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RADIO BROADCASTS

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- **NEWCASTLE** 1458 AM
- **GOSFORD** 98.1 FM
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- **GOLD COAST** 95.7 FM
- **MELBOURNE** 1026 AM
- **ADELAIDE** 972 AM
- **PERTH** 585 AM
- **HOBART** 747 AM
- **NORTHERN TASMANIA** 92.5 FM
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FORTY-FIRST PARLIAMENT
FIRST SESSION—SEVENTH PERIOD

Governor-General

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

Senate Officeholders

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

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

Senate Party Leaders and Whips

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

Liberal Party of Australia Whips—Senators Jeannie Margaret Ferris and Stephen Parry
National Whip—Senator Nigel Gregory Scullion

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

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

**PARTY ABBREVIATIONS**

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

**Heads of Parliamentary Departments**

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

Prime Minister
The Hon. John Winston Howard MP

Minister for Transport and Regional Services and
Deputy Prime Minister
The Hon. Mark Anthony James Vaile MP

Treasurer
The Hon. Peter Howard Costello MP

Minister for Trade
The Hon. Warren Errol Truss MP

Minister for Defence
The Hon. Dr Brendan John Nelson MP

Minister for Foreign Affairs
The Hon. Alexander John Gosse Downer MP

Minister for Health and Ageing and Leader of the
House
The Hon. Anthony John Abbott MP

Attorney-General
The Hon. Philip Maxwell Ruddock MP

Minister for Finance and Administration,
Leader of the Government in the Senate and
Vice-President of the Executive Council
Senator the Hon. Nicholas Hugh Minchin

Minister for Agriculture, Fisheries and Forestry
and Deputy Leader of the House
The Hon. Peter John McGauran MP

Minister for Immigration and Multicultural Affairs
Senator the Hon. Amanda Eloise Vanstone

Minister for Education, Science and Training and
Minister Assisting the Prime Minister for
Women’s Issues
The Hon. Julie Isabel Bishop MP

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

Minister Assisting the Prime Minister for
Indigenous Affairs

Minister for Industry, Tourism and Resources
The Hon. Ian Elgin Macfarlane MP

Minister for Employment and Workplace
Relations and Minister Assisting the Prime
Minister for the Public Service
The Hon. Kevin James Andrews MP

Minister for Communications, Information
Technology and the Arts and Deputy Leader of
the Government in the Senate
Senator the Hon. Helen Lloyd Coonan

Minister for the Environment and Heritage
Senator the Hon. Ian Gordon Campbell

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

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

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

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

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

Minister for Community Services
The Hon. John Kenneth Cobb MP

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

Special Minister of State
The Hon. Gary Roy Nairn MP

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

Minister for Ageing
Senator the Hon. Santo Santoro

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Shadow Minister for Transport
Senator Kerry Williams Kelso O’Brien

Shadow Minister for Sport and Recreation
Senator Kate Alexandra Lundy

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

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

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

Shadow Minister for Immigration
Anthony Stephen Burke MP

Shadow Minister for Ageing, Disabilities and Carers
Senator Jan Elizabeth McLucas

Shadow Minister for Justice and Customs and Manager of Opposition Business in the Senate
Senator Joseph William Ludwig

Shadow Minister for Overseas Aid and Pacific Island Affairs
Robert Charles Grant Sercombe MP

Shadow Minister for Citizenship and Multicultural Affairs
Senator Annette Hurley

Shadow Parliamentary Secretary for Reconciliation and the Arts
Peter Robert Garrett MP

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

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

Shadow Parliamentary Secretary for Education
Kirsten Fiona Livermore MP

Shadow Parliamentary Secretary for Environment and Heritage
Jennie George MP

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

Shadow Parliamentary Secretary for Immigration
Ann Kathleen Corcoran MP

Shadow Parliamentary Secretary for Treasury
Catherine Fiona King MP

Shadow Parliamentary Secretary for Science and Water
Senator Ursula Mary Stephens

Shadow Parliamentary Secretary for Northern Australia and Indigenous Affairs
The Hon. Warren Edward Snowdon MP
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The PRESIDENT (Senator the Hon. Paul Calvert) took the chair at 9.30 am and read prayers.

CRIMESLEGISLATION AMENDMENT (NATIONAL INVESTIGATIVE POWERS AND WITNESS PROTECTION) BILL 2006

First Reading

Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.31 am)—I move:

That the following bill be introduced: a Bill for an Act to amend the law relating to the investigation of criminal activity and the protection of witnesses, and for related purposes.

Question agreed to.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.31 am)—I move:

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

Question agreed to.

Bill read a first time.

Second Reading

Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.31 am)—I table the explanatory memorandum relating to the bill and move:

That this bill be now read a second time.

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

Leave granted.

The speech read as follows—

CRIMES LEGISLATION AMENDMENT (NATIONAL INVESTIGATIVE POWERS AND WITNESS PROTECTION) BILL 2006


Schedule 1 of the proposed amendments fulfils the government’s election commitment to introduce national model legislation on assumed identities, controlled operations and the protection of witness identity.

In order to investigate crime, police must be given effective powers. Contemporary policing requires law enforcement agencies to undertake covert investigations that extend beyond the boundaries of any one jurisdiction. To address this threat it is critical that law enforcement agencies adopt a nationally coordinated and cooperative approach to law enforcement.

In recognition of the problems that law enforcement agencies face in investigating criminal activity that crosses state and territory borders, on 5 April 2002 the Prime Minister and state and territory leaders agreed on a number of reforms to enhance arrangements for dealing with multi-jurisdictional crimes. In particular, they agreed to introduce model laws for a national set of powers for cross-border investigations covering controlled operations, assumed identities, electronic surveillance devices and the protection of witness identity. The government introduced the model legislation on electronic surveillance devices in 2004.

Currently, the law in each of these areas differs significantly between jurisdictions and there is no provision for recognition in one jurisdiction of authorisations or warrants issued in another jurisdiction. Where an investigation crosses state or territory borders, the need to obtain separate authorities in each jurisdiction can result in delays, loss of evidence and other impediments to effective investigation. There was a need to create a national set of investigative powers to facilitate seamless law enforcement across jurisdictions.

The task of developing the model laws was given to a national joint working group established by the Standing Committee of Attorneys-General and the Australasian Police Ministers Council.

Each state and territory will enact these model laws. New South Wales, Victoria, Queensland and most recently Tasmania have implemented the model laws. The proposed amendments to the
The Crimes Act will bring the Commonwealth into line with the agreed national model.

The Commonwealth amendments differ from the national model in a number of minor respects. The Commonwealth provisions will extend the legislative scheme beyond law enforcement officers to include security and intelligence officers, such as agents of the Australian Security Intelligence Organisation, and foreign law enforcement officers. This departure from the model is necessary because the Commonwealth’s role in national security and intelligence operations and in the investigation of crimes with a foreign aspect is different from that of the states and territories.

The Commonwealth will also not enact some of the mutual recognition provisions that appear in the model laws. That is because Commonwealth law enforcement agencies do not require authorisation to conduct operations across Australian state and territory borders. Commonwealth agencies have the power to operate freely throughout Australia.

The bill inserts a new part 1ACA into the Crimes Act. The part will create a mechanism to protect the identity of a covert operative who gives evidence in court proceedings. For example, an officer with the Australian Crime Commission may have been part of an “undercover operation”. In order to ensure that this operative, or their family, are not placed at risk, it is necessary to protect the operative’s true identity when the operative is called to give evidence in court. The provisions will ensure that an undercover operative can present their evidence under an assumed name but will ensure that the courts retain the ultimate power to control their proceedings.

Delayed Notification Search Warrants

Schedule 2 of the bill will introduce a delayed notification search warrants scheme. This will enable police officers to get search warrants that will allow the covert entry and search of premises to prevent or investigate Commonwealth terrorism offences and a limited range of other serious Commonwealth offences, in cases where keeping the existence of an investigation confidential could be critical to its success.

