-called independent contractors—in other words, as sham contractors. The consequences of this will be that employees’ conditions and entitlements will be reduced or removed but further burdens will be placed on those employees as sham independent contractors—the burdens of workers compensation, taxation arrangements, superannuation arrangements and others which would normally be carried by the employer.
Second, at the state level, there are many very soundly based protections for contractors who are effectively in a dependent contract position—contractors who provide services or a service in the main to one contract partner, such as in the transport industry, particularly in relation to owner-drivers. The legislation removes or reduces many of these protections. It does that by overriding state provisions and state based legislation which has employee deeming provisions or provides access at the state level to unfair contract provisions and unfair contract legislation. These protections are for the benefit of not just consumers but also contractors and small business. As I said, this legislation has one clear message to vulnerable employees and dependent contractors alike: you are on your own now. This should be concerning to all those who are contractors, and there are many millions of independent contractors in Australia: up to 20 per cent of all Australians who are in work are independent contractors.

The central principle which underpins these bills is that independent contractor relationships should be recognised and supported and that the appropriate mechanism for regulation is commercial law. The government’s legislation does not seek to define the term ‘independent contractor’, seeking rather to apply its meaning under common law. The test for distinguishing between employees and independent contractors is the common-law test which has been applied in Australian courts and tribunals and developed over many years. Briefly, that means that persons engaged under a contract of service are employees and those engaged under a contract for services are contractors. An independent contractor is seen to be a person who contracts for services to be provided without having the legal status or protections of an employee, even if they are dependent upon that contract—for example, owner-drivers in the transport industry.

This common-law test is well known to be difficult and complex. Various criteria have been applied by the courts over the years. They include: the degree of control the worker has over the work; the degree to which the worker is integrated into the principal’s enterprise; whether the worker is providing their own tools and equipment; whether it is at the discretion of the worker to work, whether the principal has the right to dictate hours of work and whether the worker can refuse tasks; the provision of leave, superannuation and other entitlements; whether the worker has the right to delegate work; whether the worker provides similar services to the general public; and whether the worker is providing skilled labour or labour that requires special qualifications. Genuine independent contractors have always been considered by our courts and tribunals to be in commercial arrangements and are therefore subject to the provisions of commercial law or contract law. When called upon to test the validity of a claim to either employee or independent contractor status, the courts have applied the relevant common-law test. So affirming this status and the commercial status of independent contractors in this legislation adds absolutely nothing to the current regulatory framework.

But in picking up the common-law test—in adopting it—the bills bring with them all the same difficulties that have been experienced in common-law jurisdictions. Professor Andrew Stewart has identified the limitations of this approach. The fact is that any competent employment lawyer can take almost any form of employment relationship and reconstruct it as something that the common law would treat as a relationship between principal and contractor, thereby avoiding the effect of a wide range of regulation typically applicable only to employees, such as industrial awards, agreements, leave, superannuation and unfair dismissal laws. I
want to make the point that this is indeed the experience of many of us who previously practised in this jurisdiction. It is a difficult process to go through a court and establish the nature of the relationship. It is certainly an area that is open to legal creativity and legal argument in representing the various parties.

Under this legislation, people who are genuine employees are at risk of being pushed out of an employer-employee relationship and at risk of losing whatever protections they have as employees. There are also at risk of having imposed upon them the additional burden of providing those things which genuine independent contractors would generally provide, with superannuation, taxation arrangements and workers compensation being among them. And the government’s so-called anti-sham provisions to prevent people from being pushed into that position are, frankly, themselves a sham. These provisions require vulnerable employees to effectively apply to a Federal Magistrates Court to seek a determination of that issue.

Labor have previously raised our concerns that these provisions will be completely ineffective in preventing sham contract arrangements from occurring. We have raised in particular the concern about the degree of intention or knowledge required by the contracting party and the extent to which that intention or knowledge would have to be established before a sham arrangement could be proved.

I understand, from our very quick analysis thus far of the amendments moved by the government, that the government may be seeking, through its amendments, to alter or possibly improve some aspects of the sham contract arrangements to deal with these concerns. I do not have advice yet, given the time frame, as to whether these deal with the entirety of Labor’s concerns. But, as I said, our concern is that the anti-sham provisions will be completely ineffective in preventing sham contract arrangements from occurring. These provisions will enable employees who are genuinely in an employer-employee relationship, and who are in a vulnerable position with unequal bargaining power, to be pushed artificially into a so-called independent contractor arrangement. This will see them at risk of having their employee conditions and entitlements reduced or removed.

I want to turn now to the state deeming provisions. The bills override all existing state deeming provisions contained in state industrial legislation which deem certain categories of independent contractors to be employees and override provisions granting employee related entitlements to independent contractors. For example, in New South Wales certain categories of workers are declared to be employees and are brought within the scope of the industrial relations framework, even though in common law they may be independent contractors. Those provisions cover a wide range of occupations including milk vendors, cleaners, carpenters, joiners, painters, bread vendors and out-workers in clothing trades—and the list goes on.

These state provisions seek to redress the unequal bargaining power of these categories of workers, which compromises their ability to negotiate working conditions. In fact, in many cases their working arrangements are not different in substance to those of employees. So these state deeming provisions have been introduced to offer protection to workers from effectively disguised employment relationships and the consequent disadvantages which flow from them.

The Commonwealth legislation overriding the state legislation is subject to a three-year transitional period and the preservation of
existing deeming provisions for outworkers and owner-drivers. These provisions will not apply to contractor textile-and-footwear outworkers. The bill provides a three-year transitional period from the commencement of the legislation, and only deeming provisions in state industrial laws will be overridden. Deeming provisions will continue to apply to existing contracts for three years after the commencement of the act, and parties may leave this arrangement early if they wish, under section 33 of the principal bill. The direct result of overriding state deeming provisions will be to leave many vulnerable workers in an unfair bargaining situation and without access to basic entitlements.

The bill also provides an exemption in relation to existing New South Wales and Victorian owner-driver legislation. The New South Wales system includes basic regulatory protection for owner-drivers, including the ability to recover costs. It includes enterprise-specific arrangements for owner-drivers and does not apply to genuine independent contract transport companies, applying only to single-vehicle owner-drivers who are dependent contractors with one company. The New South Wales legislation allows for minimum standards to be created. The Victorian system uses small business models and uses Trade Practices Act protections, asking what rate owner-drivers would have obtained if they had performed that work as an employee. All contracts must list minimum hours and rates, if any, and dispute resolution is provided by the Small Business Commissioner. The legislation allows for the collective negotiation of rates.

Only New South Wales and Victoria currently have state based legislation dealing with the employment conditions of owner-drivers, although Western Australia is proposing to introduce legislation into its parliament shortly, and there is further discussion of such legislation in the ACT.

The government has said that exemptions under both the New South Wales and Victorian state legislation are to be reviewed in 2007. Can we assume from that that these exemptions will cease to apply should the government win the next federal election? The minister himself effectively said this in his second reading speech:

The purpose of the review will be to seek to rationalise these laws with the aim of achieving national consistency in this regard.

The bill also means that independent contractors will no longer be able to access state unfair contract laws. The bill creates a federal unfair contracts jurisdiction. However, the states' tests in these jurisdictions are much broader than those contained in the bill, and much more easily able to be accessed. For example, the unfair contract provision that is proposed by the Howard government is significantly more limited than that which exists in New South Wales.

Unfair contract matters will also now be tried in the Federal Magistrates Court, which is a more formal jurisdiction. This is likely to add to the expense, length and complexity of arguments, and exposure to costs. Under these bills before the chamber there is no ability for employer organisations or trade unions to apply for an unfair contract review on behalf of a party, which is the case under state law.

The effect of this part of the bill will be greatest in states where existing regulation is most prevalent—New South Wales, Victoria and Queensland in particular. The parties to independent contract arrangements in these jurisdictions will see a sharp decline in the level of the regulation and fairness in their relationships. This provision treats all contractors on a purely commercial basis, regardless of whether they are outworkers, deemed employees or independent contractors.
Legislation in New South Wales and Queensland provides for state industrial relations tribunals to hear cases of unfair contracts and provide remedies. Concern has been expressed that overriding state unfair contract legislation would water down protection for both consumers and small businesses. In fact, the repeal of the provisions that exist in the states by this legislation effectively reduces opportunities for small businesses to claim that a contract is unfair. There is no effective federal unfair contracts legislation, and unconscionable contract principles under common law do not provide an effective remedy in most cases.

I was going to deal briefly with the outworker provisions in the textile, clothing and footwear industry. I notice that there are amendments to be moved by the government, although it is a little confusing as to what the effect of those will be. I note that the amendments speak of opposing some amendments, so I look forward to discussion of that aspect in the committee stage of this bill.

We are concerned about the regulation of outworkers in the textile, clothing and footwear industry. We are concerned that there is no provision in the government’s legislation to aid in the enforcement of state outworker laws. In our view, these bills will do little to protect outworkers without the proper application of state based outworker legislation. The legislation as drafted will have the effect of significantly weakening outworker entitlements, and anybody who has dealt with outworkers in this industry would believe that there is a compelling public policy case for ensuring that these people obtain fairer conditions than they would otherwise have if there were no state deeming provisions.

The government have introduced this bill because they would like the community to believe that somehow a so-called independent contractors bill will be beneficial to small business and independent contractors. But it is becoming clearer by the minute that no-one actually wants this bill. There has been dissent on the government’s own back bench. There are senators opposite who found that there are provisions in the bill that serve no useful purpose. By the minister’s own admission last month:

... as a result of independent contracting legislation there won’t be, I believe, any change in the number of independent contractors.

We have also seen Ken Phillips of Independent Contractors of Australia—one of the key supporters of this extreme legislation—now saying that the bills ‘would seriously undermine the status of independent contractors’. This is bad legislation and it ought to be opposed.

Senator MURRAY (Western Australia) (6.23 pm)—On behalf of the Australian Democrats, I rise to speak to the Independent Contractors Bill 2006 and its associated bill. The objectives of the Independent Contractors Bill are to: (a) protect the freedom of independent contractors to enter into services contracts, (b) recognise independent contracting as a legitimate form of work arrangement that is primarily commercial and (c) prevent interference with the terms of genuine independent contracting arrangements. The Democrats support these stated objectives but argue that the bill fails to achieve them in any meaningful way.

The main thrust of the bills is to exclude state and territory laws which deem as employees many independent contractors entering into commercial agreements with employers. The government’s view is that these state laws interfere with rights, entitlements, obligations and liabilities of parties to genuine independent contracting arrangements. The contrary view is that state laws are try-
The bill appears to do little to further benefit existing contractors. If anything, the evidence is that it will disadvantage many independent contractors whose existing remedies under state laws will be overridden by new and much weaker national laws. It also seems likely—for instance, in New South Wales—that the bill will result in an increase in cost to genuine contractors who seek a review of a contract they consider unfair. Far from achieving its stated objectives, the bill actually fails to tackle the issue of who is a genuine contractor and who is a disguised contractor—in other words, who is a genuine employee. There is no definition of a genuine contractor. Instead, the bill relies on the common-law definition, which is subject to change over time as jurisprudence advances and is fraught with problems. Nor does the bill define who is not a genuine contractor—that is, who is an employee engaged as a disguised contractor.

The issue of what are often referred to as non-standard work arrangements and the use of such arrangements to undermine the employee relationship has been an ongoing concern of the Democrats. We have raised these issues many times before in this chamber and have on several occasions attempted to amend legislation to go some way to addressing our and others’ concerns. Non-standard work practices such as labour hire do play an important role in our modern economy, providing flexibility for employers and workers. For example, labour hire is useful in providing short-term or temporary labour or workers with particular skills or expertise. However, there is increasing evidence that non-standard work practices, including disguised contractors, are being used to avoid or undermine the employment relationship in order to cut costs and minimise tax obligations, superannuation, occupational health and safety and workers compensation obligations and the like.

The ACTU and others noted in their submissions to the inquiry into this bill the increasing number of disguised contractors. The ACTU estimate was that between 25 and 41 per cent of contractors are in fact dependent contractors—that is, they are dependent on one employer for their work. The APESMA submission noted a recent study that found up to 40,000 workers currently classified by the government as independent contractors actually do all their work for one employer.

I want to make it perfectly clear at this point that the Democrats support the democratic right of every person to have the freedom to choose to work for themselves or to operate their own business rather than work for someone else. However, the Democrats also support protecting the freedom of a worker to choose to be an employee rather than a contractor and believe that, if a person does work as an employee, they are entitled to the benefits of laws established for the protection and oversight of employees. It is the Democrats’ view that for a large number of contractors the notion of independence is a myth, and any choice and flexibility in their arrangements have been constructed for the benefit of those who hire them and not their own. The Democrats saw this bill as an opportunity to finally sort out the issue of who is a genuine contractor and who is a disguised contractor and hoped that statutory definitions that could provide clarity to employers, workers and the courts would be agreed upon. But upon sighting the bill we were bitterly disappointed.
Independent Contractors of Australia, in their submission to the inquiry into this bill, argued that the bill should be drafted in line with the June 2006 ILO recommendation, in particular subclause 8:

8. National policy for protection of workers in an employment relationship should not interfere with true civil and commercial relationships, while at the same time ensuring that individuals in an employment relationship have the protection they are due.

Who could disagree with that? The independent contractors association also noted the importance of ILO clause 4(b):

4. National policy should at least include measures to …

(b) combat disguised employment relationships … noting that a disguised employment relationship occurs when the employer treats an individual as other than an employee in a manner that hides his … true legal status as an employee …

Sitting suspended from 6.30 pm to 7.30 pm

Senator MURRAY—I was referring to clause 8 and clause 4(b) of the June 2006 ILO recommendations. The Democrats support both of these clauses that have been favourably quoted by Independent Contractors of Australia. We do not believe they are at odds. In fact, what the clauses suggest is that there is a need for a statutory definition of employment to distinguish between ‘true civil and commercial relationships’ and ‘employment relationships’.

And this is where our concern lies: there is a lack of an acceptable statutory definition of ‘employee’. Surprisingly, at least to the casual observer, this is a very difficult legal area to resolve. Contractors may be independent or dependent, both contractors and employees, and that can be with respect to a number of different working relationships all in the same tax year. The Democrats themselves have previously tried to have a definition of ‘employment’ accepted into federal law but it was rejected by the government. The Democrats recognise that this is a complex area but believe that the current situation is unsatisfactory and that a definition of ‘employee’ is the best solution. In the committee stage of these bills I will be moving an amendment to include a definition of ‘employee’ as proposed by lawyer and academic Professor Andrew Stewart in his submission to the House of Representatives inquiry into independent contracting and labour hire.

The Democrats recognise, as does Professor Stewart, that the definition does not have to be universal and that there may be particular policy arguments about why a particular type of worker should or should not be covered. Due to the special nature of owner-drivers and outworkers, they have been recognised by the federal government as genuine and desirable exceptions under the legislation before us. Our amendment proposes to also exclude these two groups from the definition of ‘employee’ until further consultation and examination has been done—and on this note the Democrats are pleased that the federal government has undertaken to explore the nature of these two groups further, although it is alarming that the owner-driver exceptions only cover two of our six states.

With respect to outworkers, after concerted and admirable advocacy by outworker representatives, considerable progress was made in resolving concerns arising from the bill. The consequential amendments expected to be moved by the government are welcome. The chair of the Senate committee is to be congratulated for her efforts in this regard, in conjunction with the committee members.

Both the ACTU and the CFMEU noted in their submissions to the Senate inquiry into this bill that the sham contract provisions accompanying the Independent Contractors Bill are weak and will be ineffective in
stamping out sham arrangements. The ACTU noted that, although the onus is on the employer to disprove the element, the complexity of the issue means that this will not be difficult. Both the ACTU and the CFMEU argued that the employer could reasonably argue that they could not be expected to know for certain the true nature of the employment arrangements. This is another reason why a definition of ‘employment’ should be devised and legislated to make clearer to employers the true nature of the work arrangements.

Another key area of concern the bill raises for the Democrats is with respect to the public cost of employees being wrongly determined to be contractors. The ACTU in its submission to the inquiry noted the potential risk to society that this bill, and presumably other government labour policy, has. It stated:

The Federal government policy ignores the fact that shifts in the labour market have consequences for broader social and economic policy. The tax base, compulsory retirement savings, skills development and the management of risks involved with illness and injury at work are all linked to traditional employment relationships. The proper governance of these matters is jeopardised by the erosion of employment as the primary means of purchasing an individuals work.

The Democrats strongly support the right of Australians to determine whether they want to be in business for themselves or to work for someone else as an employee. However, we believe that someone who is in business for themselves also has a duty to meet the universal obligations that are imposed on employers in the public interest. These obligations imposed on employers are the requirements not just to withhold income tax or to provide for appropriate occupational health and safety but also to provide for employees’ futures through insurance against injury such as workers compensation and superannuation. An employee wrongly treated or classified as a contractor shifts the cost of injury and retirement onto the public as a whole unless that person makes specific and genuine provision for these matters. Fortunately, the bill may not have the effect of preventing state governments from deeming contractors to be employees for the purposes of workers compensation.

Because cost-shifting of this sort may well involve hundreds of millions of dollars of costs being shifted to the taxpayer, in our view the government has been negligent in failing to close the cost-shifting hole. When asked whether this bill should deal with contractor obligations to provide for superannuation and insurance, Mr Anderson from the Australian Chamber of Commerce and Industry argued that it was more appropriate to deal with this in issue-specific law, which the Democrats are not opposed to. But we note that the government has failed to table cognate bills to address this issue and to achieve this. To this end I move the Democrat second reading amendment, which has been circulated:

At the end of the motion, add

“but the Senate:

(a) notes that this bill does not require contractors to provide for their superannuation payments, workers compensation, and for income insurance, normally mandated to be covered by an employer;

(b) calls on the Government:

(i) to investigate the issue of cost shifting from private to public as a result of shifts in labour markets away from employment relationships to contractual relationships, where the absence of a mandatory requirement for superannuation payments, for workers compensation, and for income insurance to be covered results in a significant new and
long-term burden on taxpayers, and
(ii) to report to the Parliament within the next 12 months outlining what solutions it proposes to this problem”.

Concerns were also raised about the unfair contract provisions of the bill. The new provisions override the jurisdiction of industrial relations tribunals in New South Wales and Queensland in relation to unfair contracts. The explanatory memorandum argues that nationally consistent laws are preferable, which the Democrats do not necessarily disagree with; however, we note that the laws under both the Queensland and New South Wales jurisdictions were considered by a number of the submissions to the Senate inquiry into this bill to be fairer and stronger than the bill’s provisions. Like the recent trade practices amendment to third-party representations, this bill prevents a union or any other association making an application on behalf of a contractor to the court. The Democrats remain vehemently opposed to these sorts of provisions that deny freedom of choice for workers and offend basic rights and liberties.

In addition, the bill does not provide express power for the court to order compensation directly. Instead, the process inserts an additional, costly and time-consuming step into the enforcement process. The bill only allows the court to address these issues if the matter is still afoot and not after it is terminated. The bill does not give the court the express power to examine a contract that has become unfair because of the conduct of a party. When unfairness has been found by the court, the bill only allows the court to amend the contract and not make a monetary order, in the first instance. Many of the provisions reduce procedural fairness and add extra cost for the contractor and to the system. I will be moving some amendments to this bill to improve these unfair aspects of the new contractor provisions.

Furthermore, the Democrats are concerned about the hostile nature of this bill with respect to states and states’ relationships. We agree that national legislation is needed in this area to deal with the complex issue of employment and contracting. However, this bill is regarded as hostile by a number of state governments and concerned organisations and is not the consequence of consultation, agreement and negotiation with the key players—those being the states, business, unions and key representative bodies. In a federal system, national legislation that is unilaterally constructed is far less likely to survive than legislation that has the broad support of state governments and affected interest groups. While it is now clear from the recent High Court decision with respect to the Work Choices legislation that the federal government will have no problem with this bill—or, it seems, any other bill—overriding state laws, it seems likely that a change of federal government in the future would result in this bill being repealed or substantially amended. A hostile federal legislative move has therefore little to recommend it in the medium to longer term.