The scheme will add a covert investigative tool to the suite of tools police can use to investigate terrorism and other serious criminal offences. The warrants will allow the examination of physical evidence, such as a suspect’s computer, diaries and correspondence, so that police can identify associates and obtain evidence.

It will be a feature of the new scheme that police will have to give notice of the search without tipping off the suspected offenders that their activities are under investigation to the occupier of premises when operational sensitivities allow.

The bill imposes a range of strong accountability measures and record keeping requirements. For example, requests for warrants are subject to scrutiny by a judge or Administrative Appeals Tribunal member before a warrant can be issued. Executing officers must provide detailed reports to the chief officer of the law enforcement agency using the warrant. The chief officer must report annually to the minister. These reports will be tabled in each house of the parliament.

The bill also gives the Ombudsman the responsibility for ensuring compliance with the legislation by law enforcement agencies.

This new scheme will greatly increase the capacity of Australian law enforcement officers to investigate serious offences, including terrorism, while maintaining the appropriate respect for the privacy of all Australians.

Witness Protection Act amendments

Schedule 3 makes amendments to the Witness Protection Act 1994. The act provides a legislative basis for the provision of protection and assistance to witnesses who have given, or who are to give, evidence in criminal proceedings. It includes provision for the creation of new identities where that is an appropriate way of protecting a witness or their family.

The main aim of the Witness Protection Act is to enable witnesses to give evidence without fear of retribution, and without fear of endangering the safety of themselves or their families.

The proposed amendments to the Witness Protection Act will respond to issues which have arisen in the operation of the National Witness Protection program and will increase the overall effectiveness of the program. The amendments expand the program so that the AFP can provide protection and assistance to former participants in the
program and members of their families, and to witnesses in state or territory matters where this is necessary to protect them.

**Australian Crime Commission Act amendments and data access provisions**

The bill also makes amendments to the Australian Crime Commission Act 2002. The amendments are largely technical in nature and address some operational difficulties experienced by the Australian Crime Commission. The amendments will improve the function of the ACC by expanding the powers of examiners, aligning the current search warrant provisions with the Crimes Act model and correcting some technical errors in the legislation.

The bill also makes amendments to the search warrant provisions in the Crimes Act, Proceeds of Crimes Act 2002, Mutual Assistance in Criminal Matter Act 1987 and Customs Act 1901 to allow law enforcement officers to access data from electronic equipment once it is seized.

**Conclusion**

In order to investigate crime, police must be given effective powers. However, it is important that these powers are balanced to ensure that the rights of the individual are protected. The bill strikes that balance.

I commend this bill.

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

**INDEPENDENT CONTRACTORS BILL 2006**

**WORKPLACE RELATIONS LEGISLATION AMENDMENT (INDEPENDENT CONTRACTORS) BILL 2006**

**Second Reading**

Debate resumed from 28 November, on motion by Senator Abetz:

That these bills be now read a second time.

upon which Senator Murray had moved by way of an amendment in respect of the Independent Contractors Bill 2006:

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; and

(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”.

Senator BARNETT (Tasmania) (9.32 am)—I was speaking last night in favour of both the bills before the Senate, the Independent Contractors Bill 2006 and the Workplace Relations Legislation Amendment (Independent Contractors) Bill 2006. The thrust of the policy and the foundational views behind the legislation are that we want to build a spirit of enterprise in this country, a spirit of entrepreneurship. We want to encourage incentive, we want to encourage reward for effort and we want to encourage creativity amongst business, particularly small business, microbusinesses, which are so important across our nation.

I had the privilege of being appointed by Peter Reith, a former minister for employment and workplace relations, some years ago, in the late nineties, as a member of the
Australian government’s microbusiness consultative committee. As a member of that committee, I recall that 82 per cent of all small businesses are actually microbusinesses—that is, businesses with fewer than five employees. That is a huge number and a very important part of the Australian business framework: they provide jobs and they support families.

I want to pay credit to those types of businesses. Indeed, I want to pay credit to the independent contractors—in many cases, very small operators of fewer than five employees. Many of them are family based businesses. According to the Productivity Commission, there are around 800,000 in Australia. The Independent Contractors of Australia estimate the figure is as high as 1.9 million. These businesses put their necks on the line. They probably have a mortgage on their own home. They provide jobs, obviously, for themselves and perhaps for other family members and others in the community. They are certainly the jobs generators in Australia today. Nearly 50 per cent of the private sector workforce in Tasmania comes from the small business sector. Tasmania is very much a small business state, and I think our nation of Australia is very much desirous of encouraging small businesses to prosper and do well. Certainly that is the objective and the intent of the Howard government.

I want to acknowledge and thank federal minister Kevin Andrews for the work he has done in supporting the operations of small business throughout this country and, specifically, for following through on the 2004 election commitment to support independent contractors. They are a vital ingredient to the success of our economy. They have grown in numbers significantly over the last many years because they love that flexibility. They love the ability to prosper and do well as a result of the options and the choices they have. This is what we have done. We have actually fulfilled an election commitment. We have done what we said we would do in 2004. We are following through on that promise and delivering for those independent contractors.

Of course, the Labor Party and the union movement across the country oppose this legislation. They oppose it because they want to rope in all of these independent contractors—or at least the bulk of them—to be subject to our industrial relations regimes. This is exactly what has happened with the various state governments around Australia. They have deemed these independent contractors to be employees for the purposes of roping them in to be subject to our industrial relations legislation or their own state laws. Once they do that, the unions are thrilled because, as I said last night, he who pays the piper calls the tune.

The union movement has contributed over $47 million to the Labor Party since 1996, and I think it is a payback now because it has committed to provide, I understand, around $20 million in the lead-up to the next federal election. It is payback. The Labor Party are doing the bidding of their union masters and saying no to this legislation, and that is disappointing. This legislation, as I say, confirms and builds on the commitment that we made as a government in 2004 to the independent contractors of Australia, and we have fulfilled that commitment. Last night and yesterday many members opposite were waxing lyrical about the extreme industrial relations objectives of this government.

Senator Marshall interjecting—

Senator BARNETT—Senator Marshall, I take your interjection. You made two specific allegations against our workplace relations legislation. The first was that there would be a decrease in the number of jobs and the second was that there would be a cut in wages across this country for working men and
women and their families. What has happened since Work Choices came in? I can tell you: the exact opposite has happened. Labor senators know that. They have not admitted their mistake and they have not apologised to the Australian people for making that mistake. They know that the number of jobs has gone up. Real wages have increased 16.5 per cent in the last 10 years, where of course under 13 years of Labor they went down—D-O-W-N—by 0.2 per cent in real terms.

I would like to thank the Senate committee of which Senator Marshall is a member, the Senate Standing Committee on Employment, Workplace Relations and Education. They had a look at these two bills and delivered their report. As a member of that committee under the chairmanship of Senator Judith Troeth, I want to note what the government senators’ report says in summary about the legislation before us today. It says:

This legislation delivers on a 2004 election pledge,—which I have just indicated is correct,—in which the government promised to recognise the special status, and growing importance, of independent contractors, who constitute an increasing proportion of the workforce. ... parties which choose to enter independent contracting arrangements should not be prevented from doing so by laws which elevate industrial relations principles over commercial considerations.

This is the nub of it. The state Labor governments deem these independent contractors to be subject to their own industrial relations regime.

Senator Lundy—Do you know what you’re saying?

Senator BARNETT—This is the nub of it, Senator Lundy, and you know that. You want these independent contractors to be subject to the industrial relations regime when, in fact, it is a separate commercial arrangement and that should be noted and acknowledged. Minister Andrews put it this way during his second reading speech. I am going to note it for the senators on the other side and, indeed, for members of the public. 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.

The existing regulation of independent contracting across many of the states is a regulation of entrepreneurship. It is job destroying.

Minister Andrews is correct. The approach that Labor is taking to this bill is job destroying. As I said earlier, what we are trying to build in Australia is a spirit of entrepreneurship, a spirit of enterprise. I would like to see Australia leading the world in providing the foundation for the growth in enterprise, the growth in entrepreneurs. It is something of which we, as a country, can be proud. As a member of the government, I am certainly proud of the efforts to make that happen.

Senator Siewert also made a number of comments about the workplace relations legislation amendments in terms of them being thrown into the Senate and that she had little notice. I want to remind Senator Siewert and other senators opposite and elsewhere that this was based on a government announcement on 13 November this year.

Senator Lundy—A press release.

Senator BARNETT—It was set out in a press release by Minister Andrews in which he made the objectives of those amendments very clear to all and sundry. That is what happened. I will tell you what they related to. They addressed unintended consequences arising from the operation of the act since it came in on 27 March and introduced protec-
tions for redundancy entitlements and new provisions dealing with the standing down of employees. That is set out; it is on the public record and it has been for several weeks now.

Yes, you oppose many of the provisions that were announced, and that is your right and entitlement—we live in a democracy—but I think those particular amendments are actually very sensible. Do you know why that is? It is because we have had feedback from the community with respect to improving the bill. We have a concept of continual improvement in our government—Senator Marshall has a wry smile on his face, but that is exactly right—and we have listened to the community, particularly to small business.

I want to acknowledge and support Minister Andrews and his efforts with respect to record keeping requirements. This is one of the amendments before the Senate and which was announced several weeks ago. I want to thank those small business operators that contacted me in my role as deputy chair of the Prime Minister’s workplace relations task force and, indeed, as a member of the Senate Standing Committee on Employment, Workplace Relations and Education.

I want to thank the Tasmanian Chamber of Commerce and Industry for their feedback on the legislation, particularly for expressing their concern about the record keeping requirements. I also want to thank the Tasmanian Farmers and Graziers Association and their members, the Master Builders Association and their members, the Small Business Council of Tasmania and many others for expressing their views. It was not only those organisations but also small and microbusiness operators in and around Tasmania that expressed their views. And guess what? Those views were acknowledged, they were listened to and they were acted upon. This is democracy in action, and it is continuous improvement in action. This legislation will remove significant administrative burdens for those small business operators, and regulatory arrangements will be improved. There will still be some record keeping requirements, but essentially we have lifted the red tape so that small business can get on and do the job that they want to do.

The other provisions relate to redundancy, providing protections for workers and, in my view, an improvement of the status quo. There are provisions relating to stand-downs and the operation of the Australian Fair Pay and Conditions Standard. The details are set out in the legislation.

Finally, I want to wrap up by saying that this legislation does not override the protections for owner-drivers in New South Wales and Victoria. The government believes that protections applying to owner-drivers in those states should not be disturbed at this stage, but there will be a review. The minister has announced that there will be a review of owner-driver arrangements. That will be undertaken with a view to achieving national consistency, if possible. I hope that that does happen; I think it would be a good thing. The review will begin next year, and I strongly support it. I have supported it both privately and publicly, and I think it would be better for all of us across this country to have a national approach to this matter. All in all, I believe this is good legislation. It will underpin the importance of enterprise and entrepreneurship in this country, and it will provide further encouragement to that—which is exactly what the Howard government is all about. (Time expired)

Senator HOGG (Queensland) (9.47 am)—It is good to follow Senator Barnett, because I think that Senator Barnett epitomises the lack of intellectual rigour that is applied to this debate by some senators on the other side. Certainly the Labor Party is not against people who are genuine inde-
pendent contractors. That should be clearly and firmly on the record, if it has not been said a thousand times already. Clearly, we support those people who are genuine independent contractors. However, when the government stoops, as it has, to trying to bring down sham provisions which will take away basic and fundamental working rights of those who are genuine employees in the workforce, and tries to dress them up as independent contractors, then we are rightfully opposed.

I am someone who has had 30 years ongoing experience in the trade union movement—for which I make no apology whatsoever—and I am still a serving official in an honorary capacity in my union. I make no apologies for the stance that I take on this legislation. The first thing that I will refer to is the second reading speech of the Minister for Employment and Workplace Relations. If you have got to start somewhere to see where the devil in this lies, look at the second reading speech. I did not have to go too far. As a matter of fact, I did not even go beyond the first paragraph, where I read:

I remind the House that everyone’s life opportunities are diminished by restrictions on the freedom to work.

Over the past 25 years Australia has been witnessing one of the most important, yet least remarked upon, shifts in the history of our labour market—the rise of the independent contractor.

What an absolute pack of nonsense that is. To start off with, from my experience in the trade union movement over a long period of time, as a full-time official and honorary official, I have seen the push over a long period of time for people to be shifted from a genuine employee status into an independent contract status. Of course, it has not been a genuine shift that has taken place; it has been forced upon the workforce, in some instances by the employers and in some instances by governments, where governments have had that opportunity. However, it should be quite clear that it has not been the option, for people who genuinely believe in a fair go, that being an independent contractor gives them the necessary freedom to work and freedom from restrictions that this government claim.

There has clearly been an orchestrated campaign over at least the 25 years—and even longer in my living memory as an official of a trade union—that the minister referred to in his second reading speech. Why was that so? It was basically to avoid basic award provisions. It was one way of trying to circumvent the basic rights of individuals in the workplace. The award provisions that were fought for and hard won over the last 100 years emerged not only because of the view of the trade union movement or the view of the employers but also as a result of the industrial relations system that was in place. But people wanted to destroy the industrial relations system and get around the reasonable conditions and reasonable awards that had formed over that long period of time—things that had been won, such as a minimum guaranteed wage, minimum and maximum hours of employment, overtime, meal breaks, rest pauses, paid annual leave, sick leave and the like.

I have vivid memories of my days as a full-time union official, seeing employers trying to convince people that they should no longer be employees and they should go out and work independently, call themselves contractors, and thereby overcome the obligations that the employer had to those employees. It was really about getting the work done at a cut-price rate, in spite of what Senator Barnett and others from the other side have said. It was about the lowering of standards and conditions for the working class of Australia. It was not about better or greater reward for effort, as was implied in the minister’s second reading speech. That is just the jargon that one would expect to see
this government dish up—and which it has dished up in not only this second reading speech but also others that I have seen accompanying similar bills before this parliament.

The movement to independent contracting certainly was not about removing restrictions on the freedom to work; it was really cheating by another name. That is the best I can call it and is the best I have ever called it. It was not about security of employment; it was really cheating by another name. That is the best I can call it and is the best I have ever called it. It was not about security of employment; it was about insecurity of employment. It was about shifting the responsibility from the employer to the employee. But it was also not just about shifting responsibility but also about cost shifting from the employer to the employee in areas such as superannuation, workers compensation and the like.

It was done under the guise of appealing to the egos of some workers in the community by falsely convincing them that, by being so-called independent contractors, they would be in a class above the rest. In other words; when all else fails, appeal to people’s egos. That happened in many instances. I am not talking about those people who are the genuine contractors—let us get that quite clear. I am talking about people who were being exploited and were being used as a means of shifting the cost and shifting the responsibility from the employer to the employee. As I said, I have first-hand knowledge of it.

It was really about appealing to the vanity of a class of people who really were nothing more or nothing less than employees and who deserved to be treated in no way other than that. It was about appealing to their vanity—saying that they would in some way be different by calling themselves independent contractors—so these people might see themselves as being in a class above the rest of the working class. It did not involve a different form of work. It did not involve a different class of work. It was not about, as the minister referred to in his second reading speech, choice and flexibility. Neither of those things came into it. The only flexibility that was obtained out of this was the flexibility of the employees themselves.

This is about the nature of the work being performed and the relationship the entity offering the work has with the worker. That is what this bill really is about, and that is what industrial relations really is about. It is not about flexibility; it is not about choice. It is about the relationship. That is the one thing that is glossed over—or, if not glossed over, totally missed—by this piece of legislation. The nonsense that people will be more productive and more flexible and will offer a greater productivity output is not sustained by the arguments from the other side. Work is an exchange of one’s own possession of skill and effort in exchange for monetary reward. It is not about providing some with the opportunity to opt out of the award system or simply the basic protection that is offered by the award system.