The Democrats are concerned that with this bill it will now seem even easier for many businesses to hire Australians as contractors, not employees—not just for cost savings but because it will save them from having to cope with the complexity and flaws of the new federal industrial relations Work Choices system. That is hardly desirable if the consequence is that wages and conditions are seriously and detrimentally affected; if superannuation, workers compensation and income insurance will no longer be covered by employers and will not be covered by the new contractors; and, when previous employees move into con-
tracting arrangements, the state—namely, taxpayers—will have to pick up those costs.

As I stated in my minority report on the inquiry into this bill, the Democrats believe that the bill is likely to mean further uncertainty. This bill means an increase in disguised contracting, greater reliance on common-law litigation, reduced protection for the increased number of contractors and the shifting of costs from private to public. This bill, like Work Choices, started with a good intent but has ended up a mess. Unless our amendments are agreed to, we regret the Democrats will be unable to support these bills, despite the fact that we do support the idea of national legislation.

Senator CHAPMAN (South Australia) (7.41 pm)—The bills we are debating this evening, the Independent Contractors Bill 2006 and the Workplace Relations Legislation Amendment (Independent Contractors) Bill 2006, are landmark pieces of legislation. They will work to complement the suite of new workplace relations laws under Work Choices and were proposed by the Howard government prior to the 2004 federal election in our paper Protecting and supporting independent contractors.

This legislation intends to reflect the principle held by the government that genuine independent contracting relationships should be governed by commercial and not industrial or workplace relations law. It is for this reason that the bill stands apart from the workplace relations legislation we passed earlier in the year. The object of this legislation is to protect the freedom of independent contractors to enter into services contracts. In this we are reminded that everyone’s life opportunities are diminished by restrictions on the freedom to work. We should provide an appropriate framework for individuals to pursue the lifestyle of their choice. This is to be achieved in this legislation through the recognition of independent contracting as a legitimate form of work arrangement that is engaged in on a commercial basis. This legislation prevents interference with the terms of genuine independent contracting arrangements.

Under the principal bill, independent contractors are defined, as has been accepted under common law, as holding a contract for services. They are different from an employee who holds a contract of service. It is through this definition that independent contractors can be broadly defined yet subject to effective protections which an individual could expect under a commercial contract.

Clause 3 sets out the objects of the bill: firstly, to protect the freedom of independent contractors to enter into services contracts; secondly, to recognise independent contracting as a legitimate form of work arrangement that is primarily commercial; and, thirdly, to prevent interference with the terms of genuine independent contracting arrangements. I have to say this legislation is particularly important in the light of moves by state Labor governments—such as the Rann Labor government in my home state of South Australia a year or two ago—to prevent genuine independent contracting arrangements from coming to fruition and force people back into an employer-employee relationship which they did not want.

The ideas relevant to this legislation were brought down in the International Labour Organisation recommendation entitled ‘National policy of protection for workers in an employment relationship’, which was handed down in June of this year. In spite of the fact that independent contractors are not formally recognised by the International Labour Organisation, it has responded to the challenges presented by the growth in independent contracting. It effectively has endorsed the status of independent contractors by declaring that
employment law should not interfere in the commercial relationship. Clause 8 of the ILO recommendation states:

National policy for protection of workers in an employment relationship should not interfere with true civil and commercial relationships, while at the same time ensuring that individuals in an employment relationship have the protection they are due.

This recommendation, from a well-known arm of the United Nations, lends legal credence to the argument that the rights of independent contractors are worthy of being guaranteed under specific laws. It enshrines as customary what this legislation sets out to achieve: the right of all individuals to pursue working relationships as they please. The recommendation by the ILO is to be expected, given the growth of independent contractors both in the Australian economy and, indeed, across the world. The Productivity Commission estimates that independent contractors currently account for somewhere between 800,000 and maybe as high as 1.9 million people in our workforce. The work of independent contractors contributes to a range of strategic industries. Workers in the transport, textile, clothing and footwear, construction and information technology industries will be affected beneficially by the implementation of this legislation, and the industries in which they operate will become as productive as possible following the implementation of the bill.

All independent contractors will be engaged under transparent agreements that will protect their interests, preserve their rights and penalise the dishonesty or misfeasance of any party. The bills will introduce a single piece of legislation for independent contractors across the nation, supplanting the inconsistencies that currently exist under state laws. These distinctions mean that drivers in some industries are employees while in others they are contractors. One who installs window blinds may be considered an employee whereas one who installs a bathroom sink may be a contractor. The Howard government believes these arbitrary distinctions between industries and particular forms of work are a disincentive to entrepreneurship, restricting what the employee may rightly expect of themselves. Following the implementation of a three-year awareness program, the affected individuals will be required to become independent contractors or be defined as employees before the changes are fully implemented. This will encourage those who provide independent services to expand their operations if they choose, while not forcing their hand. It will provide a source of dynamism to the Australian economy that ensures individuals are able to pursue their lifestyle and working ambitions as they choose.

The Labor opposition has raised concerns that retaining the common-law definition of ‘independent contractor’ may lead to some workers being unfairly distinguished as contractors. Certainly, the definition of ‘independent contractor’ remains broad in the bill—and appropriately so—but within that broad definition appropriate safeguards have also been provided. In state deeming provisions being overridden, independent contractors are protected from the provision of sham contracting arrangements. The Office of Workplace Services will be empowered to ensure employers do not disguise the role of an employee as that of an independent contractor in order to avoid their legal obligations. In addition, there will be penalties for employers who knowingly make false statements in order to persuade employees to become independent contractors. Hence, independent contractors will be only those who are legitimately engaged as such from the outset and, in turn, as the economic climate requires.
The dynamism that will be underpinned by this amendment will ensure Australia remains at an economic optimum and internationally competitive in an economy increasingly requiring the work of independent contractors, given the developments in technology. The expectations that are placed on parties within services contracts will be fair and clarified and vociferously enforced by the Office of Workplace Services. The current regime of state based anti-avoidance measures that compel contractors to undertake the work for which they are contracted will be abolished. This follows the intention of the government, as was set out under WorkChoices, to provide greater choice for all individuals to pursue the working arrangements most suitable for them.

An exception under the provisions of this legislation has been made for certain owner-drivers and also for textile, clothing and footwear outworkers, who are, due to the nature of their industries, required to fulfil contractual arrangements because businesses have to guarantee that their deadlines will be met. In addition, these same outworkers will be guaranteed minimum wages and conditions across the country, as they are seen—by some—as particularly disadvantaged in terms of their skills and, in the case of drivers, their transient lifestyle. This, in my view, is a contentious aspect of the legislation. I certainly welcome the minister’s commitment to an inquiry next into whether owner-drivers in New South Wales and Victoria should remain excluded from this independent contractor legislation or whether they should come under its umbrella. It is my belief that they should operate under this legislation and I hope that that proves to be the outcome of the promised inquiry. In my view, it would have been preferable for their exclusion from the provisions of this bill to have been the subject of a sunset clause, after which they would have come under its provisions unless further legislation removed that sunset provision following the promised inquiry. The legislative procedure relating to the inquiry should have been reversed, with further legislation required to exclude New South Wales and Victorian owner-drivers from its provisions, rather than, as will be the case, further legislation being required to include them.

Despite this shortcoming, I believe that the bill is a major step forward and that it will ensure that contractors have the capacity to flourish. It is essential to overcome the inconsistencies of state laws which unfairly place contractors under industrial law and which undermine the potential of our economy and of the individuals within it to prosper. This amendment is a clear and succinct response to the growing role of independent contractors in the labour market. It enshrines in law the right of individuals to engage in contracts for their services. All individuals undertaking the same service should be subject to the same rights and obligations. Therefore, as I said, the legislation is a major step forward—despite that particular shortcoming which I addressed—and on that basis I commend the bill to the Senate.

Senator STERLE (Western Australia) (7.51 pm) —I rise to speak to the Workplace Relations Legislation Amendment (Independent Contractors) Bill 2006. Regardless of all of the fairy floss we want to put around this bill, it is designed for a couple of reasons that I cannot for the life of me see will aid contractors out there in the workplace. Before I say anything else in contributing to this debate, I do wish to put an angle on this. I am tonight speaking not only as a proud Labor senator for Western Australia but also as an ex-contractor in the transport industry. On that I welcome any commentary from the other side. I am prepared to debate this bill to the end of the sitting week because I think that I can bring angles to this bill. A lot of
honourable senators on the other side would not have the same insight into independent or dependent contracting, most certainly not in the transport industry.

This bill is designed to take away any employment relationship between an employer and a subcontractor. It will also take away any ability for contractors to bargain collectively with or without the union. That certainly will have devastating effects upon groups of subcontractors which rely upon third parties to negotiate on their behalf. In the transport industry—more than any other industry, for honourable senators opposite—truck drivers normally do engage third parties like the Transport Workers Union. I think a lot of senators could appreciate that the life of a truck driver is not about sitting around a yard all day waiting to negotiate rates and conditions with an employer. They are actually out in the truck trying to pay off anything up to a $300,000 or $400,000 loan, which normally has the family home tied to it. Also this bill, unfortunately—this is where it really does irk me—will override any state and territory laws.

But I must say from the bottom of my heart that I do support contracting. I think that contracting is a wonderful opportunity for working men and women to use their skills in their chosen fields to improve lifestyles for themselves, their families, their partners, their children or whomever. There have been some rewarding times. I know that from my own experience. I had some fantastically rewarding times through the Western Australian boom in the eighties. That was given to me because I was able to become a contractor with one of the largest transport companies in Western Australia. Why did I and a lot of other contractors—truck drivers in particular—become contractors? I will tell you why—because in the good old days we were engaged by companies under awards that came with all of the good stuff like overtime and penalty rates.

I see that the Government Deputy Whip is having a giggle. You might enlighten me, Senator Parry. You might have been a truckie in your past life too. I welcome your contribution to this debate, although I did notice that your name is not on the speakers list. In fact, I would like to see a lot of honourable senators on the other side putting their names on the speakers list because I would be interested to hear their thoughts on why this bill should go through and what is so darned great about it.

It was the wise men in the accounting departments of the transport firms who thought, ‘What is it costing us to get our freight delivered around the country and how can we do it cheaper?’ That is why contractors evolved in the transport industry. It was because of volatile fuel prices. Also, unfortunately, employees had to be paid wages when they were spending 20 or 24 hours—all day and all night—behind a steering wheel. The only cheaper way was to offer it to the world, get subcontractors in and turn a blind eye to fatigue management, weight restrictions and anything else. Not all companies were like that. Unfortunately, over the years, as margins get tighter, the grubbier element comes to the surface like cream, I suppose—although I would not like to allude to them as cream; they are certainly not cream. But there have been wonderful opportunities in the trucking industry.

I am looking forward to Senator Troeth’s contribution as chair of the Senate Standing Committee on Employment, Workplace Relations and Education. Her good work and the work of the rest of the committee for the outworkers was fantastic. But, Senator Troeth, I think there is one very important part missing. We will get to that.
We had a number of submissions given to us in this fine building on 3 and 4 August this year. But there were a couple of contributions that I certainly have grave concerns about, and I had grave concerns about them at the time, because the mistruths were just mind-boggling. We had the likes of the Australian Chamber of Commerce and Industry. We had the unions putting their side of the story. We even had a group of owner-drivers who came down from Sydney to put their arguments to us. The way it was done was very professional. But there were some shockers. One of the shockers was the Australian Industry Group, represented by Mr Smith. Once we went through the normal questioning and answering procedure, he made a couple of comments. I asked him a question and he did confess something. I would like to quote from the Hansard. Mr Smith from the Australian Industry Group said:

We are not a major player at the present time in the road transport industry but we do have some members in that industry.

I was trying to find out just how many members they did have. What it boiled down to was this—Mr Smith said:

As I have said, our organisation represents thousands of companies—manufacturers, for example—that are extensive users of transport services. They have a legitimate interest in the arrangements in place within the transport industry, particularly if those arrangements have an impact on prices and so on, so I think there is another party that is legitimately involved in this debate.

So there you have it. They want to see this bill come through because they want to keep their prices down. Their members are users of transport. It took a bit of waffling, but we finally got to it. This is what this bill is all about. This bill will certainly not improve the lifestyle of Western Australian owner-drivers in the transport industry or, for that matter, that ofQueenslanders or South Australians or owner-drivers from the ACT.

There was another amazing contribution, if I can use those words, from a gentleman who purported to represent a mob called the Independent Contractors Association. Well, well—what an interesting website they have. I will not go on too much about the quality of their submission, but I would like to lead on to some of the replies that Mr Ken Phillips gave. Mr Ken Phillips was questioned by Senator George Campbell as to the make-up of their association, where they had come from and how many people they represented. I will quote some excerpts again if I may. Senator Campbell asked Mr Phillips:

You currently have about a couple of hundred voting members; is that correct?

Mr Phillips said, ‘Yes, we do.’ Then he was asked what fees they paid. He said that they pay a token fee of about $5. That led Senator Campbell to ask:

How many of those members are owner-drivers?

I go to the remarkable answer from Mr Phillips, from the Independent Contractors Association, who is out there screaming from all the tall towers in this country, ‘What a wonderful piece of legislation this will be.’ His response was:

I have never asked. I do not know.

Senator Campbell asked him:

What information do you require when they seek membership?

Mr Phillips answered:

They put in an application. We have a look at it, give them a phone call and have a chat.

He added: ‘Anyway, we haven’t knocked anyone back.’

That interesting crowd, the Independent Contractors Association, espouse to represent owner-driver truck drivers. I think that is absolutely amazing. They do not even know how many damn owner-drivers they repre-
sent; they do not even know if they have any owner-drivers! It is not hard to work out that it is just a front for the HR Nicholls Society and also the Australian Chamber of Commerce and Industry. I suggest you go to the website and find out who is who. Once you have paid your $5 you can get that information.

Some positives have come out of the submissions. I know about the good work of the Transport Workers Union in New South Wales and Victoria, under the leadership of the Federal Secretary, Tony Sheldon; the Assistant National Secretary, Mr Michael Kaine; and Miss Naomi Rowe from the New South Wales branch. This place was inundated—as a lot of senators and members would remember, dating back to the change in the balance of numbers within this chamber. Truckies were walking the hallways, knocking on every door that had a handle on it and knocking on doors that did not have handles. They had the opportunity to put their argument forward as to why they did not want to see this bill passed and why they wanted to capture and maintain some of the state conditions and laws that they have in place.

Briefly, those in New South Wales have had contract determination for some 30 years. Contract determination was entered into with the union negotiating for the subcontractors if those subcontractors wanted the unions to negotiate for them—no-one was ever forced into it—but it was also done hand in hand with the major road transport association and employers there. These truck drivers are engaged in myriad sectors within the transport industry: couriers, wharf transport containers, freezers, general, steel and concrete. They have about 170. I know that Senator Hutchins will make a very good contribution about what has been happening in New South Wales. My colleague Senator Hutchins had major input into the conditions of owner-drivers in that state for a number of years prior to becoming a senator. That was done—fine; no worries.

The Victorians have similar legislation. The Victorian legislation is the Owner Drivers and Forestry Contractors Act. The state government in Victoria commissioned the industry to come back with a survey—to do some serious investigating into why so many owner-drivers were going broke in Victoria. It found a wonderful—and I use that term very loosely—list of reasons. The report said that major disadvantages existed and that legislation was required, because the Victorian owner-drivers, like owner-drivers in the rest of this country, are not price setters; they are price takers. They have experienced declining rates over the last decade and increasing business overhead costs; they experience significant periods of unpaid waiting time; they often experience flat or all-in rates that do not compensate for labour, let alone delivering any profit on significant capital investment or reward for risk; they experience a significant information imbalance compared with those who engage them; and they are able to be terminated without notice or with minimal notice but are unable to effectively challenge termination of their contracts on the basis of harshness or unfairness.

As a result of that—with the assistance of the Victorian government, the employer body, the Victorian Road Transport Association; and the Transport Workers Union of Victoria—the inquiry passed the Owner Drivers and Forestry Contractors Act 2005. At the committee hearings on 3 and 4 August there were two very good submissions. One was by the Victorian branch of the Transport Workers Union and the other was by Mr Phil Lovel from the Victorian Road Transport Association. They answered questions and were most upset. They had done a lot of work. I think this work goes back about 10 years. They had been trying to get this legis-
lation up. They were most indignant: how dare the Australian Industry Group, the Australian Chamber of Commerce and Industry and the Independent Contractors Association try and come over the top of not only the Victorians but also the New South Welshman and the Western Australians and say that their state counterparts in Victoria, who had assisted in negotiating this new contractors act, had no idea, no right and should get out of it. What the heck would they know about the transport requirements of owner-drivers and, I might add, companies that engage contractors in Victoria? What would they know? They are the national body, they know better than anyone, and they do not want to see that happen. Those two bodies were most upset that this bill was going to be passed that would override all the hard work that they had done.

In all my years of being engaged in the transport industry, it is not too often that we have actually had both wings of the transport industry—and by that I mean those representing the employers and those representing the owner-drivers—coming hand in hand and saying, ‘Hey, we need assistance from a government,’ let alone had a government that is more than happy to provide that assistance. That is now in place. I will add that, through the hard work of Senator Troeth, those two states will maintain and keep their legislation for now, so the contractors in those states can still be engaged under the two—

Senator Marshall—I worked hard too!

Senator STERLE—I am sorry. Senator Marshall has walked in. Senator Marshall, I was going to say that I know how hard you worked. I did not see you come in. I apologise for that. To channel it down, I experience most of my angst on this in my home state—that wonderful state where the economy is booming: Western Australia. I happen to know the people who were engaged in the negotiation of the legislation in WA—a fine bunch of men and women.

What happened in Western Australia is that about three years ago there was a massive stoppage by owner-drivers because they had come to the end of their tether. I am talking about owner-drivers who were engaged in long-distance, metropolitan and short-distance work around Perth and in Western Australia, ranging from small two-, three- or four-tonne vehicles up to road-train and triple road-train operators with 90-tonne payloads running between the ports in the northern half of Western Australia and into the Northern Territory. The price of fuel, amongst other things, was absolutely killing them. They were at the stage where they were wondering whether they would continue in the industry. If they left the industry, they were wondering what the heck they would do with the $300,000 bucket of nuts and bolts they had parked out on the driveway one day a fortnight and how the heck they would make the payments for it. Unfortunately, they found themselves on a collision course with the banks, and the family home was on the line. They had nowhere to go but to keep working, until, one day, they said, ‘Enough is enough.’ To get those truckies, with those sorts of debts hanging over their heads, to actually say that they were not going to put the key in the ignition and they were not going to start that engine because they could no longer afford to work was really something. Marriage breakdowns were occurring along the way too.

They convened a meeting on a Sunday, and I know for a fact that about 400 owner-drivers at the meeting said, ‘We are going to stop the state unless we get legislation similar to that in New South Wales and Victoria that protects us from unscrupulous employers who are screwing the living daylights out of us.’ As it turns out, the majority of the people screwing the living daylights out the
trucking industry are the wonderful multinational companies that happen to have a large presence around the state of Western Australia, particularly in mining, along the coast and in the fuel, gas and oil sectors. These are the companies that, at the end of the day, threaten the trucking industry and say that owner-drivers must dance to their tune regardless of the costs, because they are not interested.

With the great work of the Transport Workers Union of Western Australia, who represent 2,000 owner-drivers, and the Transport Forum of Western Australia, which is the peak transport employer body in Western Australia that represents some 700 transport companies, and with the assistance of the Gallop Labor government, they developed some legislation that would protect these owner-drivers from unscrupulous employers, give them an avenue for dispute settlement, provide them with a safe, sustainable minimum rates charter and allow them to recoup the costs they incur in running their vehicles. As you would appreciate, when we started whingeing about the $1.30 or $1.40 a litre that we had to pay here 12 months ago, imagine what the truckies are paying up in Halls Creek or Kununurra, where they are putting 1,800 litres of fuel in their vehicles— and their returns are one kilometre per litre—and you can understand the pain that they were going through. And some of them have to wait 90 days to get paid.

All this negotiation was done and it was done in good faith. People did not have guns held to their heads to make them negotiate a safe, sustainable rate and a code of conduct that would look after these subcontractors. It was done in consultation with both sides of industry and with the assistance of the Western Australian Labor government. And for that, we have a bill, which I am led to believe is in the upper house in Western Australia as we speak, called the Road Freight Transport Industry (Contracts and Disputes) Bill.

The worst thing, though, will be if this obnoxious piece of legislation before the Senate tonight gets through this chamber. I am really hoping the moon and the stars will align tonight and the Western Australian senators might think, ‘Oh my gosh, what are we doing to those subcontractors in Western Australia?’ and that they will have the gall to stand up and say, ‘This legislation is wrong; we are heading for a major catastrophe in Western Australia if our laws are overridden by this piece of legislation tonight.’ Not only that but if the industry does not have the ability to say, ‘We need to pay safe, sustainable rates to these owner-drivers; we need to protect them from unscrupulous employers and major users of transport,’ the conditions on our roads will deteriorate in terms of safety for other road users—let alone the fact that the Western Australian transport industry is losing subcontractors in droves. They cannot afford to run these operations, so why would they enter this industry to get done over by this piece of legislation? (Time expired)

Senator TROETH (Victoria) (8.12 pm)—After that extremely colourful interpretation of this legislation by Senator Sterle, I think it is perhaps time that we put some coherent statements and facts and figures around it. These two bills, the Independent Contractors Bill 2006 and the Workplace Relations Legislation Amendment (Independent Contractors) Bill 2006, implement the government’s 2004 election commitment to protect and support independent contractors, whom the government regards as an extremely important sector of Australia’s working population. The proposed legislation recognises independent contracting as a legitimate form of work that is primarily commercial and that, as such, should be regulated by commercial and not workplace
relations laws. I would like to go through some of the major aspects of the bill and then I would like to look at some of the most commonly asked questions about this bill and provide some answers.

Firstly, deeming: the Independent Contractors Bill will override state laws which deem certain classes of worker to be employees and which provide employee like entitlements to independent contractors. The government considers that these laws unnecessarily interfere in commercial relationships. But I do want to point out that the proposed legislation will not affect taxation legislation or the definition of an employee for the purposes of tax. Similarly, the proposed legislation will not affect the operation of state and territory laws regarding workers compensation, occupational health and safety or superannuation. These bills will specifically preserve state laws that deem outworkers to be employees, and I will have more to say about that later; provide specific protections for outworkers, and I will also be referring to that; and provide specific protections for owner-drivers in New South Wales and Victoria. For other independent contractors who have previously been deemed to be employees, there will be a three-year transitional period to give businesses and workers time to adjust to the legislation when it is passed.

The Independent Contractors Bill expressly preserves state and territory laws that protect outworkers, and, where outworkers are not covered by laws of the state or territory providing some form of remuneration guarantee, the provisions of the bill will provide for a minimum rate of pay. The bill will not override protections for owner-drivers in New South Wales and Victoria, the only two states with such legislation. The government believes that protections applying to owner-drivers in those two states should not be disturbed at this stage. The Minister for Employment and Workplace Relations has announced that a review of owner-driver arrangements will be undertaken, with a view to achieving nationwide consistency if possible. That review will begin in 2007.

Finally, over the next four years, $15 million will be spent on providing information and assistance to those affected by the legislation. That was announced in the 2006 federal budget. The bill will replace existing unfair contracts jurisdictions with one single federal unfair contracts jurisdiction, and it will make the existing federal unfair contracts legislation—currently in the Workplace Relations Act—more accessible by providing that unfair contract remedies may be sought in the Federal Magistrates Court as well as in the Federal Court. That will minimise costs and court time for all parties involved in proceedings.

The Workplace Relations Legislation Amendment (Independent Contractors) Bill will protect employees from sham or disguised employment arrangements, such as where an employer misrepresents an employment relationship as an independent contracting arrangement. Civil penalties of up to $33,000 will apply to employers who deliberately try to avoid their responsibilities through the use of sham arrangements. The bill will also set out penalties which will apply to employers who engage in certain threatening or deceptive behaviour and make employees change their status to independent contractors. The Office of Workplace Services will investigate alleged sham and deceptive conduct cases and enforce the provisions as required.

There are some frequently asked questions about these bills. They have been asked by the opposition. They have been asked by groups in the community. I would like to look at some of them, such as: why does the Independent Contractors Bill not recognise
dependent contractors? The term ‘dependent contractor’ is used by some commentators to refer to a worker who is, at common law, an independent contractor who provides a service to only one entity or primarily to only one entity. Proponents of ‘dependent contractors’ consider such workers to be employees.

The term ‘dependent contractor’ incorrectly assumes that a contractor who performs work for primarily one entity is financially dependent on that entity and is in an unequal bargaining position as compared to their principal. That ignores the reality that independent contractors may be comfortable performing work for one principal or being engaged on a long-term contract. For instance, IT professionals or contract engineers tend to be engaged on more complex and longer-term contracts than, for argument’s sake, independent contractor fruit pickers, and they are highly skilled professionals who are in strong bargaining positions.

The common law does not recognise the existence of ‘dependent contractors’. At common law, there are employees on the one hand and independent contractors on the other. So, consistent with the common law, the government also does not recognise the existence of dependent contracting. We consider that to adopt and use such a concept in the bills would blur the distinction between commercial arrangements and the employment relationship.

Some people have also asked why the Independent Contractors Bill does not use a statutory definition of an independent contractor. Again, the bill relies on the common-law test to distinguish an employee from an independent contractor. Under the common law, the totality of the circumstances surrounding the working arrangement is taken into account to determine whether the arrangement in question is an independent contracting arrangement or an employment relationship. That test has been firmly established by the courts and applied over many years. It considers a broad range of factors such as the ability to control a worker, hiring, training, location of workplace, who supplies tools and equipment and so on. The government does not consider a statutory definition to be desirable, as it would be less flexible than the common-law test.

Another question asked is: why does the Independent Contractors Bill override state deeming provisions? It will override state and territory laws that deem, or effectively force, certain classes of independent contractors to be employees. These laws, we believe, undermine the status of independent contractors and inappropriately draw them into workplace relations systems. Deeming takes no account of individual preference. It reduces choice and flexibility available to parties when choosing working arrangements that suit individual needs and personal circumstances. That choice has been the hallmark of the legislation enacted last year by this government through the workplace relations bill. I refer to the minister’s second reading speech, made in the other place, in which he said:

State deeming laws have become so absurd that they can result in completely arbitrary distinctions—an independent contractor who drives a bus can be deemed an employee, while a taxi driver is not; or a person who packages goods under a contract for services is deemed to be an employee if they do so at their home, but not if they do so on business premises; a blind installer is deemed to be an employee but a plumber is not. So, there we have it. Those sorts of circumstances undermine the legitimate desire of many business owners to increase efficiency through the use of a flexible workforce that can be increased or reduced to meet the operational requirements of the business.
On the other hand, state and territory laws will not be overridden to the extent that they apply to outworkers. This is because outworkers are a particularly vulnerable class of workers. The provisions of the bill that override state and territory deeming provisions will not disturb the operation of chapter 6 of the New South Wales Industrial Relations Act or the Victorian Owner Drivers and Forestry Contractors Act. The government considers that these state laws should continue to operate until a more comprehensive review of all state and territory owner-driver laws can be undertaken and, as I said, this review is scheduled to commence in 2007.

What laws does this bill override? This bill would exclude the operation of state and territory laws that deem independent contractors to be employees or that provide employee-like entitlements to independent contractors for the purposes of a workplace relations matter. State and territory laws that deem independent contractors or provide them with employee-like entitlements for matters that are not workplace relations matters are not excluded. Workplace relations matters are defined in section 8 but broadly include laws relating to employees and employers in substantially the same way as they are treated under the Workplace Relations Act or state and territory industrial laws. Workplace relations matters do not include, for example, laws about superannuation, workers compensation, occupational health and safety, taxation and consumer rights.

This bill will also exclude the operation of state and territory unfair contract laws, and these laws allow contracts to which independent contractors are a party to be amended, varied or found to be void on an unfairness ground. Instead, the bill will establish a new federal contract review jurisdiction. State and territory laws that allow the review of contracts to which independent contractors are a party on grounds other than unfairness grounds are not overridden by this bill. An unfairness ground does not include state and territory laws that relate to matters that are defined not to be workplace relations matters. This means that contract review mechanisms in, for example, consumer rights laws are not overridden by the Independent Contractors Bill.

I would now like to move to the part of the bill that protects outworkers. As has been remarked previously, these are largely workers at the end of the production line in, largely, the textile industry, although other industries are involved. The government recognises that outworkers are a vulnerable class of workers within Australian workplaces and deserve additional protection. The government has been and remains committed to ensuring that state and territory laws that afford protections to outworkers are not overridden by federal legislation. Last year, when we were putting through the Workplace Relations Act, both in the committee hearing and in this chamber, as chairman of the Senate Employment, Workplace Relations and Education Committee, I was particularly concerned that this particular group of workers be not disadvantaged by either omissions from the Workplace Relations Act or sections that would harm them. I am very pleased to say that, as a result of extensive negotiations carried out by my committee at the time of the passing of the Workplace Relations Act, and as a result of the hearings of this committee, we were able to ensure that, in the government’s view, outworkers are sufficiently protected. I would like to thank every member of my committee, including the deputy chair, Senator Marshall, for their cooperation in ensuring that we devoted sufficient time to hearing the concerns of the outworkers. I hope that that group of workers consider that their concerns have been effectively looked after by the government.
FairWear, which are one of the groups concerned in negotiations, and the Textile, Clothing and Footwear Union of Australia raised concerns that the current provisions did not achieve the policy objective that I have just outlined, so, with the agreement of the government, the department consulted with the outworker representatives to see that those protections remained undisturbed. In the Senate committee report, we recommended that provision be made for that protection, and I am delighted to say that the government has taken into account those recommendations.

During the committee stage, the government will move amendments to the Independent Contractors Bill to: (1) amend paragraph 7(1)(c) to ensure that anti-avoidance laws that prevent a person from contracting out of minimum terms and conditions for outworkers are not overridden; (2) amend paragraph 7(2)(a) to clarify that state and territory laws that protect outworkers are not overridden; (3) remove part 4 of the proposed legislation, as it is considered not to have any application to outworkers and imposes unnecessary regulatory burdens on persons who engage outworkers; and (4) repeal part XXII of the Workplace Relations Act for the same reason. Outworkers related amendments will also be moved to various provisions of the Workplace Relations Legislation Amendment (Independent Contractors) Bill 2006, and those amendments are consequential on the more substantive stages. I have already mentioned the review of the owner-driver’s legislation, which I think is very satisfactory. I commend the bill to the Senate.

Senator HUTCHINS (New South Wales) (8.28 pm)—I want to speak this evening on the Independent Contractors Bill 2006 and the Workplace Relations Legislation Amendment (Independent Contractors) Bill 2006. I had the opportunity to sit on the Senate Employment, Workplace Relations and Education Committee when it went through the various aspects of the bill. The committee dealt with a variety of witnesses who appeared before it and who presented their case as to what they wanted from this legislation.

It is a good sign for us in the Labor Party that, once again, ideology has gripped the government. It is always a sign that a party is starting to concentrate more on what it sees as its place in history than on the practicalities of the maintenance of government administration when it lets ideology take over. The fact that the government has presented legislation that, in essence, does not allow individuals to become members of or be represented by trade unions is again another sign of its ideology. As I said, I think that is a good sign for us in the Labor Party because, while the government is concentrating on its place in history, we will certainly be making sure that it does become part of history at the next election.

I had a long association of dealing with the issue of contracting and contractors in my previous occupation. As you would be aware, Acting Deputy President Crossin, for 18 years I was a full-time official of the Transport Workers Union of Australia’s New South Wales branch. I ended up being the secretary and also the national president of that organisation. I remember clearly when I first joined the organisation on St Patrick’s Day in 1980. My old boss then—his name was Edward Clarence McBeatty—said: ‘One thing you should remember about truck drivers is that they are politically conservative but industrially militant, and never mix up the two. They may take direct action on behalf of their wages, conditions or rates, but that does not necessarily mean that they will vote the way you would like them to at a general election.’ I always used that test in my old branch of the TWU in how to approach small business men who, of their own
The association of the union with owner-drivers goes back a long way. When the union was formed in 1888, there were men who owned their own horse and cart at the meeting at Trades Hall in Sydney. From that period on, when trade unions and industrial awards were being formed, owner-drivers who had particularly worked around the waterfront, in the sugar houses and in carting concrete and excavated and building material often not only were subject to direction and control by one employer but wore uniforms that they were required to wear by that employer, their wagons were painted in the colours that the employer required along with the company’s logo and, in fact, the employer would often tell them the sort of equipment they wanted them to provide. These owner-drivers were subject to their employer’s direction and control. This became more and more prevalent for those men after World War II, when a lot of surplus army equipment was available and people started to get more involved in the road transport industry in what was called in that period the Department of Main Roads.

From that period on, the New South Wales branch of the union sought to represent the interests of the lorry owner-drivers through legal mechanisms. I recall meeting Sir Jack Sweeney, who was their QC at one stage. His junior was Neville Wran. On two occasions they made appeals on behalf of the union to the Privy Council in London to represent owner-drivers to make sure that they could be legally enrolled. There were mechanisms to ensure that that occurred in legislation through to the sixties. In fact, when Sir Robert Askin was a Liberal Premier of New South Wales, he started to enact more and more legislation to make sure owner-drivers were represented. That continued in New South Wales right through the variety of Liberal governments, from Sir Eric Willis to Tom Lewis, Nick Greiner and John Fahey.

That is the history that has always been there with that particular union, so I am a bit concerned—even though Senator Troeth has said this evening that there are aspects of this legislation that will not apply to owner-drivers in New South Wales—that, in the amendments that were presented five minutes before the bill saw the light of day, there was one clause that would remove the right of owner-drivers in New South Wales to make or vary contract determinations. I hope that the minister will clear that up in reply—whether it is just a drafting error or whether it will be dealt with in other aspects of the legislation. But if that is the case then that negates the arrangements that were entered into by the TWU and the government to exempt at this stage the provisions of this bill for lorry owner-drivers in New South Wales and in Victoria.

I do not share the confidence of Senator Troeth on the changes to the legislation in the areas of deeming, unfair contracts and the transferring of those powers in New South Wales and Queensland jurisdictions to the federal jurisdiction. I mentioned earlier that a lot of legislation that has been helpful to owner-drivers in New South Wales was carried whilst the coalition was in power in that state and was often carried unanimously by both houses of the parliament.

In 1994, particular legislation was introduced into the New South Wales parliament to provide a mechanism to protect goodwill payments for owner-drivers, particularly in the concrete industry. That bill was, as I recall, introduced as a private member’s bill by the Labor member for Auburn, Peter Nagle, and was supported by the then IR minister John Fahey and his successor Kerry Chikarovski. In essence, that bill allowed owner-drivers involved in contract disputes with
their major employers—in this case, it was the concrete companies—to go before the New South Wales industrial commission and seek to argue a case as to whether there was an unfair or unconscionable contract. That saved a lot of men in particular and their families a lot of money and a lot of heartache in that period when those companies were restructuring. It allowed for the swift and not all that costly resolution of significant contract disputes between the concrete companies—those multinationals—on the one hand and lorry owner-drivers in painted colours on the other. It meant that the difficulties which had transpired, and which transpire in other states, no longer occurred.

In my last contribution here in parliament on this issue, I spoke about the situation only a few years ago concerning Boral. Boral in New South Wales wanted to change its method of contracting and remuneration for their lorry owner-drivers. By virtue of the fact that the owner-drivers had an opportunity to go before the New South Wales commission and to use the unfair contracts legislation that was available to them in that state, they were able to achieve a satisfactory result for both sides as a result of being able to go through the New South Wales jurisdiction. In Canberra, the men were broken because they did not have the money to compete with Boral. In the end, some lost their homes and they all lost their businesses because they did not have the opportunity to match Boral dollar for dollar in legal costs. If we transfer these decisions from a jurisdiction that allows for them to be dealt with inexpensively, that attempts to make it non-legalistic and that attempts to make sure that the outcome works to another jurisdiction—as is being proposed under this legislation—then it will become a case of, ‘If you can afford justice, you will get it.’ A former staffer of mine once said that he was told that the British system of justice, and I suppose that is what we have, is a Rolls Royce system of justice—the only thing is that you need to own a Rolls Royce to get full access to it. If that is what is being proposed here, then it is terribly wrong. I hope that some coalition colleagues go back and have a think about it because that would not be in the public interest. It will be a denial of justice.

There are significant difficulties in what is being proposed by the federal government in relation to taking these powers away from the states, where there is appropriate legislation, and putting it in the hands of the Federal Magistrates Court. That is going to make it more legalistic, more complex and more inaccessible to men and women who fall into contract disputes with major companies. That will lead to the denial of justice. I know that some coalition colleagues have an ideological bent about trade unions, and one can accept that. That is a thing that sometimes has started some of them up. But in the end this is going to lead to unfairness and to a denial of justice for men and women if they are put in this position.

In my old organisation we saw the example of what happened with Boral here in Canberra as opposed to Boral in New South Wales. The people in New South Wales were able to achieve a satisfactory result for both sides as a result of being able to go through the New South Wales jurisdiction. In Canberra, the men were broken because they did not have the money to compete with Boral. In the end, some lost their homes and they all lost their businesses because they did not have the opportunity to match Boral dollar for dollar in legal costs. If we transfer these decisions from a jurisdiction that allows for them to be dealt with inexpensively, that attempts to make it non-legalistic and that attempts to make sure that the outcome works to another jurisdiction—as is being proposed under this legislation—then it will become a case of, ‘If you can afford justice, you will get it.’ A former staffer of mine once said that he was told that the British system of justice, and I suppose that is what we have, is a Rolls Royce system of justice—the only thing is that you need to own a Rolls Royce to get full access to it. If that is what is being proposed here, then it is terribly wrong. I hope that some coalition colleagues go back and have a think about it because that would not be in the public interest. It will be a denial of justice.

The deeming aspects of this legislation change the situation as well. Under New South Wales and Queensland law, there are
certain provisions to prevent sham contracts. They have been put in there over the years. We heard from the New South Wales representatives that these pieces of legislation have been in place for 45 years, so they were in place during two significant periods of coalition government. In New South Wales, the coalition under Askin, Lewis, Willis, Fahey and Greiner did not seem to think that it was worth while to change them. But we have now got that prospect presented to us. If we change strong deeming provisions that prevent sham contracts then we are going to deny justice to people who are probably not in a position to demand it. The people who are probably going to be most vulnerable in this situation are not going to be the people in the cities but the people in country New South Wales and country Australia. Once again, I hope that that will lead to a bit of a rethink from some of the National Party senators and some of the senators from the coalition who come from outside the metropolitan areas.

Two other things worth mentioning came out of the inquiry. The first was that, as a result of changes to the personal services income tax in July 2000, the income test for a contractor is much stronger. The ability to claim benefits and to deem yourself as a contractor has been significantly reduced. So, if this legislation goes through as it is proposed, we could find men and women put in positions where they are deemed contractors for the purposes of this act—and I will come to how that occurs—and yet with that not meaning anything to the Taxation Office. And Senator Marshall may be able to help me with that in his contribution. So in fact you can be deemed a contractor under this legislation yet not get access to the benefits of being a contractor because of the July 2000 ruling. You can still be taxed as an employee by the Australian Taxation Office because they will not accept whatever is said in the mechanism that is being proposed.