The second reading speech, in my view, shows the ideological fixation of the government in trying to destabilise the working conditions established over the last 100 years and to debase unions—unions that are unions of employees and unions of employers—who so diligently over a long period of time established the framework that was there and which has now been destroyed by Work Choices, with a second attempt through the piece of legislation before us today. What had been established over that last 100 years sought only to improve the lifestyle of people. That was something that a number of employers could not stomach. Of course, there were those on the employer side who were very good indeed and saw the merits of what had been achieved during that period of time.
It is worthwhile to look at the views that were expressed by my colleague Senator Marshall in the opposition senators’ report in the former Senate Employment, Workplace Relations and Education Legislation Committee’s report of August 2006. Senator Marshall, in that report, debunked some of the criticisms that have been raised by the other side of Labor’s view on this particular piece of legislation. I want to refer to a couple of brief snippets from that report. At page 12, the report, under the heading ‘Swelling the ranks of contractors’, states:

The basic policy aim of the Independent Contractors Bill is to turn as many employees as possible into contractors.

I have no doubt about that at all. Whilst it is not specifically stated in the legislation, that is the undercurrent of the legislation, and that is why I addressed the opening part of the minister’s second reading speech.

This is not just an emerging trend, or a trend that has gone unnoticed and not commented on by either the trade union movement or others over the last 25 years; it has been a deliberate plan to get people out of the award system. The report went on further, at page 12, to state:

The committee grappled with the problems of turning employees into contractors in questions to a number of witnesses at its hearings. Both Labor and ACTU policy recognise the importance of contract employment as a necessary component of the workforce and enterprise arrangements. That is clearly out there in the marketplace for everyone to see. It is clearly on the Hansard record and on the record of this report that Labor accept the importance of contract employment as a necessary component of the workforce and enterprise agreements. The report goes on:

Contractors work across all sectors of the economy. They are a diverse category of workers. The concern of Opposition senators on the committee has been for that segment of the contractor workforce which is made up of de facto employees, and designated as contractors for the convenience and financial advantage of employers.

That is a genuine concern. The government’s claim to get around the sham arrangements that can be put in place under this legislation does not hold true. The report goes on, at page 13, under ‘Common law protection of sub-contractors’:

A high proportion of sub-contractors are employees for all intents and purposes. They work exclusively for a single firm in continuous engagement. Opposition senators reject the notion that this bill creates more certainty for sub-contractors who continue to work as de facto employees, without the entitlements of employees. The committee received strong evidence of the inadequacy—some would argue the irrelevancy—of provisions in the bill which purport to protect contractors from sham arrangements; that is, disguised employment relationships.

If a person walks like an employee, talks like an employee and acts like an employee, the chances are they are an employee. That is really the nub of this. A lot of these people—not all contractors but a number of these people—to all intents and purposes are employees. They are nothing more and nothing less than that. They take on all the attributes, all the functions, all the roles, of employees, and yet the government are trying to get around that by saying that these people no longer should be called employees and we should appeal to the entrepreneurship of these people. They can still be entrepreneurial and be an employee. There is no harm in being entrepreneurial and being an employee and getting ahead and being rewarded for your efforts. There is nothing wrong with that whatsoever. But having to go down the path of calling them independent contractors just does not gel at all.

How confused are the government on this? One only needs to read the explanatory memorandum, the other source that I generally turn to. At page 3 on the explanatory
memorandum to the bill, the government address the issue of who is an independent contractor:

An ‘independent contractor’ is a person who contracts to perform services for others without having the legal status of an employee.

Isn’t that bright and intelligent! The explanatory memorandum goes on:

The term is generally used to refer to a person who is engaged by a principal, rather than an employer, on a labour only contract.

None of this gets to the heart of what really is an independent contractor or what is an employee. I note in the report that that debate was sought but it did not get very far. The explanatory memorandum goes on:

Under such a contract, the principal pays the independent contractor a one-off flat rate.

So what? The fact that you pay someone a flat rate does not make them an independent contractor. It goes on:

There are generally no legislatively prescribed minimum entitlements or other employee-style benefits and the independent contractor is responsible for a number of aspects of the relationship that would usually be the responsibility of an employer (for instance, remitting income tax to the Australian Tax Office and contributing to a superannuation fund).

That is right. That attempt to explain what an independent contractor is says nothing at all. It talks about a principal. When I go to the legislation and try to find out what a principal is, there is no definition, none whatsoever. This is just a ruse on the part of the government. They are just using jargon to cover their own tracks. All that this will do out there in the workplace is lead to confusion.

I read somewhere in the material that was put to me that the Australian Taxation Office have a test whereby if a person earns 80 per cent of their income from one source then they are taxed as an employee. Here, though, with the attempts the government are making to create independent contractors, we will end up with a pineapple being the answer. In circumstances where a person is an independent contractor under this bill and earns more than 80 per cent of their income with the same employer, according to the bill they will be an independent contractor but, as I understand it, according to the Australian Taxation Office they will be an employee. So these people will be even more confused about their own state.

As I say, Labor is not opposed to independent contractors. I cannot say that often enough. There is a role for them, there is a place for them, but creating a sham category of people out there in the workplace and leading them down a path where they have unrealistic expectations of their own role in the work relationship is quite wrong indeed. This bill is going to add a layer of complexity that is not needed and will only serve to cost individual workers in the hip pocket in the longer term.

I am disposed to say that the ideas put forward in this bill should be sent to the scrap heap. The government should relook at the bill and, if they want to come back and do something genuine for genuine independent contractors, by all means they should do so. This bill is not about the dignity of the individual, it is not about security of employment, it is not about choice and it is not about flexibility for the worker. It really is about the exploitation of these people, a class of people that deserve their basic entitlements protected under the laws of Australia. Going down the path of trying to convince some people that they are something that they are not is quite wrong indeed. The bill needs to be defeated. If the government want to bring back some realistic conditions for independent contractors, they should do so at a later date.
Senator CROSSIN (Northern Territory) (10.07 am)—I rise this morning to provide my contribution to the debate on the Independent Contractors Bill 2006 and the Workplace Relations Legislation Amendment (Independent Contractors) Bill 2006. What we have before us here in this parliament again this week is legislation that is most unfair, unreasonable and a further attack on and abuse of the rights of workers in this country. This legislation will negatively impact on workers, including outworkers, owner-drivers outside of New South Wales and Victoria—and I will speak about the Northern Territory in a minute—and other contractors deemed by relevant state and territory legislation to be employees.

The bills introduce a layer of additional complexity to an already complex industrial relations system. They override all existing provisions contained in state industrial legislation which deem certain categories of independent contractors to be employees and provisions which grant employee related entitlements to independent contractors. This legislation will mean that independent contractors can no longer access state unfair contract laws. It will override, in fact, the state unfair contracts legislation and will water down protections for consumers and small business. This legislation does little to protect outworkers, without the proper application of the state based outworker legislation. As drafted, the legislation will have the effect of significantly weakening any outworker entitlements.

I want to mention three key points of this legislation that have been highlighted not only in discussions by my colleagues previously but also by our Parliamentary Library, in the Bills Digest that they produce. In reading that, I notice that they have summarised this legislation pretty well. The Bills Digest says:

This legislation complicates an area of law unnecessarily. The preservation of State laws in some areas and in some States, reliance on the common law test of employee/independent contractor and the introduction of very complex transitional provisions, which will last for three years, will compromise the hope that this legislation will cut through red tape for business.

Another key area of this legislation is that it provides a costly system of redress for small business and for workers. As mentioned in the contribution from my colleague Senator Hogg, it is not just the impact on employees and workers that we are going to see with this legislation; I have not heard too many people talk about the cost that this will also incur on small business. The Bills Digest says:

While the Bills contain protections to prevent unfair contracts and sham arrangements, they only provide the remote option of taking an employer/contractee before the Federal Magistrates Court or the Federal Court, both costly jurisdictions and therefore unlikely to be available to the majority of workers who these Bills should be protecting.