The other thing is that, if you are a person who wants to put someone on a contract, all you have to say is, ‘I genuinely thought he or she was a contractor.’ And that is it; that is the defence in the law. You do not have to do anything else. From my recollection of the hearings and from other stuff I have read, you do not have to do anything else other than to make that claim, and that is sufficient for this bill to be in operation.

There are two other things I want to mention in the brief time I have left. I think Senator Marshall may comment more widely on this because he asked these questions in relation to the operation of minimum wages. On 4 August Senator Marshall asked Mr Pratt from the Department of Employment and Workplace Relations:

Is it possible under this proposed legislation that an independent contractor can be paid less than the federal minimum wage?

Mr Pratt answered, ‘No.’ Senator Marshall went on to ask:

So what provisions of this legislation give any protection to people under the age of 18 entering into an independent contractor relationship? Is there any?

Mr Pratt said, ‘No.’

I have outlined my concerns about this legislation. I think that this is going to be a terrible piece of legislation that will be unfair and unjust on probably the most vulnerable members of the working community in this country. There is no protection for them from being forced into contracts—as much as the government may say there is—because all an employer has to say is, ‘I genuinely thought they were,’ and that is the defence.

There is no advantage for the contractors in taxation. There is no minimum wage for them. In fact, I alluded earlier to child labour—Senator Marshall was concerned
about the vendors outside a VFL ground in Victoria—and there does not seem to be any particular protection for children.

So what is this all about? I go back to my original point, and that was that this is about ideology gone mad, which has consumed this government since it got control of the Senate. And, as I said earlier, it may mean that, as a result of the government worrying about their place in history, they probably will make their place in history because of silly moves like this.

Senator MARSHALL (Victoria) (8.48 pm)—I also rise to speak in this second reading debate on the Independent Contractors Bill 2006 and the Workplace Relations Legislation Amendment (Independent Contractors) Bill 2006. Let me, at the outset, commend Senator Hutchins on his contribution to this debate. It comes from practical experience and an understanding of the way working relationships operate in the workplace and how this quite evil and pernicious legislation will be used to drive down the wages and conditions of working Australians. It seeks to follow the false mantra of this government, which constantly confuses productivity with profitability, because all that can be demonstrated in this legislation is a way to reduce the wages costs for employers, with no measurable offsets to improve productivity. It is simply a cost-cutting exercise to increase profits.

The principal bill, the Independent Contractors Bill 2006, seeks to exclude state and territory laws which deem as employees many independent contractors entering commercial agreements with employers. In the government’s view these state laws interfere with rights, entitlements, obligations and liabilities of parties to genuine independent contracting arrangements.

Most of the other measures contained in the principal bill are qualifications to the overriding provisions. These include the introduction of transition arrangements for those workers previously deemed by state and territory laws to be employees but who would now be independent contractors, and the retention of existing protections for out-workers and road transport owner-drivers.

The principal bill also enables application to be made to a Federal Court for the review of services contracts on the grounds that they are harsh and unfair. At the outset, that is what the government has sought to do with this bill. We do not have a problem with genuine contracting. Where there is a genuine need, a genuine contractual arrangement that forms genuine contracting is not a difficulty for us. But this legislation allows genuine employees from genuine employee-employer relationships to be established as so-called independent contractors. The policy aim of the Independent Contractor Bill 2006 is to turn as many employees as possible into contractors. It seeks to recognise independent contracts as bona fide workplace relationships which, in effect, turn natural employees into contractors. This places the worker at risk of reduced or even removed employee entitlements and conditions.

I heard Senator Troeth today assure the Senate that the Independent Contractors Bill did not affect taxation legislation, superannuation legislation, workers compensation legislation or occupational health and safety legislation. But Senator Troeth simply misses the point. While the bill does not interfere with those legislative requirements, it does enable people to be removed from an employee relationship into an independent contractor relationship, which removes the obligation of the employer to provide those provisions. It puts the onus back on the independent contractor themselves to provide those provisions and, more often than not, in
circumstances where they are then simply not applied.

There are so many examples for those of us who live in the real world where people have been forced into independent contracting arrangements against their will, because it is cheaper for the employer to deem them as independent contractors, where they simply do not cover themselves for workers compensation; they do not apply any occupational health and safety standards to their own workplace, because they are the ones who have to provide it; they do not pay themselves superannuation; and they do not provide for their retirement incomes and, thus, that burden ultimately is transferred back onto the rest of the community.

Senator Hutchins mentioned this—and following up on what Senator Troeth said earlier: it is absolutely true that the taxation legislation will not view people that have been deemed independent contractors under this legislation as independent contractors. The Taxation Office has a very different arrangement. It is an arrangement that is more in the real world and understands what is happening in employee-employer relationships out in workplace. The Taxation Office certainly will not deem most of these non-genuine independent contractual arrangements as independent contracting arrangements. It will simply deem them as employees and tax them accordingly. I guess that demonstrates, probably as much as anything else, the flaws in this bill.

It is the view of the government and employer organisations that share a close association with this government that industrial relations are greatly simplified by arrangements that put employees on to AWAs—Australian workplace agreements—or turn them into contractors. The Work Choices legislation is intended to encourage the first of these trends, and the Independent Contractors Bill is intended to encourage the later development. It is part of an ideological attack on organised labour in this country; that is what this is really about.

I heard Senator Murray earlier talk about what the government had stated as its objectives in terms of this bill. He went through a very detailed and comprehensive argument demonstrating how the government had completely failed to deliver on any of those stated objectives of the bill. The reason the government has failed to do that is that the bill is not about achieving those stated objectives; it is about taking people off good employment conditions where they can organise and provide for themselves decent working conditions and decent wages.

We have seen already, with the introduction of Work Choices and AWAs, massively high percentages of those agreements remove penalty rates, shift loadings, annual leave loadings, public holidays and much more. That has been spoken about a lot in this place already. In terms of deeming people as independent contractors, we do not even see the basic fair pay condition standard that the government has set as fair pay; it would be better described as the ‘low-pay standard’. But even with those low-pay standards that the government has legislated for—those five basic minimum conditions—if you are deemed and forced into an independent contracting arrangement that is not genuine, there is no standard whatsoever. Under an independent contracting arrangement, you can be paid less than the guaranteed minimum wage. How much less? Technically, down to zero—and that is absolutely legal.

Do you need to have annual leave provisions if you are an independent contractor? No, not at all. Do you need to have superannuation provisions if you are an independent contractor? Not under any requirement of
this piece of legislation before us today. Do you need to have sick leave? You do not. Do you need to be able to demonstrate that you have some understanding and knowledge before you are put into one of these employment arrangements? Of course not.

We have seen examples where schoolchildren have been declared independent contractors when they are working as vendor sellers at football games, with no provision for safeguards of any minimum standards. It is pure exploitation. This seems to be the underlying philosophy that this government wants to force down the throat of the working people of this country. It is based on a false premise. It is based on a view that is clearly wrong—that an individual employee, whether they are deemed as a contractor or not, has the same bargaining power as an employer. That is based on a lie. That is simply not true. An individual worker in any circumstance does not have the same bargaining power as the employer who is employing them. Of course, that will lead to great exploitation and great abuse.

There were many concerns about the whole process of this bill. At the time of the bill’s referral, the minister’s office attempted to restrict the scope of the inquiry by, among other things, preventing consideration of how contractors and employees would be defined in the bill. This was considered by Labor senators and minor party senators to be such a fundamental issue that it could not be excluded from consideration. The minister was apparently advised to follow the precedents set in the committee’s consideration for the Work Choices legislation in November 2005. However, on this occasion, the Senate’s adoption of the Selection of Bills Committee report referring the Independent Contractors Bill, which set no limits on its brief, foiled the minister’s attempt.

However, the minister tried to avoid us highlighting one of the major flaws in this legislation. This bill fails to tackle the issue of who is a genuine contractor and who is a genuine employee. This legislation does not define the term ‘independent contractor’ beyond its meaning under common law. It seems that contracting relationships should be recognised under common law, not industrial law. Therefore, an independent contractor is considered to be a person who contracts for services, thus denying them the legal status and the associated protections of an employee. However, a high proportion of subcontractors are employees for all intents and purposes. They work exclusively for a single firm in continuous engagement. The government bases its support for a common-law underpinning of this legislation with regard to distinguishing between employees and contractors on the grounds that the courts over time have developed a multifactor test to make this determination.

But during the committee inquiry we received a submission from the New South Wales government which quoted an opinion by Professor Andrew Stewart. It says:

The fact is that any competent employment lawyer can take almost any form of employment relationship and reconstruct it as something that the common law would treat as a relationship between principal and contractor … thereby avoiding the effect of a wide range of regulation which is typically applicable only to employees, such as industrial awards, registered agreements, leave and superannuation legislation and unfair dismissal laws.

This arrangement places burdens on the employee that would normally be the responsibility of the employer—that is, superannuation, taxation arrangements and workers compensation—and leaves the subcontractor vulnerable to exploitation. That is it in a nutshell. That is what this legislation is actually designed to do—remove those obligations
from the employer which would normally be theirs under an employer-employee relationship and transfer all those obligations back to the independent contractor as an individual, whether compensated for or not, whether they choose to be a self-employed businessperson or not. They have simply no choice when the employer decides that that is the preferred employment arrangement that the employer will employ people under.

In his own submission to the committee, Professor Stewart further noted:

By engaging a contractor, a firm may be spared the cost of providing leave and superannuation entitlements, of observing any award obligations, and perhaps too of insuring against work related injury. They may also be relieved of any exposure to unfair dismissal claims or severance pay in the event of terminating the arrangement, and a contractor is far less likely to belong to a trade union. And that is of course the nub of the issue with this legislation. Professor Stewart continued:

Even if higher nominal pay is provided than would be the case for an employee performing the same work, the firm is likely to end up ahead … if the firm can find a way to hire someone who in practical terms works only for the firm and is under its (more or less) complete control, yet who is legally characterised as a contractor, the firm has the best of both worlds

Professor Stewart again has quite accurately described the intent and the effect of this legislation.

The government has attempted, but simply failed, to overcome this burden on workers through the provision of penalties for employers operating sham contracts. But this provision in the bill is in itself a sham. What it provides for is an individual worker having to go to the Federal Court to get a determination on whether they are a contractor or an employee. What a ridiculous proposition. For example, if you have a cleaner in a school who is deemed by the employer to simply be a contractor and the cleaner disputes that and says, ‘Not really; you tell me when to work and when to come, you tell me the wages I am going to get paid, you monitor my times, you tell me how to clean—I am an employee,’ see what happens when he pops off to the Federal Court.

I went and got a quote from Slater and Gordon to find out how much an action by a worker in the Federal Court would cost if it was going to be defended by an employer. Their written advice back to me was that it would be a minimum of $30,000 to get a determination in the Federal Court. So to simply determine whether or not they should be deemed a contractor the employee has to first find $30,000 to go to the Federal Court against the employer. Even if you get a decision in your favour, because there are no unfair dismissal laws anymore, under the Work Choices legislation you become an employee. You are then covered by the Work Choices legislation, and we all know that without the protection of unfair dismissal legislation the employer can simply concoct a reason and then terminate your employment. So the sham contracting provisions in this bill are themselves a sham because they are unworkable. They are inaccessible for the vast majority of people which this sort of legislation will affect. The whole process itself is a sham.

There should be a cheap and readily available system available to workers to pursue disputes. This is similar to the measure we saw in the anti-choice provision in the amendments to the Trade Practices Act that sought to prevent unions from bargaining on behalf of collective groups and businesses. The independent contracting legislation forbids unions acting collectively on behalf of independent contractors if they are deemed to be in that position. The CEPU in their submission to our inquiry said:

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... such provisions appear to us to have little to do with protecting the interests of contractors, who may legitimately wish to seek the assistance of unions in work-related matters, and more to do with the Government's determination to quarantine all such workers from the industrial relations system.

With all of this government's industrial relations legislation we see the anti-union, anti-organised labour, anti-collectivism ideology coming through time and again.

This legislation also aims to override state and territory laws which consider as employees independent contractors who enter into commercial agreements with employers. The government perceives that these state and territory laws interfere with the rights, entitlements and obligations of those who enter into contract agreements. This bill creates a federal unfair contracts jurisdiction which overrides all provisions in state based industrial relations legislation which consider independent contractors to be employees. It also overrides provisions which seek to redress reduced bargaining power and protect the conditions of contractors. It does little to protect workers and it is more about overriding the states' ability to protect groups of workers which they deem vulnerable.

One of the interesting things—and Senator Troeth talked about this—was the outworker provisions. It was recognised by all members of the committee and the government that those workers are in an extremely vulnerable position. They cannot negotiate in any meaningful way with their employer, so the government has agreed—and I welcome this—to exclude them completely from the provisions of this bill, and that is great. It recognises on one hand that there are vulnerable workers but on the other hand tries to say there is only one group of vulnerable workers, and that is simply not true. You only have to look around at the cleaning professions. These are people who work long hours under incredibly arduous conditions in a very competitive environment because it is generally considered to be a low-skill, low-educated occupation, where there is the ability to turn over staff and have people compete against each other for those conditions.

This government fails to recognise the inequity in the bargaining power between employees and employers and, as I said earlier, it tries to do this in the following ways: by destroying trade unions, smashing any organised labour and making workers vulnerable, firstly, through Work Choices and, secondly, through the introduction of independent contracting legislation.

Senator SIEWERT (Western Australia) (9.08 pm)—Although I am going to specifically address the issue of the Independent Contractors Bill 2006 shortly, I would like to draw the Senate's attention to the last-minute inclusions in the amendments presented today—several hours ago—of changes to the Workplace Relations Act which go well beyond what this bill is purported to be dealing with, well beyond what the Senate inquiry looked at and well beyond what we were led to expect to be dealing with in the amendments.

I feel like it is groundhog day, as it is almost a year to the day when we were debating the regressive Work Choices legislation. We are once again having amendments fobbed off on us at the last minute when we have no time to adequately consider either the extent to which they apply to this bill or the broader ramifications they have for the Workplace Relations Act.

The government have reached a new low in their approach to the Senate and the contempt in which they hold this place. Maybe they thought they could sneak these amendments in under changes to the Independent Contractors Bill. Not only is the government using this bill quite plainly to get at employ-
ees to make them independent contractors, which undermines their rights; they are using it to have another go at introducing changes such as the stand-down provisions, encouraging people to trade their sick leave and not ensuring employees record everybody’s work hours—and the list goes on.

The amendment on stand-downs looks at providing employers with an extensive and wide-ranging right to stand down employees without pay at any time during which an employee cannot be usefully employed. It goes through things like a downturn in work, a breakdown in a piece of machinery, a strike or industrial action or any stoppage of work for any cause for which an employer cannot be reasonably held responsible. This is wide open to interpretation. It is not clear exactly how far employers can take this or under what conditions employment might resume. What happens if there is a power blackout and everyone is stood down indefinitely? What happens if you travel out to a remote mine site and the equipment is not working; are you stood down and do you have entitlements to accommodation and transport? What happens if an employer fails to maintain equipment like they are supposed to do? Once again, the employees are held responsible.

This is an absolutely outrageous piece of legislation. It is clearly open to not only interpretation but abuse. We have already seen how employers blatantly abuse the Work Choices legislation. The government might as well scrap all AWAs, scrap all employment requirements and say, ‘Go for it, guys.’ I would suggest that these provisions leave it wide open for unscrupulous employers to dump staff whenever it suits them, with the employees’ only recourse being to pursue expensive legal action. Of course, if you have been stood down without pay, your chances of being able to pursue legal action are very poor. It is likely to impact most on employees who are low paid and in unskilled positions and those who are unable to take any action and fight this piece of legislation.

It is also unclear whether people who are stood down will be able to claim some form of income support. So they are stood down without pay, and we do not know whether they will be able to claim income support. Tell me how that is fair to workers. Tell me how that is family friendly. You go into work expecting to work for the day and there is a piece of equipment down: ‘Sorry, there’s no work. You’re stood down.’ How ridiculous is that?

Section 245A deals with the entitlement to cash out an amount of paid personal or carers leave—it is on page 25 of the government amendments. This provides for the ability to cash out personal leave, which can include sick leave and carers leave. It is unlikely to help very many workers and has the potential to disadvantage many, particularly those who are caring for children or family members. This is not a piece of family-friendly legislation and it does little to redress the current imbalance between work and family life. It threatens to make things substantially worse. Australia is already facing a care crisis. Things are set to get worse with an ageing demographic, and carers already tend to be one of the more disadvantaged groups in our community. Carers need to use more of their personal leave and family leave to meet their care responsibilities. These changes will systematically prejudice workplaces against people with family and care responsibilities and put pressure on Australian people to cash out their leave.

Carers leave and personal leave are things that many employees do not think they will need until they are hit with a serious illness or family crisis; if they have been pressured and encouraged to cash it out, they will have no recourse. While there is a minimum
amount kept in reserve, it is unlikely to be enough if you or your loved ones are in crisis and need care or if you have a sudden serious illness. Younger workers in particular—again, those already disadvantaged by Work Choices—are likely to think that they will not need illness or sickness cover. They are the ones that are highly likely to be encouraged to think it is a good thing to cash out their leave.

Sick leave was never supposed to be tradable. It is supposed to be there in case of emergencies if you are sick. It is likely, as I said, to encourage particularly young people and also those on low incomes, who might think they will get a slight advantage, to cash out their sick leave. What happens when they do get sick? It will encourage people not to call in sick when they are sick, which in turn will lead to a drop in productivity, not only their own—which they will probably get in trouble for—but also that of other members of the workplace who catch the sickness or the illness because the person came in sick. Medical experts have repeatedly said it is best for people to stay home as soon as they start feeling sick. It is better for the person—the worker—and it is better for the workplace.

There are other amendments in this legislation. Of course, due to the time constraints—we have had these amendments for only a small amount of time—we have not had time to go through them. I am sure there are other hidden little beauties in the bill that we will be shocked to discover when we get more time to discuss it. We will no doubt be debating those during the committee stage.

I now turn to the issue of the Independent Contractors Bill 2006. In 2004, as part of the federal election campaign, the government stated that, if re-elected, a coalition government would introduce an independent contractor act to prevent the workplace relations system being used to undermine the status of independent contractors. Well, that is certainly not what this bill does. This bill undermines employees. It is clearly designed as another plank in the federal government’s approach of undermining workers’ rights and treating workers as just a commodity. It is likely to impact on a growing number of Australians as more employees are forced into independent contracts. Already, there is estimated to be, I would say, over a million people already under some kind of individual contract, and this is likely to increase significantly with the passage of this legislation. This legislation is not delivering what I think some people thought the government intended to deliver. As I said, it is about undermining workers’ rights by forcing employees into being independent contractors, taking away their entitlements and basically making inaccessible many of the provisions that they as workers should get.

The bill purports to move the contracting relationship as far away as possible from the realm of employment and to place it as far as possible under commercial regulation. The bill seeks to exclude state and territory laws which deem as employees many independent contractors entering commercial agreements with employers. It is the government’s view that state laws interfere with the rights, entitlements, obligations and liabilities of parties to genuinely engage in independent contracting arrangements. The bill supposedly retains existing protections for outworkers and road transport owners and has, the government maintains, a provision for service contracts to be reviewed on the grounds that they are harsh or unfair. But that is only possible by application to the Federal Court. The Federal Court is hardly easy for workers to access. Having to go to the Federal Court would put anybody off the very idea of seeking a review, let alone having the money to do it.
The bill does not define the term ‘independent contractor’ beyond the current meaning under the common law. The problem with this is that independent contractors will not receive the same entitlements in doing their job as an employee. The independent contractor is seen as a person who contracts for services, and is not afforded the same legal status as an employee. The bill also overrides the deeming provisions contained within state and territory industrial legislation which deem certain categories of independent contractors to be employees and provisions which bestow employee related entitlements on independent contractors. Those deeming provisions provide independent contractors with their basic employment conditions beyond those required federally under the existing legislation. Again, the bill is about undermining employees. Those safeguards will not exist when this legislation is passed, except for owner-drivers in New South Wales and Victoria and, potentially, some outworkers—that is dependent on the extent of the government’s amendments, which, of course, we have not had time to check out.

The House of Representatives Employment, Workplace Relations and Workforce Participation Committee report titled Making it work noted the difficulties with the common-law distinction between employees and independent contractors. Common law has a number of mechanisms available to it in determining whether a person is an employee or is performing work under another type of arrangement. The report recommended that, when drafting independent contractor legislation, the government maintain the common-law approach to determining employment status but distinguish between employees and legitimate independent contractors.

In addition, the report recommended that any new legislation adopt components of Australia’s legislative income tax assessment alienation of personal services income tests to define independent contractors. The Taxation Office has a number of criteria which a person has to satisfy to claim taxation status as an independent contractor. The bill does not implement that recommendation. The minister argued that the test is a self-assessment and therefore able to be easily manipulated by a person to arrive at a desired outcome. But the question that should be asked is this: if it is good enough for the tax office to require criteria to determine if a person is actually independently contracting then why is it not for the independent contractor legislation? It is interesting—more than interesting, I have to say—that yet again the government has been given advice through parliamentary process and has not listened to it.

The relationship between an employee and an employer is not equal. This is even more so when the person is earning a livelihood as an independent contractor and has no fallback or no-one to stand up for their rights. This legislation should protect the vulnerabilities of people who are not always able to negotiate fairly with employers. It does not. Employment and workplace advocates have expressed concern at the growing incidence of independent contractors in Australia. They are concerned that the independent contracts are issued to advantage companies—big surprise!—and are being used as a means of not providing employee entitlements such as superannuation, training, occupational health and safety requirements, sickness leave et cetera. These responsibilities fall to the independent contractor. The reason the government wants to do this is to make it easier and easier for employers and harder and harder for workers.

Ensuring a better definition of ‘independent contractor’ as well as defining it by common law and entrenching it in taxation assessment is essential. It should be harder
for companies to offer independent contracts as an alternative to taking on employees. Because of the limited protections afforded to people who work in industries that run on independent contractors, such as truck drivers and workers in the textile and footwear industry, state governments have introduced deeming legislation to ensure that workers have protection under their state based industrial relations systems. A number of states consider that many of these workers are dependent contractors or are actually disguised employees—that is, they do not have an independent say in choosing to independently contract; it is all they are offered. In other words, they are disguised employees.

Deeming in the context of employment law involves the power to declare people who work under a contract for service, such as independent contractors, to be employees. This means that the independent contractor is then able to access the state based safeguards, ensuring that they receive basic pay and conditions which they would not otherwise be entitled to. Despite the many submissions received from the many inquiries into workplace arrangements over the years, and despite the reports available to them, the government have failed to provide the protections that independent contractors—or, more importantly, those disguised employees who are forced to become independent contractors—need. They need these provisions.

The ACTU, in their submission to the House of Representatives Standing Committee on Employment, Workplace Relations and Workforce Participation inquiry into independent contractors and labour hire arrangements, commented that non-standard work arrangements are increasingly being used to undermine the employment relationship and the protections offered. The growth of these forms of work has also contributed to the lack of skills development and has serious implications for the management of occupational health and safety. Occupational health and safety is an area of utmost importance and I believe that all Australians feel passionately about it. Independent contractors are vulnerable in this area and there should be greater mechanisms in place to protect them from workplace hazards and safety concerns.

This bill does not address the issues faced by working Australians who are forced to independently contract their labour. The bill, as I said, not only fails to adequately define ‘independent contractor’ but also does not address concerns that employers may be using contract arrangements to avoid employment obligations. As I said, it does nothing to address occupational health and safety concerns to ensure that people working under independent contracts are adequately protected, nor does it look at trying to avoid taxation liabilities. There is no provision for appropriate amounts of superannuation to be paid to independent contractors or to clarify workers compensation responsibilities.

Whilst it is good that the bill retains specific protections for owner-drivers in New South Wales and Victoria, the government has taken a selective approach to the way that it is dealing with these issues. It is good that it has moved to protect New South Wales and Victorian legislation. However, it leaves other states which may want to bring in this type of legislation—Western Australia has legislation pending, as does the ACT—out in the cold. It is not in the nation’s interests to not adequately protect a vulnerable group of workers such as owner-drivers, who are the lifeblood of transport—they transport many goods within Australia. It does not adequately protect them. It puts increasing pressure on those people. Unless the government protects others beyond New South Wales and Victoria, it takes away their right to collectively bargain. It takes away their safety provisions. It does not adequately pro-
tect these so-called independent contractors who are essentially only working for one employer. Whilst I appreciate that the government has chosen to protect owner-drivers in New South Wales and Victoria, it would be offering exactly the same level of protection to the other drivers in the other states if it were genuinely trying to ensure that those provisions are there for all owner-drivers.

In summing up, I would like to make the point, yet again, that the government has reached a new low in the way it is dealing not only with this legislation but also with the amendments to this legislation. I feel like I am in *Groundhog Day*. We are being forced to consider a raft of amendments dumped on our desks just before dinner—literally as we are about to walk in and debate this legislation. This is exactly what happened with the Work Choices legislation. It was dumped on our desks as we were walking into the chamber to debate that regressive legislation that has far-reaching implications for all workers in Australia. Again, a year later, we have exactly the same thing. We are being forced to consider, at very short notice—or with no notice at all—legislation that has far-reaching ramifications for the workers of Australia.

Senator POLLEY (Tasmania) (9.28 pm)—I rise to speak on the Independent Contractors Bill 2006 and the Workplace Relations Legislation Amendment (Independent Contractors) Bill 2006. Can I first compliment and concur with those who have spoken already in this debate who are opposing this bill. I congratulate them on their contributions. Let us be blunt: these laws are just the latest attack by this arrogant government, by Mr Howard and Mr Andrews, on Australian workers. In even allowing these laws to be debated, they are sticking the boot in yet again and saying resoundingly and finally to workers, ‘You are on your own.’

This legislation will negatively impact on many workers and will add even more intricacy to the Howard government’s already extremely complex industrial relations legislation. Recently we have seen the government trying to back-pedal slightly on their unfair industrial relations changes. It is obvious that the Prime Minister is getting a whiff of an election year.

The Senate Standing Committee on Employment, Workplace Relations and Education report on this bill unanimously recommended that part 4 of the bill, relating to clothing outworkers, be removed completely. Part 4 of the bill will create a new category of worker—the contract outworker. This section of the bill will ignore the fact that outworkers would previously have been afforded employee like protections. It also has the potential to create confusion regarding the appropriate classification for outworkers. It would allow unscrupulous employers the opportunity to reclassify their workers and thus avoid awarding them any entitlements they would otherwise be entitled to.

With this legislation, the government are doing what they do best, and that is deceive. They are trying to create the impression that these laws will be beneficial for small business and contractors, but that is completely wrong. These bills seek to force genuine employees out of employer-employee relationships and create sham independent contracting arrangements which will reduce their entitlements, conditions and protections. Does that sound familiar? It is becoming increasingly obvious that this government’s preference is to simplify industrial relations by putting as many employees as possible onto Australian workplace agreements, with the Work Choices legislation, or turning them into contractors with these bills.

Contractors are an important part of Australia’s workforce and Labor recognises that.
Contractors are versatile and diverse. It is true that many industries rely on the services of contractors. Estimates vary on exactly how many contractors there are in Australia—around 800,000 to two million contractors in 2004. This is a range of between eight to 20 per cent of the entire Australian workforce. Regardless of the final figures, that is a very large percentage of Aussie workers. Labor’s concern is that these bills will allow employers to designate certain types of employees as contractors simply for the financial advantage of employers.

The number of submissions received by the committee from all areas of the workforce indicates just how much concern there is about this legislation. As is typical of this government—we all know the history since 1 July last year; it continues to abuse the powers in this place and the committee system—the minister attempted to restrict the scope of the committee’s inquiry before it even began. As mentioned in the opposition senators’ report on the bills, the minister attempted to prevent consideration of how contractors and employees would be defined in the bill. Obviously, this is a fundamental aspect of the bill and could not be excluded from consideration during the inquiry. However, the Senate’s adoption of the Selection of Bills Committee report referring the Independent Contractors Bill to the committee had no limitations and thus the inquiry was allowed to continue unencumbered—surprisingly, even with the best efforts of this arrogant government.

Of particular concern regarding this legislation is the fact that all contractors will be treated the same. A submission to the inquiry from the Australian Workers Union stated:

Of the million Australians currently deemed ‘contractors’, University of Melbourne research suggests up to 40 per cent do all their work for one boss—they are ‘dependent contractors’ not ‘independent entrepreneurs’. A dependent contract is one where one party is not truly independent, and work under the contract is in reality performed in a similar way to work under a contract of employment. Compared to truly independent contractors these workers tend to be those who are more vulnerable in the labour force—they work in lower skilled occupations; are young; and female.

The AWU submission goes on to state that the bill is really designed to provide an opportunity for employers to designate employees as independent contractors and thereby reduce the entitlements of the employees and the financial obligations of the employers. The AWU said:

Protections under the legislation like under the WorkChoices legislation will not deter employers from such practices as the incentives will be too great.

As a result of this legislation, workers will be faced with the burdens of their own superannuation and workers compensation—burdens which usually, and quite rightly, fall on the employer.

These laws are just another nail in the coffin, compounding the Howard government’s extreme industrial relations legislation. They will override state based employee deeming provisions and unfair contracts legislation. This is yet another step in the Howard government’s seemingly never-ending crusade to wrest powers away from the states. The people who will be hurt by these laws are ordinary working Australians: electricians, drivers and cleaners. They are being hurt because of one man’s ideological agenda. What is perhaps even worse is that the laws target workers who are already in an inferior bargaining position and would already be starting off on the back foot. But that is becoming a habit of this arrogant government: it targets the people in society who require help the most.

Workers or small businesses who want to take further action against an unfair or sham
contract will have to go through an expensive court process. That is not really an option for most workers who will be hurt most by this legislation, but that is just the way the government and employers want it to be. These laws will keep up the hurt for Aussie workers—the hurt that began with the unfair, extreme Work Choices legislation that Mr Howard did not believe was worth mentioning to voters before the last election. Perhaps it just slipped his mind. What cannot be allowed to slip our minds here today is the fact that these bills will dissipate protections and entitlements for workers who are already in an inferior bargaining position.

The AWU said:

By allowing contractors who are dependent on a single business for work to be ‘deemed’ as employees, industrial tribunals have ensured these workers have had access to superannuation, workers compensation and some legal recourse when treated unfairly. Under the legislation these rights are lost. Independent contractors will be by definition outside employment regulation and protections of industrial instruments such as awards, health and safety legislation, long service leave legislation and superannuation.

This arrogant government is intent on taking Australia down the low-wages, low-skills road. Under this legislation, independent contractors will be responsible for their own professional development.

Australia is in the grip of perhaps its worst ever skills shortage, but this arrogant government does not like to be reminded of that. The skills crisis that this government has created is holding back our economy, but still it make no moves to fix it. In fact, it is doing all it can to make it even worse by introducing legislation like this. This legislation will cause skills development and training levels to fall and will compound the already critical skills shortage in many industries.

In its submission to the inquiry, the Transport Workers Union of Australia said:

The unfair contracts provision of the Independent Contractors Bill envisaged a system which in a number of key respects is inferior to the current NSW and Queensland provisions which it will override.

Should we be allowing inferior legislation to be passed in this place? No, we most definitely should not. What is even worse about this legislation is that it will override any future state or territory owner-driver transport laws and also put at risk existing laws.

We have seen more than enough bad legislation from this government. This is not just legislation; this involves people’s lives. Everything the Howard government is trying to achieve with these bills is wrong. Australians are dealing with more pressures than they ever have before—high petrol prices and rising interest rates at a time when housing affordability is at its lowest. All the while, Mr Howard is continuing his crusade to knock down wages, strip away workers’ conditions and eliminate entitlements. Enough is enough.

Labor are completely opposed to this bill but concede that we do not have the numbers in this place to stop this bad piece of legislation proceeding. As such, we will support the amendment relating to outworkers in the hope that it will take away some of the evils contained in this bill.

Senator McEWEN (South Australia) (9.39 pm)—I also wish to speak on the Independent Contractors Bill 2006 and the Workplace Relations Legislation Amendment (Independent Contractors) Bill 2006. I note also that a substantial number of government amendments to the bills were circulated in this chamber at approximately 4.30 this afternoon—90 minutes before debate commenced on the bills. I note also, like previous speakers, how arrogant and contemptuous it was of the government to drop a large bundle
of amendments into the chamber without warning and without even notifying the shadow minister responsible for the bill. It is an attitude of disrespect for the processes of the parliament that we have come to expect from the government, and we particularly expect it when the subject matter of the legislation is protections for working people or attempts to take away those protections. Perhaps some of those government amendments have taken on board some of the concerns of the Senate committee that had a brief time to conduct its inquiry and report on the provisions of both bills. I look forward to further explanation of the government amendments during the committee stage of the debate on these bills.

Together, these bills comprise yet another plank in the government’s agenda to make the Australian labour market a deregulated free-for-all where the vulnerable get exploited and the powerful get away with it. The central principle of both bills is that so-called independent contracting relationships should be recognised and supported and that the appropriate mechanism for regulation is not the industrial relations system but the more legalistic and more expensive commercial law system. The bills add more complexity to an already overly complex industrial relations system. Another intention of the bills is to override the deeming provisions in state laws that were introduced by state governments to allow people who are genuine employees to have an accessible tribunal where they can go to pursue their rights and entitlements.

It is true that the government signalled its intention to introduce legislation along these lines, dealing with independent contractors, prior to the 2004 federal election. However, the Australian public was not clamouring for the independent contractor act before the election, and those of us in the Labor Party cannot actually recall legions of employees begging to be freed from the confines of the employer-employee relationship for the free-wheeling life of self-employment or for life as an independent contractor. In the Labor Party we did, and we do, support people having the genuine choice of either working for themselves or working as an employee. Labor did, and do, support the protection of genuine contractors from unfair contracts. However, the government’s 2004 policy document was a masterpiece of misrepresentation and ideological dream-speak. You know that when a government like this one talks about ‘flexibility of hours’ and ‘freedom to move easily between workplaces’, what it really means is that you will have to work ridiculous hours for no penalty rates and you will have no job security at all, because it believes you should be able to be sacked for no reason at all.

That is what we have seen in the Work Choices legislation, or the ‘no choices’ legislation, and that is the so-called flexibility and freedom this government wants to promote and encourage. These bills encourage a situation where even otherwise well-intentioned business owners and employers are forced to compete against each other, not by improving productivity but by driving down labour costs. It is the same ideology that underpins the so-called Work Choices legislation, the ‘no choices’ legislation. Take away the protections that should be part of the employee-employer relationship and take away the measures that attempt to redress the power imbalance in the employment relationship. Encourage people out of a regulated system into a deregulated system where the only safety net is what you are able to individually extract from the person who pays you.

If you have the skills that are needed by the employer or the organisation seeking to engage your services, and if you have language and savvy to negotiate, you will do okay. If you are not in that position, you will
just have to take what you are given. You might get ripped off by whoever is paying you, and you may even have legal redress provided under this legislation. But, if you are a cleaner or a courier driver on a low income, will you really be able to afford to mount a legal challenge? Will you be able to afford the legal fees and, more importantly, if you are self-employed or a contractor, will you be able to take the time off work necessary to pursue such a case?

There are provisions that are intended, I presume, to give people who are subject to unfair contract arrangements the ability to pursue a remedy. But you have to ask: why is it that the government was keen to introduce this legislation at all? Who wanted it? It was not the average Australian working person who, if the legislation is passed, will be at risk of being turfed out of a genuine employment relationship with the benefits and protections that that offers—turfed out of employment because there are no unfair dismissal provisions anymore and forced into so-called contract arrangements.

Who wanted it? It was not those out-workers and owner-drivers who were protected by the state legislation that this federal legislation seeks to override. It was certainly not the TWU, the Transport Workers Union, which, on behalf of its members, put to the former Senate Employment, Workplace Relations and Education Legislation Committee the case for giving owner-drivers the right to be able to bargain collectively and to pursue remedy for unfair contracts in a relatively user-friendly arbitration system. Even some of the government’s own members heeded the TWU submissions and understood that a race to the bottom in the transport industry was going to have devastating effects on safety on our roads, not just for the drivers but also for those of us who share the roads with them.

Who wanted it? So far, the Australian Chamber of Commerce and Industry has been in favour of it, although it did not go far enough in the first take for ACCI. However, in my experience, any legislation that remotely offers any protection at all for working people is probably too much legislation for ACCI. What is the government’s justification for this legislation? The government’s 2004 policy document, which I referred to earlier, is telling in this regard. It states:

The Coalition Government is determined to protect the rights of independent contractors. We will not allow union officials to strip these enterprising Australians of the right to choose how they live and work.

It goes on to say that the government:

... will not permit unions, industrial tribunals or State Labor governments to attack the freedoms of independent contractors.

There you have it—the trifecta: mention unions, industrial tribunals and Labor state governments all in one sentence, then throw in a gratuitous ‘freedom’ or two, and that is about the sum total of the government’s justification. Never mind that it was the unions that fought for and won protection from exploitation for owner-drivers and outworkers. Never mind the fact that it was unions and Labor governments that won those protections. The very fact that unions were involved means that those protections must, in the government’s eyes, be bad and therefore, according to the government, we must destroy them and, along the way, do what ACCI wants.

The government says this legislation will be good for small business. You have to ask: how? How will it help those owner-drivers, who are small business people? Labor support Australians who genuinely want to start their own businesses. Labor have already issued our blueprint for small business—our five-point plan to help small business get ahead. Our plans include helping small busi-
ness to save time and money by cutting down government red tape and by giving them financial assistance to improve their business skills. We know that a lot of people prefer to work for themselves, and we will help them do that successfully. But Labor do not support legislation that encourages sham self-employment or contract arrangements.

This government goes on about the fact that independent contractors are flourishing in the Australian marketplace. We get figures ranging from 700,000 to over a million Australians—or even two million, if you believe the Independent Contractors of Australia. This is presented to us as a good thing, but it completely ignores the long-term outcomes of initiatives that take Australians out of traditional employment relationships, employment relationships that include the provision of industrial benefits such as superannuation. With Australians already undersuperannuated, anything that increases employment which is not accompanied by compulsory superannuation will see too many Australians reach old age or retirement age with insufficient income to sustain a decent lifestyle. Lack of superannuation is just one of the facts of life for too many people working as contractors.

What is the reality of life for many so-called independent contractors? I can give a couple of examples that are within my family. One is that of a courier driver. He provides his own vehicle and of course his own ABN, and his daily routine is to turn up at the workplace of one supplier of medical goods that he has worked for a couple of years. He loads the parcels for delivery and takes them to clients of the supplier. I suppose the flexibility and freedom in this arrangement is that he can decide which route he takes to deliver those goods. And, of course, it is the most economical route, because he has to buy his own petrol and the price per parcel delivered has not risen in line with the increase in the price of petrol.

He has no particular issue with the supplier for whom he delivers. They are a reasonable company, a family company, but he does have difficulties with the arrangements under which he works. He is not qualified to do much else except to drive a van and deliver parcels. He is at an age at which it is difficult to train for something else, and there are many other people in his situation. He has to earn a living and the supplier wants to maximise profit, so the courier driver takes what is on offer. But the reality is that he has no sick leave and no annual leave, he has no employer superannuation contribution and he does not earn enough to put enough into self-funded superannuation.