The legislation leaves open the opportunity to significantly expand its scope by a heavy reliance on regulation making. The legislation confers a very broad law-making power upon the executive government, including provisions which will enable the executive to make, for example, regulations capable of overriding states’ laws, as well as changing this proposed law itself.

I think the central principle, though, that underpins both of these bills is that independent contracting relationships should be recognised and supported and that the appropriate mechanism for regulation is commercial law, not industrial law. Estimates vary as to the total number of independent contractors operating in Australian workplaces. The Productivity Commission estimates from the ABS forms of employment survey data that the total
number of independent contractors was 787,600 in 2004. That is about 8.2 per cent of all employed persons. It is down from the 1998 figure of 843,900, or 10.1 per cent of all employed persons.

It is interesting to note that on 9 October 2006, in the Financial Review, the Independent Contractors Association and the Australian Chamber of Commerce and Industry, ACCI, effectively said that unless the government makes changes to this legislation it ought to be dropped. But they were not saying it in the same context that my colleagues Senator Hogg and Senator Marshall have been talking about. There is one problem here: ICA and ACCI want the bills to go even further. They want the bills to be even more extreme or to be dropped. I agree with my colleagues that these bills should be scrapped, but not for the reasons that ICA and ACCI gave.

There is clearly dissent among government ranks and dissent in the industry about the effectiveness of the government’s independent contractors legislation. We opposed it in the House and we intend to oppose it now in the Senate. The government may well assert that the Independent Contractors Bill is intended to protect independent contractors, but, like all other legislation coming from this government, it does nothing to protect any worker in this country—in fact, far from it. This legislation adds to an already massively complex workplace relations system. It makes life perhaps a bit more complicated for employers, who have to do more administration, but it makes life, pay and conditions far more precarious for workers across a whole range of industries.

We know that this legislation was shunted off to the Senate Standing Committee on Employment, Workplace Relations and Education. Labor senators, not surprisingly, have produced a dissenting report for that committee. My colleagues who produced that dissenting report said:

The basic policy aim of the Independent Contractors Bill is to turn as many employees as possible into contractors. In the Government’s view, and more particularly in the view of employer organisations close to the Government, industrial relations are greatly simplified by arrangements which put employees onto either Australian Workplace Agreements, or turn them into contractors. Work Choices is intended to encourage the first of these trends—

and we have seen that; Work Choices encourages and, in fact, pushes workers onto AWAs—

and the Independent Contractors Bill is intended to encourage the latter development.

So, if you are not on an AWA in this country, you will be pushed to become an independent contractor. Furthermore, my colleagues went on to say:

Evidence was given that the protection of contractors through penalties against sham contracts would be largely ineffective. Not only are they a doubtful deterrent, but even if a firm or a principal contractor is found to be in breach of the law, it would be of small comfort to an aggrieved contractor.

... ... ...

Even if the legal case of an individual contractor forced to work for minimal remuneration is taken up, through legal aid being available, the consequences for the individual amount to a pyrrhic victory. A case can be won, and a contracting principal penalised, but there is no guarantee for the aggrieved contractor of the same job at a decent contract price. The contract can be terminated. Nor will a judgement of a court in a particular circumstance necessarily have a deterrent effect on sham contracts generally.

I note that Senator Murray, in his eminent wisdom in these matters—as he always provides fine contributions—in his dissenting report said:

For an increasing number of contractors the notion of independence is a myth ... any choice and
flexibility in their arrangements have been constructed for the benefit of those who hire them, not their own.

He went on to say:

... this legislation ... does not prevent business from exploiting loopholes in the common law that allow workers to be classified as contractors, when for all practical purposes they are employees.

With this bill it will seem even easier to hire Australians as contractors and not employees, not just because of the cost savings but because it will save them having to cope with the complexity and the flaws in the new industrial relations system. It abrogates, I believe, employers’ rights to comply with superannuation, occupational health and safety, long service leave and a whole raft of entitlements that employees in this country should be entitled to.

In introducing these so-called independent contractors laws, the Prime Minister and Minister Kevin Andrews have two messages for Australian workers. One message is: under this government’s industrial relations scheme, there is no genuine choice for people. The choice is: ‘Either cop this or cop the door and take a walk. Take an AWA or don’t take a job. Either become an independent contractor or go and find a job somewhere else.’ The other message for Australian workers is: you are on your own; you are an island, by yourself; you are out there battling an industrial relations world in which you are left to your own devices in order to survive. Not only that but also: we are going to push you out to sea in a rowboat and take all the paddles from you, so you will be just floating around out there and doing the best you can. Certainly, as a worker in this country you would not want to rely on this government to support you in your endeavour to seek fairness and your rights when it comes to the workplace.

These laws amount to nothing more than the Howard government’s latest attempt to slash wages and strip away the conditions of working Australians. We support Australians who genuinely want to start their own business and, as Senator Hogg said, we support independent contractors. But the government is trying to create the impression that these laws are somehow beneficial for small business and contractors. In fact, these laws will do precisely the opposite. We have no problem with people who want the freedom and flexibility to operate as an independent contractor. This gives me an opportunity to refer to people like my colleague Senator Sterle who, in fact, has spent many months and years on the road as an independent contractor, carting stuff to and from Darwin. In our communities we sometimes pay little homage and give little respect to the people who spend many long, tedious hours on the roads, moving our goods in this country from one place to another.

People who want to operate as an independent contractor have the freedom and flexibility to do that, but we are concerned about the government using this as an excuse to strip away protections for vulnerable workers and to force employees of a business into a position where they must become independent contractors. As a result of these laws, genuine employees will be pushed out of the employer-employee relationship and into sham independent contracting arrangements, reducing their entitlements, conditions and protections, and placing additional burdens on them.

If you are already in a bona fide contracting relationship, this bill does nothing to support you, encourage you or protect you. When introducing the bill, the minister said that Australia’s continuing prosperity requires a system which encourages creativity and rewards initiative. However there is nothing in this bill which does encourage or
reward Australians who choose to be and are bona fide independent contractors. Instead, if you are a principal with bona fide contractors, you should be careful because you are now threatened with $33,000 fines if you cannot prove the arrangements are genuine. And, by the way, these fines will apply as soon as the bill passes. The minister has sold out on genuine contracting arrangements by imposing the threat of these high fines and leaving genuine contractors unsure of their status.

I turn to the unfair contracts element of the legislation. Not content with removing protections for vulnerable workers, the government has done away with unfair state contract laws for all contractors. These bills override state based employee deeming provisions and unfair contracts legislation which protect not just employees but small businesses and contractors. Under this bill, contractors have to take their chances with the government’s new unfair contracts test, which has been removed from the Workplace Relations Act and placed in this bill. Firstly, under this law, there is no ability for employer representatives or unions to apply for a review of a contract on the basis that it is unfair. Instead of going to the state or federal industrial relations commissions, workers now have to go to the Federal Magistrates Court. This is likely to raise difficulties for employees, including, of course, the expense, the length and complexity of arguments and the exposure to a costs order.

The test used in the bill to determine whether a contractor can get relief is that the contract may be unfair or harsh. In doing so, the government wants the courts to look at, amongst other things, the relative strengths of the bargaining parties and any person acting on their behalf, and whether undue influence or pressure has been used. However, the courts must now see whether the rates paid to a worker who claims their contract is unfair are commensurate with rates paid to other workers performing similar work in the industry. This means that, where all, most or some of the workers in an industry are getting low or unfair rates, according to the minister the courts should not find that this is unfair.

So, even if you can demonstrate that a contract is unfair, the courts have powers only to set aside or vary it, not to order compensation to you or your workmates for your losses in the past. Lastly, even if you are successful and you get orders to vary or set aside the contract, you need to make separate orders to enforce the first orders. I am not sure how this convoluted process is helping employees or, for that matter, their bosses in a small business area. As a result of this law, burdens will now be placed on workers which normally fall on the employer. We should not be too surprised about that under this government. For example, the burdens of superannuation and workers compensation will become the responsibility of the employee, now deemed to be the new independent contractor under these laws.