He goes to work when he is sick because he cannot afford to take the day off. He puts off having dental treatment and preventative medical appointments because to take time off work costs money. When his elderly father, who is in an aged care facility, needs assistance or is admitted to hospital and there is no-one else to go with him, the courier driver is obliged to help his parent and loses a day’s pay because of it. If his van is off the road because of a breakdown or regular service, he loses wages because he cannot work or because he has to hire a replacement vehicle. This is not a matter of choosing that kind of income earning arrangement. It is what is on offer when you are relatively low skilled and have to earn an income in competition with others in a similar situation. The government’s 2004 election policy document stated:

They—— independent contractors—— opt for the flexibility of hours, the freedom to move easily between workplaces and, frequently, the higher rates of pay.
Where is the freedom and flexibility for that courier driver?

I have another example. This one involves a much younger person. She is a university student and works in the usual kinds of occupations that students typically seek out when they are looking for an opportunity to earn money to support their studies and pay their HECS debts. In this case, she was offered a job working in hospitality, specifically working on weekends and at nights, waitressing at a function centre where weddings and other events of that nature are held. On accepting the work offer, she was told that she had to have an ABN before she started work because she would be working as a ‘contractor’. An ABN is easy to get via the ATO website. Armed with that, she went along and worked as a waitress. The only difference between this work and working in another establishment, where she would have been called an employee, was the way she was paid and the entitlements she did not get—an amount of money that was not taxed and was not subject to superannuation or penalty rates and that the employer did not have to pay employment related taxes on.

Again, I am not overly critical of the employer. They are about making money and they will use whatever legal framework they legitimately can to maximise their profits. What Labor is concerned about is the misuse of available laws to increase the number of people who are, for all intents and purposes, employees who should be employed under industrial laws but who are called ‘contractors’ so that the employer can avoid the obligations due to employees. Would-be employees need protection; the world of work is not a level playing field. What is an 18-year-old who needs a job supposed to do in this situation? Would they say to the employer, ‘Thanks, but I don’t want to work under those arrangements; I want to be engaged as an employee and paid the award rate and have all the other entitlements and rights of an employee that you are denying me’? Is the 18-year-old going to pursue an unfair contract litigation in a civil court? I do not think so. I think the government needs to get real.

In fact, the government have already acknowledged the potential for abuse of contractor arrangements, because they have taken into account the legitimate concerns raised by unions about particular groups of workers—outworkers and owner-drivers—and accommodated some of those concerns in their legislation. The government attempt to sell this unwarranted and unwanted legislation by saying that it gives people the freedom and flexibility to enter into arrangements of their choice. They already have that choice. No law prevents anyone from working for themselves as a contractor if that is what they want to do—and no-one is saying that that is not the case. Labor supports choice, and it is truly galling to hear those on the other side say that they are promoting choice in this legislation when it is their ‘no choices’ Work Choices legislation that says, ‘Take this AWA or take nothing.’ They have a funny concept of freedom and choice on that side of the chamber.

This is another piece of legislation that is driven by the government’s overwhelming hatred of unions and fairness. It excludes unions from the process of representation for no good reason except this government’s ongoing pathological and pathetic hatred of the notion of working Australians banding together in unions and helping each other improve their bargaining power and working conditions. This is another bit of legislation that will override the states’ legitimate role in providing protection for working Australians. This is another piece of legislation that tilts the balance of power further towards those who already have it and puts those who are most vulnerable at risk of being exploited. It
gives me great pleasure to say that Labor opposes these bills.

Senator Barnett (Tasmania) (9.55 pm)—I stand tonight to support the Independent Contractors Bill 2006 and the Workplace Relations Legislation Amendment (Independent Contractors) Bill 2006. In the very short time I have available, I want to make some general comments about the importance of this legislation, the importance of building a spirit of enterprise and the importance of encouraging entrepreneurialism in this country. Like the government, I have a vision for Australia—that is, one where small business is encouraged to prosper and do well, where jobs are grown, where wages increase and where we have a strong economy. As a result of the independent contractors legislation, we are providing a foundation of support for creativity, support for ensuring reward for effort and support for encouraging initiative by individual Australians—men and women alike—who are then likewise able to support their families, support their children, through the services they provide.

The Labor Party insist on using a one-size-fits-all approach to their policies and to their opposition to both these pieces of legislation. The Labor Party have a policy that would abolish Australian workplace agreements—a policy that would abolish choice for Australian working men and women. Not only do they wish to abolish choice and AWAs altogether from the industrial relations landscape in this country; they have a view that is not only moribund and antiquated but stuck in the 20th century. Their approach is to oppose for opposition’s sake, and they are fixated on, and stuck with cement boots in, history.

Our government wishes to move on. We wish to provide flexibility and choice to the Australian men and women of this country. One estimate from the Productivity Commission was that about 800,000 to 1.9 million Australian men and women make up the independent contractors of this nation. That is a lot of Australian families who can benefit under this legislation, and this is an attack by the Labor Party on those Australians. Sadly, the Labor Party wish to oppose the legislation we are putting forward tonight. What happened in 2004 was that those independent contractors and the groups that represented them said, ‘We want legislation, and we want protection,’ because the Labor state governments around this country were trying to rope in those independent contractors by saying, ‘You have a commercial relationship but we do not recognise it. We will deem you to be covered by our industrial relations legislation.’ That is unfair and unconscionable. That is why this legislation, including the principal bill, the independent contractors legislation, is before this parliament, and the amendments to it refine it and improve it. It will ensure a spirit of entrepreneurialism and a spirit of enterprise that this government wishes to enhance and encourage in this country. Tomorrow I will continue my remarks with respect to the merits of both pieces of legislation.

Debate interrupted.

ADJOURNMENT

The Acting Deputy President (Senator Murray) (10.00 pm)—I move:

That the Senate do now adjourn.

Australia Post

Senator Fifield (Victoria) (10.00 pm)—There are a number of elements that underpin the integrity of the electoral system in Australia: the independence and incorruptibility of the Australian Electoral Commission and the electoral offices of the state and territory jurisdictions; the electoral laws that govern the activities of parties and candidates; and the freedoms we enjoy—the
freedom of association, the freedom of speech and the ability of political parties and candidates to communicate freely with voters. A key element of that ability to communicate with voters is the professionalism, competence and impartiality of Australia Post. That is why it is with great regret that I bring to the attention of the Senate some serious matters of misconduct by this government entity.

In election campaigns, there are always allegations of dirty tricks and underhand tactics. Sometimes these are legal, even though they might represent poor form or a lack of fair play, and then there are other activities in the context of parliamentary elections that are just plain illegal. I would like to cite a number of disturbing instances from the recent Victorian state election campaign, some of which quite possibly breach Commonwealth law. I am not talking about any activities undertaken by the Australian Labor Party or the Greens. Regrettably, I am talking about Australia Post.

On the morning of Saturday, 18 November, a week before the Victorian state election, an unusual discovery was made. The Liberal candidate for the seat of Evelyn, Christine Fyffe, was campaigning at Chirnside Park Shopping Centre when she was alerted by a shopping centre employee to something very odd: thousands of Liberal Party brochures that were to be delivered by Australia Post were found in a rubbish compactor at the shopping centre. The compactor was so full that it could not be shut and the brochures were spilling out onto the ground. These brochures were to have been delivered to thousands of households in the marginal electorate of Evelyn. Evelyn was not just any marginal seat; it was Labor’s most marginal seat in Victoria, held by a margin of just 0.4 per cent. Liberal Party officials were subsequently able to view video footage from the security system at the centre that showed an Australia Post employee emptying an Australia Post tub containing the Liberal Party brochures into a rubbish compactor. The Liberal Party has requested that Australia Post undertake an internal investigation into the matter. Lest this be seen as the cry of a defeated candidate, I should point out to the Senate that Christine Fyffe actually won the seat, with a swing of three per cent. She previously held the seat two elections ago and she will again make an outstanding member for the state seat of Evelyn.

Sadly, there were a number of other serious failings in the performance of Australia Post during the Victorian state election. These included failing to deliver Liberal Party election material within a number of marginal seats and delivering material to the wrong seats. For example, in the electorate of Cranbourne, contested by Luke Martin, Australia Post underquoted by 2,500 the number of mail items required to reach each household in the electorate. Australia Post knew they had made a mistake in the first week of the campaign but, rather than advising the Liberal Party when this was discovered, they chose to hide the fact. They chose to randomly miss 2,500 households each week. They chose to fail to deliver to 10 per cent of the electorate each week and they chose to conceal this fact. When challenged by the Liberal Party in the third week of the campaign, Australia Post admitted what they were doing. The Liberal candidate, Luke Martin, failed to win the seat. While Australia Post’s failure to honour a contractual obligation and to then conceal that fact was not the cause of the loss, it was undoubtedly a contributing factor.

In addition, certain parts of Helen Sharkey’s electorate of Caulfield—particularly the areas of Caulfield South and Elsternwick South—received no campaign material, despite Australia Post being con-
tracted to deliver it. There were similar incidents in the electorate of Oakleigh, contested by Colin Dixon; in Frankston, contested by Rochelle McArthur; and in the suburbs of Wonga Park and Lilydale in Christine Fyffe’s electorate of Evelyn. In these cases, Australia Post told the Liberal Party that the election material had been delivered. At the same time, members of the community were telling us that it had not been.

The Liberal Party has raised these concerns with senior management of Australia Post and has requested they undertake a full internal investigation and explain their internal processes. The Liberal Party is, to date, entirely unsatisfied with the response from Australia Post. We do not know if the problems identified are due to poor performance by Australia Post staff or whether some Australia Post staff have the more sinister motive of political interference or political sabotage. Either way, it is totally unacceptable. Strangely, Australia Post seem relatively untroubled by these contractual failures and, in relation to the Chirnside brochure dump, they seem untroubled by the activity of one of their employees. They seem untroubled by an act which subverts the democratic process.

A letter to the Liberal Party’s state director, Julian Sheezel, from Mr Peter Lavis, Commercial Manager Victoria and Tasmania, Australia Post, dated 22 November 2006, says:

The service does not offer any delivery guarantee or confirmation. I have to ask myself this question: what are you paying for? If you pay Australia Post to deliver and they offer no delivery guarantee or confirmation, I do not know what you are paying for. In other words: ‘We’ll try, but that’s all we’ll do; near enough is good enough.’ I have to say that carrier pigeons offer greater service standards and care more about customer satisfaction than Australia Post. We are not talking about any old delivery outfit here; we are talking about the Australian Postal Corporation, which is owned by the taxpayers, which enjoys a monopoly over many services and which is an organisation trusted in state and federal elections to deliver material and to treat all equally.

The State Director of the Liberal Party in Victoria has advised the Australian Federal Police of some of these matters, in particular the dumping incident in Chirnside Park. He will be making a formal referral to the Australian Federal Police. These matters go to the heart of the integrity and fairness of elections in Australia. Australia Post should treat these matters far more seriously than they are doing. I have confidence that the Australian Federal Police will do so and I look forward to questioning Australia Post in the next round of Senate estimates hearings.

International Day for the Elimination of Violence Against Women

Senator KIRK (South Australia) (10.08 pm)—I rise this evening to speak on behalf of the many women who are victims of violence. Last Saturday, 25 November, was the International Day for the Elimination of Violence Against Women, also known as White Ribbon Day. According to the latest personal safety survey, published by the ABS in August this year, one in five women experiences sexual violence and one in three women experiences physical violence during their lifetimes. Family violence is of particular concern. Many people are surprised when they hear that most women who are murdered or are physically or sexually assaulted in Australia are killed or assaulted by their male partners. According to the Australian Institute of Criminology, around half of all female murder victims are killed during a domestic argument.
During the time that I have available today, I want to give the Senate an update on some of the things that have occurred over the past 12 months. I spoke on this issue last year and will continue to do so during my time here. I would like to start with some of the positives that we can point to. Firstly, I would like to applaud the government of India for legislation that it introduced earlier this month which for the first time recognises domestic violence as a crime. The Protection of Women Against Domestic Violence Act 2006, which came into force this month, defines domestic violence as including physical, verbal, emotional or economic abuse. This new law recognises marital rape and dowry harassment as crimes. It also prevents men refusing to let women work or banishing them from their homes.

Another important step forward in the same region was when President Musharraf and the government of Pakistan voted to amend the rape laws in that country, paving the way for civil courts to try rape cases. This law came into effect in November this year. Previously, according to the law, rape cases were dealt with in sharia courts. It was the case that, unless victims had four male witnesses to the crime, they faced prosecution for adultery. These old laws had the effect of making rape virtually impossible to prosecute in Pakistan. These two new developments in that region are very much positives from the last 12 months.

I also want to pay tribute to the work of UNIFEM, which organises White Ribbon Day and the events that occur on that day internationally. White Ribbon Day was started in 1991—some 15 years ago—by a group of Canadian men who wanted to commemorate the killing of 14 Montreal women the year before. UNIFEM must be congratulated for their ongoing efforts to involve men—not only women, but men—in the White Ribbon campaign. This year, it was interesting and pleasing to see that the Gillette Rugby League Tri-Nations competition came on board. It is a sponsor of the White Ribbon campaign. During the tri-nations final—which coincidently happened on Saturday, which was White Ribbon Day—several NRL players were nominated as White Ribbon ambassadors. The AFL has also introduced a new program, known as ‘Respect and Responsibility’, in order to tackle violence.

One gentleman who I am sure did not receive a single nomination to become a White Ribbon ambassador this year is Sheikh Taj al-Din al-Hilali. As has been widely reported, it appears to be the case that the Sheikh considers that certain women ask to be sexually assaulted. He implied that what women wear determines whether or not they are asking for it. According to a translation that was reproduced in the Australian, this is what the Sheikh said to followers during a religious service:

> If you take out uncovered meat and place it outside on the street, or in the garden or in the park, or in the backyard without a cover, and the cats come and eat it ... whose fault is it, the cats or the uncovered meat? The uncovered meat is the problem ... If she was in her room, in her home, in her hijab, no problem would have occurred.

I am sure that all senators would agree that a woman is not piece of meat and should not be likened to one. A woman has the right to wear whatever she chooses, whether it be a hijab, a short skirt or anything else for that matter. A woman has the right to be in her room, in her home, at work or, for that matter, in any public place, at any time of the day or night. Rape and assault are never the fault of the victim.

Domestic violence plays a significant role in the lead-up to lethal violence, accounting for 27 per cent of all homicides in Australia. Witnessing parental violence turns out to be one of the strongest predictors of later perpe-
tration of violence. It certainly does not bode well for the future that, according to the Australian Institute of Criminology’s latest figures, up to one quarter of children have witnessed parental violence against their mother or stepmother. Young people of lower socio-economic status are about one and a half times more likely to be aware of violence.

Indigenous youths are significantly more likely to witness violence. Tragically, Indigenous Australians are overrepresented as both victims and perpetrators of all forms of violent crime in this country.

I want to spend a bit of the time that I have left talking about violence against Indigenous women. But before I do, I would like to thank Nanette Rogers, the Crown Prosecutor based in Alice Springs. I do not know her personally but I saw the *Lateline* program on which she was interviewed, where she spoke out about the epidemic of sexual abuse, violence and death among Indigenous women and children in Central Australia.

We all know that there are links between domestic violence and child abuse and that the social, economic and other disadvantage factors that contribute to one also contribute to the other. I come across many sad and disturbing cases, particularly in my role as convenor of Parliamentarians Against Child Abuse—and I acknowledge, Mr Acting Deputy President Murray, that you are a member and that you are very active in this area—but I have to say that when I learnt of the details that Ms Rogers brought to public scrutiny, I was horrified.

But one thing that it is important to stress is that it is clearly not the case that all Indigenous communities are in disarray. And we have to be very careful not to stereotype all Indigenous communities as having problems. We must also be very careful not to stereotype all Indigenous men as abusers.

Fixing the problems where they genuinely exist must be based on partnerships with Indigenous peoples and with their full participation. However, statistics in the Australian component of the International Violence Against Women Survey 2004 show that the rate of family violence victimisation for Indigenous women may be 40 times the rate for non-Indigenous women. Despite representing just over two per cent of the total Australian population, Indigenous women accounted for 15 per cent of the homicide victims in Australia in 2002-03.

In June this year, the Human Rights and Equal Opportunity Commission released a paper, *Ending family violence and abuse in Aboriginal and Torres Strait Islander communities*. I commend the paper to senators. It covers the period 2001 to 2006 and it highlights issues that are linked to violence, including substance abuse and the high incidence of mental illness, poor health and suicide in these communities.

The No. 1 recommendation in the HREOC report is that government commitments must be turned into action. According to the HREOC report there is a patchwork of programs and approaches to addressing family violence in Indigenous communities across federal, state and territory governments. The report said there remains a lack of coordination and consistency.

In the time I have remaining I would just like to emphasise the fact that the government has to stop paying lip-service to ending family violence in Indigenous communities—and more generally across the wider community—and implement a national strategy and some leadership in this critical area.

Migrant Workers

Senator BARTLETT (Queensland) (10.18 pm)—I would like to speak tonight about the need for all of us across the political spectrum to be very diligent and watchful
about the rhetoric we use, and the need to avoid encouraging prejudice towards migrants or encouraging xenophobic attitudes towards migrants. It is a propensity that people from across the political spectrum can fall back on from time to time in playing on people’s fears and subconscious prejudices when it suits the political arguments that they want to make at the time. As I said, encouraging such attitudes towards migrants is something that can and does occur across the political spectrum. It is very easy to slip into and it is very important to try and avoid. It is important to speak out about it whenever it occurs.

I have previously spoken in this place about my concern about some aspects of the campaign against the 457 visa—the visa that is for long-term temporary skilled workers—and other visas that allow migrant workers to come into the country. It is certainly legitimate to raise concerns about the exploitation of migrant workers, whether on temporary visas or permanent visas. I have no doubt that exploitation is occurring and that more needs to be done to address it, but that important point should not be reinforced by promoting the myths that migrant workers are taking the jobs of Australians, through these schemes, or that the migrant labour scheme as a whole drives down conditions. As I said, I have no doubt that there is exploitation. Indeed, the recent Senate Standing Committee on Employment, Workplace Relations and Education report, Perspectives on the future of the harvest labour force, which dealt with the potential for Pacific labour in the horticultural industry, noted increasing evidence of unscrupulous exploitation of 457 visa holders by some labour contractors and their business clients. It pointed to some of the ad hoc arrangements in abattoirs, for example.

That example from the Senate report highlights an area on which we can focus to address exploitation and misuse of the scheme, particularly through some labour contract firms. It does not mean that these workers are driving down conditions; it means that some people are misusing the scheme and exploiting the workers.

The facts show that the 457 visa scheme, and other schemes that allow migrants to come in to fill employment gaps in our labour market, is a clear net economic and employment benefit for Australians. That makes sense when you think about it, because these people, on the whole—and I emphasise ‘on the whole’—are filling jobs that would otherwise not be performed. They are therefore working and acting in the employment market, generating wealth through performing those jobs, which creates wider wealth in the community and further employment.

It is to the overall net benefit of the community to have people filling gaps that would otherwise not be filled. That is no excuse not to do more about increasing skills in Australia. When there are multifaceted issues and different points to raise in debates we need to make sure that we do not slip into using that as an excuse to tap into old fears that migrants are taking our jobs. Frankly, any law-abiding employers—those that do not want to exploit the system—would not go through the red tape and uncertainty of getting temporary offshore workers here if they could get onshore workers.

That campaign and some of the xenophobia that has accompanied it has been run through parts of the union movement and some, although certainly not all, in the ALP. The government, of course, is also not devoid of occasionally plugging into prejudices in the Australian people when it comes to fear of people from overseas. Many of us, including me, have spoken a number of
times about the demonisation of asylum seekers, with some—again, certainly not all—in the government being prepared to imply, and sometimes be quite explicit, that there is a risk here that some people are potential terrorists or that there is some sort of threat to our security from asylum seekers, despite the total lack of evidence of this.