These laws will hurt ordinary Australians like clothing outworkers, drivers, cleaners and electricians. These laws tear away the protections and entitlements for Australians who are in an inferior bargaining position. If you are a worker or a small business wanting a remedy for any unfair or sham contract arrangement then you are going to have to go through the costly court process—an option not realistically open to most people that this legislation will affect.

I just want to have a quick word about the impact of this in relation to the Northern Territory, where we have a majority of owner-drivers. In relation to some of the amendments that were put up yesterday by the government, the government has promoted their new unfair contracts provisions as an addi-
tional protection for owner-drivers. However, amendment (6) that was put up by the government guts any protection for owner-drivers, especially in states other than New South Wales and Victoria. So this will have a significant impact, of course, in the Northern Territory. This amendment ensures that the only things that can be reviewed by a court are the black-and-white terms of the contract and other matters at the time the contract was made. This has devastating consequences for owner-drivers. Here is just one example of this: in reviewing the fairness of a contract over a 10-year period, you will not be able to take into account a spike in the cost of fuel in years 7 and 8. That makes the remuneration structure unfair. You will only be able to consider if the fuel component of the remuneration structure was fair at the commencement of the contract. The amendments put up yesterday do nothing to protect the fairness of a contract and will allow a situation to occur where drivers are operating below cost recovery. That has a significant impact on the safe and sustainable operation of a small business and it is without remedy.

The new unfair contracts provisions are not an additional protection, as promoted by the government. Rather, they are the creation of a situation where drivers will be working below cost recovery and where they are unable to seek effective remedy because of this amendment. The solution to this is the proposed amendments by the Democrats. We believe they will ensure the proper capacity for a review of contracts that may be considered unfair.

Finally, I just want to say that there was an amendment moved by Mr Stephen Smith, our shadow minister in the House of Representatives, in relation to this bill. I commend that second reading amendment to people. But I certainly note that this bill follows on from the government’s extreme industrial relations changes which were and still are a massive attack on living standards and living conditions. They remove the rights, entitlements and conditions of Australian employees. What this bill does, essentially, is push people into becoming independent contractors in the same way that this government has tried to force and push employees in the workplace onto Australian workplace agreements. This bill introduces more complexity and confusion into Australia’s workplace relations laws and provides a system that, as I said at the outset, is unfair and unreasonable. *(Time expired)*

**Senator WORTLEY** (South Australia) (10.27 pm)—I rise to speak in opposition to the Independent Contractors Bill 2006 and the related bill, the Workplace Relations Legislation Amendment (Independent Contractors) Bill 2006. These are bills that introduce even more complexity and confusion into Australia’s workplace laws. Labor will continue to stand up for workers and their families against this onslaught of anti-worker legislation constructed by the Howard government. This is legislation that is intent on destroying the Australian tradition of a fair go for all.

This is legislation that will ultimately have a negative impact on the day-to-day lives of thousands of Australian workers and result in slashing the wages and stripping away the conditions of working Australians. This legislation ignores the structural disadvantage with which a worker is encumbered when they have no choice but to be engaged as an independent contractor when in fact the relationship should be that of employer-employee. The proposed changes that will result from the passing of the Independent Contractors Bill 2006 created by this government, with perhaps just a little help from their friends, sends a very clear and distinct message to these workers. That message is: ‘You are on your own.’
The intention of this bill is to turn natural employees into unnatural contractors, placing considerable stress and hardship on tens of thousands of workers and their families. There are genuine independent contractors who willingly go into independent contracting, in many cases for entrepreneurial reasons. I repeat what many of my Labor colleagues have already said: we are not opposed to independent contractors. However, with the passing of this legislation, we are likely to see a significant increase in a different type of independent contractor, because this bill paves the way for genuine employees to be pushed out of a genuine employer-employee relationship and be set up effectively as independent contractors, without any say or choice and through no fault of their own.

What will this mean for workers whose status changes from employee to independent contractor? It will reduce or remove their conditions and entitlements, award wages, holiday pay and sick pay. It will place the burden on them for workers compensation arrangements, taxation arrangements and superannuation arrangements—arrangements which until now have been the responsibility of the employer.

The bills before us today cover five key areas: state laws with employee deeming provisions; state transport owner-driver laws; state unfair contracts jurisdiction; outworkers in the textile, clothing footwear industry; and the sham arrangements. Currently, at a state level, protection exists for contractors who are effectively in a dependent contract position. This legislation removes or reduces that protection for dependent contractors because it overrides provisions in state legislation—provisions which act as a protection for the benefit of consumers, contractors and small business.

In addressing state transport owner-driver laws, I acknowledge the valuable insight and contributions made by my Labor colleagues senators Sterle, Hutchins and Conroy, particularly regarding the plight of owner-drivers. Over recent months I have met with many owner-drivers and had discussions with them about the impact that this legislation will have on their working life, and the burden it will create for them and their families.

While this bill now provides for an exemption of existing New South Wales and Victorian owner-driver legislation, it has the effect of preventing other states from introducing legislation to protect dependent contractors. For owner-drivers and their families in New South Wales and Victoria, the exemption means that they are able to maintain a critical system of safe and sustainable rates, without which driver and public safety would be threatened. It also protects the owner-driver small business model, which provides security to these unique small business operations, along with industry stability. But the question is: how long will this remain the position?

Will the review proposed for 2007 lead to the welcome inclusion of the other states and territories benefiting from these exemptions or will this government buckle under the pressure from its friends in high places—and not only continue to rule out the other states and territories from claiming exemption from the provision of the bill but also remove New South Wales and Victorian legislation from being exempt? Through these bills, this government has provided even more uncertainty for thousands of workers and their families across Australia and a fear that there will not be a secure future for owner-drivers in the other states or for those workers forced into the position of being independent contractors—those workers who lose their em-
ployee-employer relationship and its associated benefits.

One does not have to look far to see who is in the shadows behind the introduction of such antiworker legislation. On Monday I received an email from Independent Contractors of Australia also known as ICA, an organisation with only a relatively small number of members who should consider a name change to better reflect their membership and what they are on about. It is probably fair to say that it is not those workers who will be pushed from an employee-employer relationship to a sham independent contractor arrangement. The email said: ‘ICA has informed the government that we oppose the bill in its current form. If two amendments are made, we will support the bill.’

The first amendment the ICA wants is that ‘any exclusion of more independent contractors from the act should be made by legislative change only’. One may well ask: why would Independent Contractors of Australia want such an amendment? In Western Australia and the Australia Capital Territory, industry support has been demonstrated throughout the consultation process for the development and introduction of owner-driver legislation that will seek to address the vulnerabilities recognised as being unique in this part of the transport industry. The bill as presently drafted will override the operation of those pending state laws as well as those in Queensland, where there are currently legislative provisions utilised by owner-drivers.

The minister in his announcement in May identified the vulnerabilities unique to owner-drivers as a reason to maintain this legislation for owner-drivers in New South Wales and Victoria. These vulnerabilities are not limited by borders and are the same vulnerabilities experienced by owner-drivers in all states, including in my own state of South Australia. With the passing of this legislation, owner-drivers could be forced to work longer hours or maybe even sacrifice the maintenance of their vehicles to make payments on their loans. They could be forced to choose between losing their business and putting themselves at risk on the road. In this scenario everyone is a loser. At the very least, these exemptions should be expanded to include all of the states and territories.

The bill as it currently stands confers a broad regulation-making power which makes express reference to the exemption provisions. If the relevant minister in this government or a future government gets some sense and decides to broaden the exemptions to include those in the other states and territories, it could be done simply through regulation. However, the ICA does not want this to be the case and is actively lobbying the government to make this process more difficult.

The second amendment being sought by the ICA reads: ‘Only a government authority should conduct a sham contract prosecution.’ Why would they want this? Owner-drivers are single-vehicle operations, the vast majority of which perform work exclusively for a single-transport operator, a principal contractor. Owner-drivers are often highly dependent upon those with whom they contract. The current legislation in New South Wales and Victoria allows for a degree of basic regulatory protection to ensure the owner-driver small business model operates in an economically viable and safe way.