We also have the issue, which applies to both major parties on the whole, of many—although, again, not all—being unwilling to accept at this stage Pacific island labourers coming in to fill gaps that are there in some of our seasonal work. It is, in my view, very hard to see how it is acceptable to promote working holiday visas for people from European countries to come here to do seasonal work but at the same time say we will not take people from Pacific island nations. I think it is no surprise that that is perceived as having some degree of prejudice attached to it when talking about Pacific island workers.

That is not to say there are not some legitimate policy issues to consider when we are talking about using offshore workers for seasonal work or unskilled labour market programs, but those policy issues should not be infused with any sort of prejudice or selective discrimination towards people from certain parts of the world, particularly, people from our own region. Again, I would point to the evidence that was given to the inquiry of the Senate Standing Committee on Employment, Workplace Relations and Education into Pacific region seasonal contract labour. Evidence was provided about how a similar program that operates in Canada has not only assisted those who have come in for temporary seasonal work from particularly Mexico and the Caribbean but also provided significant economic benefits to the host country, Canada. There have been positive spin-offs for rural towns. Seasonal workers spend a proportion of their earnings on local goods and services. So we are not only risk-inflaming prejudice by playing on some of these fears as arguments against these sorts of programs, saying these sorts of people might not go home or they are not the sort of people we want here—that people from Western Europe are much more likely to fit in and those sorts of arguments—but also neglecting economic opportunities that are there for us.

I note with some dissatisfaction the use of some antimigrant arguments that I saw in a submission put forward by the Greens in opposing the pulp mill in Tasmania. There are lots of legitimate arguments for and against the pulp mill, and I am not passing a view on that in this speech, but I am concerned that in amongst some of the legitimate arguments put forward against the pulp mill there was concern expressed about large numbers of international workers being required, as though this was somehow a bad thing, and that those people might bring in diseases like TB and HIV and that there may be an increase of those diseases. Along with that concern was expressed the concern that overseas workers will send money back home to their family in remit earnings. Again, I think that is actually a positive aspect of distributing wealth around different parts of the world and an aspect of migration that has mutual benefits. It is disappointing to see arguments like that used to back up and reinforce other arguments against a particular project.

A view that is prevalent in parts of the environment movement—not the majority—is that genuine concern about the overall population of the planet is used as a cover for arguing against migration into Australia to keep Australia’s population down. This is completely focusing on the wrong issue and is using closeted concerns about people from overseas under the guise of environmentalism. To be balanced, that is a view that some of the Democrats held in the past and it used
to be reflected in our policy, but I am very pleased that it no longer is and has not been for a number of years. Migration has been a massive boon to Australia. There are always further refinements about how to run migration programs, but it should never be based on fear, discrimination or prejudice towards people from other countries. The net benefit to our country and the globe as a whole is enormous.

**Workplace Relations**

Senator Barnett (Tasmania) (10.28 pm)—I rise to plot the course of the Work Choices reforms and the great success story for business and working men and women of Australia and their families, specifically in Tasmania.

Senator Kemp—Hear, hear!

Senator Barnett—Thank you, Senator Kemp, for that commendation. The evidence that I will be sharing demonstrates, in my view quite clearly, that Work Choices is working. Labor and the unions made two simple claims about Work Choices prior to its introduction. The first was that jobs would be slashed and the second was that wages would be cut. The exact opposite has occurred. It is time, in my view, for both the Labor Party and the union movement to admit their mistake and apologise. Australia’s unemployment rate has fallen to 4.6 per cent in October this year—its lowest level for 30 years. Unemployment has fallen by over 240,000 since the Howard government was elected in 1996. Australia now has a record high of 10,287,400 in work, and of these three-quarters or 7.3 million are full time. So since the Howard government came to office in March 1996 well over 1.9 million jobs have been created and towards 200,000 more jobs have been created since Work Choices started in March this year. In Tasmania the number of full-time jobs has grown from 151,200 in March this year, using the trend figures, to 154,100 last month, while the Tasmanian unemployment rate in trend terms has dropped from 6.5 per cent to 6.4 per cent.

Now, what about real wages? We have talked about jobs and unemployment—what about real wages? Real wages have actually increased 16.5 per cent since 1996, and last month, interestingly, against the predictions of the union movement and the Labor Party, the Australian Fair Pay Commission increased the federal minimum wage by $27 a week. In terms of real wages, it was a 16.5 per cent increase, compared to a minus 0.2 per cent fall under the previous Labor government, when they had 13 years of government. It was 0.2 per cent down.

Senator Kemp—Is that right? That is an amazing figure.

Senator Barnett—That is an amazing figure, Senator Kemp, and I take your interjection. What did Labor claim would happen under Work Choices? This is what Mr Kim Beazley said at a press conference on 10 October 2005:

This is about slashing wages; make absolutely no mistake about that.

Then what did Stephen Smith, the shadow industrial relations spokesperson, say in a media release on 28 March this year? He said:

... the Minimum Wage will not rise in real terms under the Australian Fair Pay Commission.

In both cases they have been proven wrong, but they have not as yet admitted their mistake or apologised to the Australian people.

In contrast let us look at the figures under the previous Labor government, when Mr Beazley was employment minister and the unemployment rate reached a peak of 10.9 per cent, with nearly one million Australians out of work. That is true—nearly one million Australians were out of work. So much for the doom and gloom spin of the unions and
the ALP that Work Choices would lead to mass sackings and a big cut in wages. That was proved wrong.

A fascinating fact that I have seen in the last month’s statistics relating to Tasmania and the Australian workplace agreements is for industry penetration in Tasmania. It has actually increased from nine per cent in late 2005 to 13 per cent in September this year. This is against a national penetration which has grown from six per cent to seven per cent in the same period. So Tasmania has nearly doubled the penetration rate of the national average. Tasmanian based AWAs prior to Work Choices totalled 31,634. Since Work Choices, up to 31 October this year, the total is 35,590. As for AWA growth since March, there were 151 AWAs in April, 403 in May and 749 in August, rising to 793 in October. The grand total since March is 3,956. Since 1997 there have been over 10 million AWAs struck in Australia. The number of currently live AWAs nationally is 646,341 and live AWAs in Tasmania total 24,521. On average, Tasmanian AWAs deliver an income 48 per cent higher than employees on awards get.

What is the Labor policy with respect to AWAs? What would they say about the 24,000 Tasmanians or the nearly 650,000 Australians on AWAs? They want to abolish AWAs. They want to reduce the wages of those Australian men and women on AWAs, and they want to reduce them big-time.

Why is that? The union movement have promised $20 million to the Labor Party in the lead-up to the next election by levying their members, and that adage ‘he who pays the piper calls the tune’ in my view is exactly right in this case. Labor want to remove choices; we want to retain choice for Australian businesses and for small business. We want to build a spirit of enterprise and entrepreneurialism in Australia. We want to encourage creativity. We want to support initiative. We want to build and underpin the things that we support with reward for effort. Why shouldn’t we have choice for men and women in the workplace? And AWAs offer that choice. Labor will remove that choice. In Tasmania it is interesting that we have such a high penetration rate compared to the national average, because we are a small-business state. Fifty per cent of the private sector workforce comes from small business, and that is something that I am very proud of with respect to Tasmania. What about industrial disputes? What has happened to them under Work Choices? Believe it or not, they are at a record low level.

Senator Kemp—I thought World War III was going to break out!

Senator Barnett—That is right. That is what we were expecting, Senator Kemp; that is true. I can tell you what the ABS data says about industrial disputes. Let us look at the facts. They have shown that there were 3.1 working days lost per 1,000 employees in the June quarter this year, the lowest quarterly rate of disputes ever recorded by the ABS. This is an early indication of the success of Work Choices. It is fostering greater workplace cooperation, as opposed to the views expressed by the Labor Party and the union movement that the exact opposite would occur. This rate is more than 33 times lower than the highest rate recorded under the Labor government, which was 104.6 working days lost per 1,000 employees for the December 1992 quarter, when guess who was minister for employment? Kim Beazley. There has been an average of 13.4 working days lost per 1,000 employees each quarter under the Workplace Relations Act 1996 from March 1997 to June 2006, and this contrasts with the average quarterly rate of 44.4 working days lost per 1,000 employees under Labor from June 1985 to June 1996. So the high dispute levels act as a constraint on economic and employment growth, and what
we are doing is encouraging greater workplace participation and cooperation.

I want to comment briefly on the High Court challenge. The Labor Party and the union movement supported a frivolous High Court challenge to the Work Choices legislation, and the Labor states and the union movement challenged the reforms in the High Court. Those challenges have cost all those parties, I understand, an estimated $4 million. In my home state of Tasmania, the Lennon government are running a budget deficit, yet they were willing to spend around $100,000. Is this correct? Can the state government confirm these figures?

Finally, I want to thank the Minister for Human Services, Joe Hockey, for his visit to Tasmania on 16 and 17 November. He came down to speak about the merits of Work Choices and to support the hardworking local member for Bass, Michael Ferguson. He participated in a number of business breakfasts, lunches, meetings and briefings, and it was a very successful visit. He met with Ben Quinn, the federal Liberal candidate for Lyons. (Time expired)

Australian Law Reform Commission

Senator WORTLEY (South Australia) (10.38 pm)—Labor welcomes the recent report by the Australian Law Reform Commission, the ALRC, Fighting words: a review of sedition laws in Australia, and in doing so notes with concern the government’s failure to implement its recommendations. The report makes a number of recommendations to improve the existing law. It says:

Some of these represent technical refinements to the drafting. Mainly, however, the recommendations are aimed at ensuring there is a bright line between freedom of expression—even when exercised in a challenging or unpopular manner—and the reach of the criminal law, which should focus on exhortations to the unlawful use of force or violence.

The ALRC report refers specifically to the laws said to be modernised in the Anti-Terrorism Act 2005. I remind this chamber of the unfortunate way these laws were rushed through the parliament by the government last November—legislation that could have first been reviewed by the Australian Law Reform Commission before it went to a vote of the parliament. Labor opposed the sedition laws being part of the anti-terror laws and the amendments that were made to them. The sedition provisions were opposed too by a Senate committee that comprised opposition and government senators.

Media organisations, arts organisations, community organisations, lawyer groups and many members of the general public opposed these sedition provisions that formed part of the legislation. And why was there such concern, such opposition, by so many? It was because the laws, as drafted by the Howard government, had the ability to threaten some of the things that Australians hold dear: the right to comment, criticise and peacefully protest against government action. These extreme laws were drafted so that they cast the net too wide, opening up the possibility of journalists, artists and peaceful protesters being caught in it. The sedition provisions as they stand create a real risk that people could face prosecution simply for criticising the government or reporting the words or actions of others. There is no doubt that there is a clear difference between criticism of government, which is a democratic right, and the promotion of violence, which should be caught by our laws.

It remains Labor’s view that, from the outset, these laws that were rushed through, with very little real consultation or consideration being given to concerns raised, were clumsy and poorly drafted. Concerns were expressed through the media and the Senate inquiry that the laws might intrude unreasonably upon freedom of speech and stifle or
severely punish sharp criticism of government policy. Labor proposed that we should look at protecting the community, our community, from those who incite others to violence, but we raised our genuine concerns that these laws would not do that. Labor proposed amendments that would put beyond doubt that peaceful criticism of the government and genuine journalistic and artistic works would not be caught by the sedition laws.

Labor’s reasonable approach has now been endorsed by the finding of the Australian Law Reform Commission in its conclusion that there needed to be:

... a clear distinction in the law between free speech and conduct calculated to incite violence in the community—which properly should be the subject of the criminal law.

ALRC President Professor David Weisbrot, in a press release on September 13, the day the report was tabled, said:

Technically, the laws must be drafted in sufficiently precise terms to ensure they cannot be applied inappropriately or used in a way that would infringe upon freedom of expression—whether directly or by prompting artists or commentators to self-censor for fear of prosecution.

He went on to say:

Context is critical in these circumstances, so under our recommendations, courts would be required to take into account whether the conduct was a part of artistic expression; or genuine academic or scientific discussion; or a news report or commentary.

The private member’s bill introduced by shadow Attorney-General Nicola Roxon last year focuses on people who incite attacks against racial or religious groups, whether they are aiming for national attention or just encouraging local bullying. If these more targeted laws were in place, they would leave journalists and artists free to criticise government but provide an effective way to crack down on those who promote violence in our community.

The ALRC report supports some of the concerns raised by the media, artist and industry bodies that made representations to the Senate inquiry. Labor voted against the sedition laws, and even some government backbenchers thought they were a mistake and needed more work—that they should not have been rushed through in the way that they were. The Australian Law Reform Commission report confirms what Labor knew all along: the term ‘sedition’ should be removed from federal criminal law and the sedition laws do not do the job of protecting Australia in the way that they should. A recommendation in a media release put out by the ALRC said:

... drop the ‘red rag’ term ‘sedition’ from federal laws.

The fact is that, under the changes to federal law recommended by the Australian Law Reform Commission, media commentators, satirists, artists and activists would be safe from controversial sedition laws, even if their ideas were unpopular and confronting, as long as they did not urge the use of violence. More than two months has passed since the ALRC handed down its report. It is time that this government acted on the recommendations of the Australian Law Reform Commission and moved to put them into effect.

**Senate Standing Committee on Community Affairs**

Senator HUMPHRIES (Australian Capital Territory) (10.45 pm)—I want to take the opportunity tonight to refute some comments that were made about me in my role as Chair of the Senate Standing Committee on Community Affairs. The community affairs committee, as senators will no doubt be aware, has had a series of difficult references in the course of the last 12 months. One of
those references was into the Transparent Advertising and Notification of Pregnancy Counselling Services Bill 2005. That bill dealt with proposals to regulate the advertising of pregnancy counselling services and with the funding by government of services that are, in the language of the legislation, objective and nondirective. Although these issues dealt extensively with truth in advertising, inevitably they raised issues, during the inquiry, associated with abortion.

The report of the community affairs committee was presented to the Senate on 17 August. On 20 August, an article appeared in the *Sun Herald* newspaper under the heading ‘MP who felled abortion ad bill funded by lobby’. The article went on to suggest that a donation of $30,000 from the ACT Right to Life Association to the Liberal Party had assisted me in my 2004 election campaign. It went on to comment that, as chair of the Senate community affairs committee, I had used my casting vote to veto a private member’s bill of Senator Natasha Stott Despoja’s.

I want to put on the record in the Senate that the report in the newspaper was untrue. I did not receive a donation of $30,000 or indeed any amount from the Right to Life organisation. It is true that a donation was made by that organisation to a number of Liberal candidates in the ACT Legislative Assembly election that was held one week after the federal election in 2004, but that was an amount that was quarantined. It was directed not even to the Liberal Party in the ACT but to 10 specified candidates.

To its credit, the *Sun Herald* did acknowledge its error. It published on 3 September a retraction and apology in relation to the earlier article, and I thank the *Sun Herald* for being prepared to acknowledge its mistake. However, I was disturbed that some correspondents with me were, notwithstanding that retraction, misled by the claims that were made on 20 August. One of those, Ms Kate Mannix, of Sydney, had made a submission to the inquiry and had been a witness at the inquiry hearings in Sydney. I am aware that she sent an email on 21 August in which she repeated the false allegations concerning a donation from Right to Life. That email was sent to a number of honourable senators who are or were then members of the community affairs committee. That correspondence—or, at least, some version of it—was sent by email or letter to the Prime Minister, presumably repeating the false assertions.

I am not sure if senators saw the retraction and apology of 3 September but, in any case, I want to take this opportunity to draw it to their attention. Unfortunately, Ms Mannix was not prepared to accept either my assurance that the claims were false or the *Sun Herald*’s retraction and apology. She continued to assert in email correspondence that I had benefited from a $30,000 donation from the Right to Life organisation and that the donation had skewed the Senate inquiry into the bill. She also asserted that I should have stood down as the chair of that committee. She went on, incidentally, to claim that the ACT Legislative Assembly Liberal candidates at the October 2004 election were in breach of the ACT Electoral Act 1992 by failing to personally disclose the donation; but, in fact, I have had assurances from the ACT electoral commissioner that in his opinion the $30,000 donation by Right to Life had been properly disclosed under the terms of the ACT’s legislation.

My purpose in raising these matters tonight is to assure the Senate and anyone who might have seen these false allegations, either in the newspaper or in correspondence with Ms Mannix, that the assertions are indeed false and without foundation. I will have more to say on this subject when the Transparent Advertising and Notification of
Religious Intolerance

Senator STEPHENS (New South Wales) (10.51 pm)—Last Sunday, 25 November, marked the 25th anniversary of the adoption of the UN Declaration on the Elimination of all Forms of Intolerance and of Discrimination Based on Religion or Belief. And on 10 December we will be celebrating Human Rights Day. But despite such international covenants, many states fail to promote tolerance for others beliefs or even to protect their citizens’ right to freedom of religion or belief. The message of most religions is peace and tolerance, but too often we find that intolerance of one religion for another exists. Indeed, in some parts of the world it seems to be thriving. So this evening I want to speak about religious intolerance, beginning right here in Australia.

Australians are justly proud of our multicultural society and have made substantial efforts to outlaw vilification and encourage mutual understanding and justice for all. There are many examples of this effort in legislation, education campaigns and public awareness programs. For example, Australia was one of the first countries to endorse the final declaration at the 2000 Stockholm International Forum on the Holocaust, which included commitments to strengthen ‘efforts to promote education, remembrance and research about the holocaust’ and to ‘promote education about the holocaust in our schools and universities, in our communities and encourage it in other institutions’.

How concerning it is, therefore, to read that, in the year ending 30 September 2006, the Executive Council of Australian Jewry logged 442 reports of incidents defined by the Human Rights and Equal Opportunity Commission as racist violence against Jewish Australians. This was 47 per cent more acts of vandalism, harassment and intimidation than the average annual total. The incidents included physical assault; vandalism, including arson attacks; hate mail; graffiti; leaflets; posters; and abusive emails. The offences were spread all around the country. There was racial vilification of all types, including anti-Jewish telephone calls and text messages being used as a mode of harassment.

While all this was happening, we in the parliament were doing our best to condemn anti-Semitism. In the last session the Senate resolved to condemn racism in all its forms. That resolution demonstrates that everyone in this place is united in the belief that the way forward to a more peaceful, tolerant world is through dialogue. As we are reminded in the preamble to the constitution of UNESCO:

... since wars begin in the minds of men, it is in the minds of men that the defences of peace must be constructed ...

In the minds of men and women, it is all too easy to harbour suspicion of those whose beliefs are different from our own. It is much easier, indeed, than making the effort to listen respectfully and try to understand where they are coming from. Listening receptively does not mean forfeiting our own principled position; it means treating another person’s perspective with respect in the hope of finding a way in which we can live together peacefully. It is not always easy to accept the fact that people have different traditions, religions and values. But it is worth the effort.

Let me give you an example. When the late Pope John Paul II was planning his visit to Sydney back in 1986, he requested a meeting with the leadership of the Australian Jewish community. This caused quite a bit of apprehension. The Jewish delegation felt that until Israel received formal diplomatic recognition from the Vatican there would be an...
enormous chasm between Catholics and Jews, and they had no idea how the Pope might respond to this point of view.

In fact, their fears were baseless. Pope John Paul II treated them respectfully, as equal partners in dialogue. And it was at that meeting in Sydney that the Pope first articulated the view that, for all Catholics, anti-Semitism is a sin. This was a huge breakthrough for interfaith dialogue and understanding, mutual respect and the growth of trust. Since 1998 the Australian Catholic Bishops Committee for Ecumenism and the Executive Council of Australian Jewry have held a formal annual conversation to further dialogue in Australia, provide input into global Catholic-Jewish dialogue and build a firm friendship grounded in intellectual, personal and theological mutual respect.

This story illustrates how the very nature of dialogue consists in the ability to see oneself from the perspective of the other. Since human nature all over the world is the same, it is irrational to consider some persons as brothers and others as enemies. But, rational or not, it happens too often. A case in point is that of the Bangladeshi journalist Salah Uddin Shoaib Choudhury, who is facing charges of sedition, treason and espionage in a Dhaka court. Mr Choudhury is a devout Muslim who has been an outspoken critic of radical Islamic fundamentalism, denouncing the hatred and violence it has spread in its wake. A proponent of greater dialogue and understanding between Muslims and Jews, he has called on his fellow Bangladeshis to recognise the state of Israel and establish diplomatic relations with Jerusalem.

Though Bangladesh was founded as a secular state in 1971, it is currently ruled by a coalition government that includes two Islamist parties. Of the 147 million people, 83 per cent are Muslims. Islamic extremism is reportedly on the rise, with several fundamentalist groups wanting to replace the secular system with sharia, or strict Islamic law. To achieve this, these groups have turned to terrorism. In August last year, 430 bombs exploded across the country, killing two and injuring dozens. Three months later, Bangladesh suffered its first suicide bombings when at least three people detonated themselves in front of and inside two court buildings. At least two arrested terrorists in Bangladesh have admitted to being sent by Osama bin Laden. Saudi Arabia too has recognised Bangladesh as a potential tipping point, sending millions of dollars to the 64,000 Bangladeshi madrassas, or religious schools, that preach extremist Islam. Bangladesh is due to hold elections in January, and it is widely held that the radicals are set to increase their strength at the ballot box.

In this tense atmosphere, Mr Choudhury’s English-language newspaper, the Weekly Blitz, has featured strong editorials against violence in the name of religion and has called for dialogue between Muslims and Jews as the first step on the road to peace. Mr Choudhury has paid a severe price for this. In November 2003, he was arrested at Dhaka’s international airport and arrested for violating the passport act, which forbids citizens from visiting countries with which Bangladesh does not maintain diplomatic relations. This is usually punishable by a fine of $8, but Mr Choudhury’s experience was quite different: he was taken into custody and tortured and interrogated for 10 days in an attempt to extract a confession that he was spying for Israel. He spent the next 17 months in solitary confinement and was denied medical treatment.

He was released on bail in April 2005, thanks in part to the intervention of US congressman Mark Kirk and a campaign waged on his behalf by American human rights activist Dr Richard Benkin. But the Bangladeshi government decided to pursue the
Chamber charges against him. In July, Islamic militants bombed the offices of the Weekly Blitz. In September, a judge ordered the case continued on the basis that Mr Choudhury had spoiled the image of Bangladesh and hurt the sentiments of Muslims by his positive attitude to Jews and Christians. Just days before the start of his trial, the offices of the Weekly Blitz were ransacked and Choudhury was assaulted by a mob of 40 people, including senior members of the ruling Bangladesh Nationalist Party. Local police failed to make any arrests and refused to allow Mr Choudhury to file charges against his attackers. When he lodged a formal complaint with the police, an arrest warrant was issued for him.

Now Mr Choudhury’s trial has resumed and if he is convicted, as seems very likely, he could face the death penalty. His case may be relatively unfamiliar to most Australians, aside from a recent article by Janet Albrechtson in the Australian, and to some of us it might seem strange that Mr Choudhury printed articles knowing the likely anger they would provoke. Why would someone do such a thing? The answer has to be that, surrounded by extremists, he believed in spreading truth and justice, no matter how high the price.

Renowned Israeli politician turned columnist Michael Freund wrote in the Jerusalem Post:

With the rise of Islamic extremism across the globe, speaking to Bangladeshi Muslim journalist Salah Uddin Shoaib Choudhury is like catching a breath of cool, fresh air on a hot and sweltering afternoon.

We need to celebrate that breath of fresh air to protest against the maltreatment of Mr Choudhury and send the clear message that there should be no place for religious authoritarianism and ideological extremism. Here in Australia we have heard about the attention that the mufti has been attracting recently. We need to respond to the challenge, and that will determine whether we will in future live in a world of escalating cultural and ethnic conflict or in a world in which different civilisations coexist and cooperate in peace.

Senate adjourned at 11.01 pm

DOCUMENTS

Tabling

The following government documents were tabled:

Administrative Appeals Tribunal—Report for 2005-06.
Audio-Visual Copyright Society Limited (Screenrights)—Report for 2005-06.
Office of Film and Literature Classification—Classification Board and Classification Review Board—Reports for 2005-06.
Snowy Hydro Limited—Financial report for the period 3 July 2005 to 1 July 2006.
Superannuation Complaints Tribunal—Report for 2005-06.
Treaty—Bilateral—Text, together with national interest analysis and annexures—Agreement between the Government of Australia and the Government of the Kingdom of Cambodia concerning the Transfer
of Sentenced Persons, done at Canberra on 11 October 2006.

Table

The following documents were tabled by the Clerk:

*Legislative instruments are identified by a Federal Register of Legislative Instruments (FRLI) number*

Air Services Act—Air Services Regulations—Instruments Nos—

AERU 06-062—Revocation Instrument [F2006L03796]*.

AERU 06-063—Revocation Instrument [F2006L03822]*.


Civil Aviation Act—

Civil Aviation Regulations—Instruments Nos—

CASA 447/06—Instructions – specifying minimum runway width for a certain aeroplane [F2006L03769]*.

CASA EX41/06—Exemption – use of radiocommunication systems in firefighting operations [F2006L03827]*.

Civil Aviation Safety Regulations—Airworthiness Directives—Part—

AD/B737/119 Amdt 3—Fuel Boost Pump Wiring [F2006L03806]*.

AD/B737/121 Amdt 2—Fuel Boost Pump Wiring [F2006L03805]*.

AD/B737/188 Amdt 1—Main Wheel Well Electrical Connectors [F2006L03803]*.

AD/B737/298—Aileron Balance Tab [F2006L03848]*.

AD/B747/352—Overlapped Skin Panels in the Fuselage Skin Lap Joints [F2006L03847]*.

AD/PC-12/49—Executive Passenger Seats [F2006L03812]*.

107—

AD/WHE/8—MLG Wheel Assembly Part Numbers C20500000 and C20452000 [F2006L03810]*.

Class Ruling CR 2006/115.

Customs Act—Tariff Concession Orders—

0613650 [F2006L03787]*.

0613940 [F2006L03778]*.

0613957 [F2006L03788]*.

0613974 [F2006L03789]*.

0613975 [F2006L03790]*.

0616110 [F2006L03791]*.

0616282 [F2006L03792]*.

0616288 [F2006L03793]*.

0616332 [F2006L03794]*.

0616376 [F2006L03795]*.

Environment Protection and Biodiversity Conservation Act—Amendment of list of threatened species, dated 10 November 2006 [F2006L03834]*.

Goods and Services Tax Rulings—

GSTR 2004/5.

GSTR 2006/11.

Lands Acquisition Act—Statements describing property acquired by agreement for specified public purposes under sections—

CHAMBER
40.
125.

Taxation Determination TD 2006/73.

Taxation Ruling—Old series—Notice of Withdrawal—IT 2246

Wine Equalisation Tax Rulings—
Addendum—WETR 2004/1.
WETR 2006/1.

* Explanatory statement tabled with legislative instrument.
QUESTIONS ON NOTICE

The following answers to questions were circulated:

Post-Budget Function
(Question No. 1910)

Senator Milne asked the Minister for Ageing, upon notice, on 6 June 2006:
Did the Minister host a post-budget function after the release of the 2006-2007 Commonwealth Budget on 9 May 2006; if so:
(a) where was the function held;
(b) who was invited to the function;
(c) who attended the function;
(d) what was the cost of hosting the function;
(e) was the cost charged to the Commonwealth; if not, to whom was it charged;
(f) was a ticket price charged; if so, what was the ticket price;
(g) if no ticket price was charged, was a donation requested;
(h) how much revenue was collected by way of tickets charged or donation received; and
(i) to whom was the revenue paid.

Senator Santoro—The answer to the honourable senator’s question is as follows:
(a) to (i) I did not host a post budget function after the release of the 2006-07 Commonwealth Budget on 9 May 2006, however earlier in the day, before the Budget, I did host a private function for which no costs were charged to the Commonwealth.

POS Auckland
(Question No. 2185)

Senator O’Brien asked the Minister representing the Minister for Transport and Regional Services, upon notice, on 14 July 2006:
With reference to the vessel POS Auckland which was at the centre of a maritime security incident at the Port of Geelong in June 2006:
(1) What was the number and nationality of the crew.
(2) When did the vessel arrive at the Port of Geelong.
(3) What was the nature and volume of cargo loaded or discharged at the Port of Geelong.
(4) What was the vessel’s proximity to the Shell refinery while moored.
(5) When and at what time did the Minister and/or the department (including the Office of Transport Security) become aware of the incident aboard the vessel.
(6) What was the source of information about the incident.
(7) When and at what time did the master of the vessel raise the security level in response to a security threat aboard the vessel.
(8) Can the Minister confirm the claim by Detective Senior Constable Damian McKeegan, published in the Geelong Advertiser on 19 June 2006, that the master raised the vessel to security level three.
(9) Can the Minister confirm that level three is the highest security level under the International Ship and Port Facility Security Code.
(10) Does raising the security level to three represent an exceptional measure that is applied only when there is credible information that a security incident is probable or imminent.

(11) How did: (a) the Port of Geelong; and (b) the Government, respond to the raising of the security level.

(12) When and at what time was the security level restored to level one.

(13) Can the Minister confirm whether the security level was raised in response to the actions of a crew member.

(14) What was the nationality of this crew member and what was his role aboard the vessel.

(15) Did this crew member: (a) stab a fellow crew member; and/or (b) assault a fellow crew member with a hammer; and/or (c) lock himself in the engine room; and/or (d) open fuel values in the engine room flooding it with diesel; and/or (e) threaten to blow up the ship.

(16) When and at what time or times did these actions occur.

(17) How did the Government respond to this incident.

(18) When did the vessel depart the Port of Geelong.

(19) (a) Which Australian ports did the vessel visit before and after the Port of Geelong; and (b) when.

Senator Ian Campbell—The Minister for Transport and Regional Services has provided the following answers to the honourable senator’s question:

(1) The Australian Customs Service has advised the Office of Transport Security that the crew of the vessel was comprised of 21 Philippine nationals.

(2) The vessel arrived at the Port of Geelong at 11:30 on 12 June 2006.

(3) The Office of Transport Security does not routinely monitor the type and volume of cargo carried by vessels except cargo carried under a coasting trade permit. Australian Customs Service monitors cargo carried by vessels.

(4) The vessel was moored at Lascelles Wharf at the time of the incident. The distance by sea is approximately 1 kilometre from where the vessel was moored to the Shell Refinery Pier, in a direct line of sight over water. By road or land the distance is approximately 2 kilometres following the coastline.

(5) Initial notification of the incident was made to the Office of Transport Security Operations Centre at 07:04 on 14 June 2006.

(6) The Office of Transport Security was provided information about the incident from the Port Facility Operator, Toll GeelongPorts.

(7) Security levels on board the vessel were not raised during the incident and the Master of the ship treated it as a criminal matter.

(8) Security levels on board the vessel were not raised during the incident and the Master of the ship treated it as a criminal matter.

(9) Level three is the highest security level under the International Ship and Port Facility Security Code.

(10) The security level will be raised to level three for the period of time when there is probable or imminent risk of a security incident, even though it may not be possible to identify the specific target.

(11) Security levels on board the vessel were not raised during the incident and the Master of the ship treated it as a criminal matter.

(12) Security levels on board the ship were not raised during the incident and the Master of the ship treated it as a criminal matter.

QUESTIONS ON NOTICE
(13) Security levels on board the vessel were not raised during the incident and the Master of the ship treated it as a criminal matter.

(14) The crew member was part of the engine room crew. The Australian Customs Service has advised the Office of Transport Security that the crew of the vessel was comprised of 21 Philippine nationals.

(15) The information provided to the Office of Transport Security by the Port Facility Operator, Toll GeelongPorts, reported that this crew member: (a) stabbed a fellow crew member; and (b) assaul ted a fellow crew member with a hammer; and (c) locked himself in the engine room; and (d) threatened to blow up the ship. The Port Facility Operator did not advise the Office of Transport Security Operations Centre that this crew member had opened fuel valves in the engine room, flooding it with diesel.

(16) The Port Facility Operator, Toll GeelongPorts, advised these actions occurred at approximately 02:45 on 14 June 2006.

(17) The Office of Transport Security Operations Centre received initial advice of the incident from the Port Facility Operator, Toll GeelongPorts, and notified relevant parties (DOTARS Executive, DOTARS Media, Protective Security Coordination Centre and OTS VIC/TAS State Office) as per the incident notification procedures. No further action was required as the situation had been resolved by the Victorian Police.

(18) The vessel departed the Port of Geelong at 15:15 on 16 June 2006.

(19) (a) The Australian Ports visited by the vessel before and after the Port of Geelong, were Port Lincoln, Bell Bay and Adelaide. (b) The vessel arrived at Port Lincoln at 13:00 on 8 June 2006, and departed at 00:09 on 10 June 2006. The vessel arrived at Bell Bay at 16:12 on 18 June 2006 and departed at 18:30 on 21 June 2006. The vessel arrived at the Port of Adelaide at 21:18 on 23 June 2006 and departed at 20:00 on 27 June 2006.

Single Voyage Permits
(Question No. 2258)

Senator O’Brien asked the Minister representing the Minister for Transport and Regional Services, upon notice, on 26 July 2006:

With reference to the issuing of single voyage permits under the Navigation Act:

(1) How many ships, for each year since 2004, have traded on the Australian coast under a single voyage permit (SVP).

(2) What type of SVP was issued (routine, urgent or any other, for example amended).

(3) What was the permit number.

(4) What date was the SVP approved.

(5) What was the name and flag of the vessel.

(6) What was the cargo type.

(7) Who was the shipper.

(8) What was the port of loading.

(9) What was the port of discharge.

(10) What was the estimated sailing date.

(11) (a) What was the estimated tonnage (dry bulk); (b) estimated metric tonnes (liquid bulk); and (c) TEUs (twenty foot equivalent unit containers).
**Senator Ian Campbell**—The Minister for Transport and Regional Services has provided the following answer to the honourable senator’s question:

(1) The Department’s databases indicate that the number of ships for each year since 2004 issued with a single voyage permit (SVP) are listed below:

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of ships</th>
</tr>
</thead>
<tbody>
<tr>
<td>2005</td>
<td>329</td>
</tr>
<tr>
<td>2006</td>
<td>230 to 15/08/06</td>
</tr>
</tbody>
</table>

(2) to (11) The response to the Senator’s questions can be found in the attachment to this Question on Notice. The details in the attached spreadsheets include several entries under the one permit number in some cases. This occurs where there are several legs on the one voyage with different cargo either carried or discharged on each of these legs. (The attachment is available from the Senate Table Office.)

Note: The table identifies instances where some approval dates are after the estimated sailing date (ESD) for the voyage. The ESD refers to the estimated date of sailing from the first port of loading covered by a permit. A voyage covered by a single voyage permit may consist of one or more legs. This apparent discrepancy in dates relates to amendments submitted for a leg on a multiple leg voyage that occurred after the amendment approval date.

**MV Thor Hawk**

(Question No. 2519)

**Senator O’Brien** asked the Minister representing the Minister for Transport and Regional Services, upon notice, on 28 September 2006:

Since 1 July 2005:

(1) What is the number of continuous and/or single voyage permits issued to the *MV Thor Hawk*.

(2) Can details be provided of the consigner, importer or exporter for each voyage.

(3) What was the cargo for each voyage.

(4) On what dates has the *MV Thor Hawk* been inspected by the Australian Maritime Safety Authority.

(5) What was the outcome of each inspection including any repairs required.

(6) On what dates were the repairs completed.

**Senator Ian Campbell**—The Minister for Transport and Regional Services has provided the following answer to the honourable senator’s question:

(1) to (3) No continuous or single voyage permits have been issued to the *MV Thor Hawk* since 1 July 2005.

(4) Australian Maritime Safety Authority (AMSA) conducted a port State control inspection of the ship at Port Kembla on 29 August 2005 and follow-up inspections on 1 September 2005 at Port Kembla and 6 September 2005 at Newcastle. AMSA conducted inspections of the ship’s cargo gear in Newcastle on 6 September 2005 and Gladstone on 10 September 2005, as detailed in answer to Senate Estimates Committee question on notice AMSA02 of 13 February 2006. AMSA conducted a port State control inspection at Darwin on 17 August 2006.

(5) Eight minor deficiencies were detected in the port State control inspection at Port Kembla and subsequent follow-up inspections checked that these were being rectified. The outcome of the cargo gear inspections are detailed in answer to Senate Estimates Committee question on notice AMSA02 of 13 February 2006. There were no deficiencies identified in the port State control inspection at Darwin.
(6) The repairs for the eight minor deficiencies at Port Kembla were completed before the ship sailed from Port Kembla on 2 September 2005 or were rectified within an agreed timeframe thereafter.

**Speedometer Approval Tests**  
*(Question No. 2575)*

Senator O’Brien asked the Minister representing the Minister for Local Government, Territories and Roads, upon notice, on 17 October 2006:

1. With reference to Australian Design Rule (ADR) 18/03–Speedometers, can the names and addresses be provided, of: (a) technical services responsible for conducting approval tests; and (b) administrative departments as required under section 9 of this rule.

2. Do these services hold the certification from the Metrologist as required under section 10 of the National Measurement Act 1960.

Senator Ian Campbell—The Minister for Local Government, Territories and Roads has provided the following answer to the honourable senator’s question:

1. (a) and (b) The names and addresses of the technical services referred to in section 9 of ADR 18/03 are posted on the official website of the United Nations Economic Commission for Europe (UNECE) at the following URL: http://www.unece.org/trans/main/wp29/wp29wgs/wp29gen/wp29fdocstts.html

   (2) No. There is no requirement under the National Measurement Act 1960 for these services to hold certification from the Metrologist.

**Giant Step**  
*(Question No. 2627)*

Senator O’Brien asked the Minister representing the Minister for Transport and Regional Services, upon notice, on 9 November 2006:

With reference to the Panamanian-registered iron carrier Giant Step, which sailed from Port Walcott on 11 September 2006 loaded with 190 000 tons of iron ore and subsequently sank:

1. Have Australian authorities: (a) assisted in the investigation of the circumstances surrounding the loss of the vessel; if not, why not; and (b) made any inquiries to ensure that the loading of the ship was in no way a cause of the sinking.

   (2) (a) When was the last time the ship was inspected by Australian authorities; (b) what were the results of this inspection; and (c) if the ship has never been inspected, why not.

   (3) Since 30 June 2006, how many ships operated by the Mitsui O.S.K. Lines Ltd have been: (a) lost; and (b) inspected by Australian authorities.

Senator Ian Campbell—The Minister for Transport and Regional Services has provided the following answer to the honourable senator’s question:

1. (a) Yes. The Australian Transport Safety Bureau (ATSB) has expressed an interest in the investigation and on 9 October 2006 offered assistance to both the ship’s flag State, Panama, and the coastal State where the ship grounded and sank, Japan. Panama has acknowledged the ATSB’s offer of assistance and has been liaising with Japan. These States have the primary jurisdictions to investigate the accident under international agreements.

   (b) No. The Japanese and Panamanian authorities will determine whether or not the loading of the cargo in Port Walcott was causal in the loss of the ship in the course of their investigations. The ATSB has undertaken to provide their investigations with any relevant information which exists within Australia on request.
(2) (a) The Australian Maritime Safety Authority (AMSA) conducted a port state control inspection of Giant Step on 4 April 2006 at Port Hedland.
(b) There were no safety deficiencies identified during the inspection.
(c) Not applicable.

(3) (a) AMSA is aware of one ship, Giant Step, lost in October 2006.
(b) AMSA records show that since June 2006 port State control inspections have been conducted in Australian ports on seven ships owned or operated by Mitsui OSK Lines.