The Transport Workers Union has represented owner-drivers in collective negotiations since the 1920s. The New South Wales experience is that owner-drivers simply do not bargain or seek representation other than through their union. The lesson from this is that preventing union representation of small business in the transport industry will ensure
that big business gets its way in cutting costs through exploiting its superior bargaining power. As part of its representation, the TWU is also active in ensuring that the relationship accurately reflects that which has been entered into. Owner-drivers are not employee drivers and vice-versa. By excluding the union, the capacity to conduct and the inability to investigate a sham prosecution will effectively deny owner-drivers effective and established representation.

So, in reality, the idea behind the Independent Contractors of Australia is to prevent unions from representing their members. We will now have to wait and see how much influence the ICA has on the Howard government. This government’s continuous attack on the working conditions and rights of workers is an attack on the security of working families and the values of Australian society. It is an attack on the conditions and job security that we should be protecting for our children and for future generations. Labor supports those who genuinely set out to start their own business. The Howard government is out there trying to create an impression that these laws are somehow beneficial for small business and contractors, but the reality is that they are not.

These laws will result in genuine employees being forced out of the employee-employer relationship and into independent contracting arrangements, reducing their entitlements, conditions and protections and pushing additional burdens onto them. They will remove protections from thousands of independent contractors who are in a dependent contract position and, as a consequence, in an unequal bargaining position. They will override state unfair contract provisions, which provide protection to employees, contractors and small business. They will allow employees to be treated as independent contractors in a sham way through ineffective, weak anti-sham provisions. And, if you are a worker or a small business seeking a remedy for an unfair or sham contract arrangement, you will have to go through the costly court process—an option beyond the reach of most of the people this legislation will affect.

The bills before us today will ensure that thousands of Australians will have no choice when it comes to their status as workers. That is the reality of this legislation—another Howard government no-choice piece of legislation forced onto Australian workers with far-reaching, ongoing consequences for them and for their families.

Senator LUDWIG (Queensland) (10.40 am)—I rise to speak on the Independent Contractors Bill 2006. It really is the latest chapter in the Howard government’s extreme industrial relations reform. It is, sadly, the latest chapter in the government’s abuse of the Senate as well in its pursuit of its ideological agenda, since the Prime Minister promised to use the government’s majority ‘carefully and not provocatively’. They are the words he used, but, when you look at this legislation, and the extraordinary, late supplementary explanatory memorandum to the bill and the original supplementary memorandum, you really do wonder whether he said those words ‘carefully and not provocatively’ with tongue in cheek.

It is the latest chapter in this government’s attempt to ride roughshod over the states and territories since getting the green light from the High Court. Ever since Senator Minchin himself let the cat out of the bag in his secret speech to the HR Nicholls Society, there has been little doubt that the Howard government was not content with the reforms in its so-called Work Choices package. The ink had not even dried on this bill and there was Senator Minchin speculating about his wish list for future reform in this area.
In that sense these bills are, unfortunately, inevitable. With our ideologically driven government having gotten their hands on the honey pot in the form of control of both houses of parliament—and I might remind Senator Vanstone that in fact you do have control of this Senate—they could not resist the urge to push more and more of their extreme agenda through. And they are pushing so far that the rest of Middle Australia—working Australians, including many who voted for the government—are watching with amazement as this band of warriors runs off into the distance on some ideological crusade. The government just keeps on pushing, not even bothering to turn around to see that they have left the rest of the country far behind.

You can see this in the Prime Minister’s reaction to the results of last Saturday’s Victorian state election. Despite the Labor Premier being returned with a strong majority, having campaigned strongly on the impact that Work Choices is having on family life, Mr Howard is in complete denial about the impact his reforms had on that election result. The Prime Minister did not so much as utter the words ‘industrial relations’ during the last federal election campaign, but he then turned around to claim a mandate for some of the most extreme, regressive and, when you look at this independent contractors legislation I think you can also add, experimental reforms in this nation’s history. Talk about self-delusion in truth!

This bill shows how out of touch this government is becoming. It has shown no vision for the future of Australia—no vision for how to secure our future prosperity to build the wealth of tomorrow, only a vision for squandering the wealth of today. Just like the Work Choices legislation, this bill sends a very clear message to Australian workers: you are on your own now. Forget about looking after your workmate; forget about working together in the workplace; cooperation under this government is a thing of the past. If you want to get ahead and provide for your family, you have to squeeze every last dollar out of your boss—that is the unfortunate message that this sends.

It is sending the wrong message to business as well. The message it is sending to business is: if you want to stay afloat, drive down the wages bill; if you want your employees to work harder, add hours to their work, rather than taking a cooperative approach that drives productivity up. That is what we know will happen if you take a cooperative approach in the workplace. Productivity will be driven up, taking wages and profits with it.

In introducing this bill the government argued that it is built on the principle that genuine independent contracting relationships should be governed by commercial not industrial law. If the Independent Contractors Bill was genuinely about independent contracting and not just the latest instalment in this government’s extreme industrial relations reform, then it would have come out of the Treasurer’s mouth, in truth, and not that of Mr Andrews. But we know that it is not about that at all. When the minister in his second reading speech says:

... everyone’s life opportunities are diminished by restrictions on the freedom to work—

I could not agree more, because it is about this government. After all, that is why I voted against the so-called Work Choices legislation, which restricts the right of employees to bargain collectively and enables employers to offer individual contracts on a take-it-or-leave-it basis. There is no proper freedom and no dignity in that. For the government to try to argue that this latest assault on the employment conditions of Middle Australia is about ‘respecting’ and ‘protecting’ the Australians who make the ‘choice’ to
work for themselves, they can only have had a Hobson’s choice in mind when they said that. Like Mr Hobson, Mr John Howard offers Australian workers a very simple choice: under Work Choices sign the AWA or there is no job; and under this bill become an independent contractor or there is no job. That is the choice you are given. In truth, there is no choice in that. This is yet another excuse for stripping away the protections of vulnerable workers.

Turning to some of the specific measures in this bill, this bill will force genuine employees out of the employer-employee relationship and into some sham independent contracting arrangements. As a result they will lose all the protections that go along with being an employee, being stripped of entitlements like sick leave and annual leave, and made to administer their own superannuation, tax, and workers compensation arrangements. It makes it easier for employers to force people into these arrangements, people who do not want to be in these arrangements and people whose work does not suit that style.

The bill will do this in a number of ways. It does it by overriding employee deeming provisions contained within state and territory legislation which would otherwise see certain categories as independent contractors deemed to be employees. In New South Wales, for example, this occurs for occupations such as cleaners, painters and bricklayers. It does it also by overriding state unfair contract provisions, which otherwise provide protection to employees, contractors and small businesses. Under proposed changes these groups will lose the ability to apply for an unfair contract review through an employer organisation or their union. Talk about removing choice! Talk about driving people onto sham arrangements! Talk about ensuring that the whip will be in the boss’s hand! That is what this legislation is about.

It introduces anti-sham arrangements that are themselves a sham. Even if an employee manages to satisfy the extraordinary burden of proof placed upon them, they would probably find themselves without the protection of unfair dismissal if their employer has fewer than 100 workers. Even if they managed to get to that point, they will be given the ‘no choice’ option—take it or leave it or go. The bill weakens the protections for outworkers and diminishes their entitlements, ignoring that many outworkers had previously been awarded employee-like protections because of their particular vulnerabilities.

This bill also puts at risk existing state owner-driver laws and overrides any future owner-driver legislation from the states and territories, which many are actively considering. The government should not be overriding any of these laws. This is a government that has lost control of itself. It has managed to use its legislative fiat to override state and territory law without consulting, without ensuring that there will be a positive benefit and without using a cooperative federalist model. It is using a unitary system approach to ensure that it will drive its view through to every corner of Australia. It is a negative view, a hardline view, an extreme view, and it justifies it on the basis of the inconsistency between different states and territories. What a furphy.

What this bill relies upon to determine who is and who is not an independent contractor is a complex common law test. It is a test that is stacked in favour of the employer, otherwise we would not have had legislation agitated and argued for, and finally introduced in states and territories to address it. It is not unusual for that to happen. It happens in a range of industries. But in this area we are taking a backward step. We are going away from ensuring certainty for business and for employees and ensuring that there is
a fair test. We are driving it back to the courts for an independent contractors test, which has been oft argued about and will continue to be oft argued about. In many cases it could be enough for them to simply say, ‘I believed it was a contracting arrangement,’ and it is then left to the employee to prove otherwise. The employee will not have the senior counsel or the silk on their side. They will not have the legal advice. In many instances, they will be faced with an employer who will probably not even need senior counsel or legal advice either, because the choice will again be: take it or leave it.

The problem with the government’s refusal to provide a statutory definition of ‘independent contractor’ is that it will lead to inconsistent treatment. At the moment a person earning more than 80 per cent of their income from one source is taxed as if they are an employee. So we will have the absurd situation under this legislation where Commonwealth law considers someone an independent contractor for industrial or commercial purposes but an employee for tax purposes. With the latter comes financial responsibility for withholding income tax, superannuation and workers compensation—all of which come with a significant administrative burden.

Let me talk briefly about what happened in Queensland: it provided an alternative. If the federal government were serious about protecting independent contractors, rather than overriding state and territory laws, it would actually work with the states and territories and pick up some of their models. Even if you disagree with some of their models, you can argue for a consistent principal treatment to ensure that you have consistency across the system. You can argue for your model. That is what the Commonwealth heads of agreement is about, that is what SCAG does and that is how the Attorney-General works through difficult laws. It is about arguing from a principal position. If you do not have a principal position then do not expect to win the argument.

In my home state of Queensland, the Beattie Labor government introduced section 275—amending the Queensland Industrial Relations Act—which gave the Queensland Industrial Relations Commission the power to declare persons to be employees. Unlike some of the other deeming laws criticised by the government for their arbitrary listing of individual occupations in regulation, these provisions simply list matters to be considered by the commission in making a determination. Importantly, the section does so in a clear and simple manner, in stark contrast to this government’s reliance on the more complex common law test. The factors listed are:

(a) the relative bargaining power of the class of persons;
(b) the economic dependency of the class of persons on the contract;
(c) the particular circumstances and needs of low-paid employees—not that the Howard government would care—
(d) whether the contract is designed to, or does, avoid the provisions of an industrial instrument;
(e) whether the contract is designed to, or does, exclude the operation of the Queensland minimum wage;
(f) the particular circumstances and needs of employees including women, persons from a non-English speaking background, young persons and outworkers;
(g) the consequences of not making an order for the class of persons.

That list of factors is in stark contrast to the complex common law test and the indicia created under it. Those factors are not indicia that point to one or the other, as in the common law test, but a simple and reasonable list
of matters that is easy for all to comprehend and that genuinely puts a stop to sham independent contracting arrangements.

The Queensland government also introduced section 276, which gave the commission the power to amend or void contracts deemed to be unfair. Similar to the previous section, this provision adds clarity to the process and actually gives practical protection to genuine independent contractors.

The Queensland government has managed to achieve in two provisions what the Howard government has failed to do in an entire act: provide genuine protection to employees from being forced into sham independent contracting arrangements and also provide genuine protection to genuine independent contractors. Independent contractors do exist and they do not want to be accused of being in a sham arrangement or argued about either; they want to continue to do their job as they always have. But what we need to make sure of is that the potential for abuse of the system that can be generated in these areas is put to bed, that it is not allowed to fester.

I remember a case—and I will leave out the name of the firm—where, depending on the times, they would directly employ drivers to drive cement trucks. If the business case for that changed, they would then sell the drivers the trucks and say, ‘You’re now an independent contractor.’ When the business case for that expired, they would say: ‘Those trucks are old. We think we might replace them. We might end your contracts. We’re not going to buy the trucks back. You’re an independent contractor—we can end the contract. We can sublet or directly employ drivers again.’ So we go back. The business case changes depending on the nature of the industry, the nature of the work and also the economics that are applied, and you will find that employers will exploit the arrangement unfairly and disingenuously.

But there is nothing in this bill to ensure that adequate protections do exist for employees and employers, and that there is fairness in the system. Otherwise there would not have been a drive for sections 275 and 276 in the Queensland legislation—but there was significant agitation for it, and the Beattie government perceived that there was a need to introduce it. The section is not often used, but it is there underpinning the system. It provides a floor on which people can rely, unlike spinning them off and saying, ‘We’re going to rip the floor from under you and let you float and see how you go.’ Some might do well, but what you are ensuring is that there will be inequities in the system and some people will do badly, some people will be exploited. But it really is the way of the Howard government to say, ‘That’s not a bad thing.’ I reject that proposition.

Labor is opposed to this bill because it is bad law and will only serve to further undermine workers in this country. In the committee stage, my colleagues will look at all amendments in the hope of improving the bill. The government have the numbers, but sometimes, as we saw in the families bill, even you lot can be embarrassed by the nature of the legislation that you are putting forward into withdrawing it. However, in the end I suspect your ideological agenda will drive this bill forward.

It is shocking that this Senate’s processes are being abused in the way the government are bringing in bills. You send them off to committees for which you set short timetables for hearings and then you do this—you bring in large amendments right at the end and say, ‘Well, some of these we may have already indicated.’ You could do this whole thing in a much smarter and much better way, but you do not want to do that; you want to drive this ideological agenda forward with these types of tactics, which you said you would not do. Well, Senator Minchin,
you are doing it. You are doing it here today and you should be ashamed of yourself.

Senator FIELDING (Victoria—Leader of the Family First Party) (10.59 am)—Family First is the true champion of workers and families. Family First is proud of the fact that we were the first party to point out that, under the government’s anti-family Work Choices bill, workers on agreements or contracts would no longer be guaranteed public holidays, meal breaks and overtime. Australian workers and their families want to feel safe and secure. Job security is a huge issue. We all know that many workers, particularly unskilled and migrant workers, are not in a strong bargaining position with their employers, and the government’s Work Choices legislation makes them even more vulnerable, which is why Family First voted against it.

Family First proudly stands up for workers and their families, and it is those workers and their families that Family First has as its top priority when considering this bill before us. But the Independent Contractors Bill 2006 is not about Work Choices; it is about giving people the option to work as independent contractors if they want. This bill is interesting because it appears that no-one wants it in its current form. It is a compromise between two sides of the debate.

Both the Independent Contractors of Australia and the Australian Chamber of Commerce and Industry do not want it unless it is amended. On the other side, the Transport Workers Union also wants amendments. In broad terms, the bill states that anyone who says they are an independent contractor is an independent contractor. The bill will override state and territory laws on independent contractors which deem many of them to be employees. The problem is these state laws are frustrating people who want to be independent contractors but are prevented from doing so. These workers want to set themselves up as small businesses subject to commercial law rather than operate as employees subject to industrial relations laws.

The bill before us therefore empowers those workers to become independent contractors—in effect, small businesses—if they choose. Family First believes this is a good thing. However, there is also the risk that employees could be made to become independent contractors against their wishes, and that is a concern to Family First. The main incentive for companies to employ independent contractors rather than employees is that employers do not have to pay the 25 per cent on-costs, such as nine per cent compulsory superannuation, along with workers compensation and payroll tax.

It has been suggested that minimum conditions could be introduced for independent contractors. But, once you start imposing minimum conditions, the person is in effect no longer an independent contractor and can no longer freely negotiate their contract with an employer. Family First supports workers becoming independent contractors if that is what they want. But Family First wants to ensure that employees are not forced to become independent contractors if they do not want to, so they are not exploited. Groups of most concern are outworkers in the textile, clothing and footwear industry as well as owner-drivers.

As always, the challenge is to get the balance right. The government has recognised that some workers would be vulnerable if they were not given extra protection, and Family First is pleased that outworkers and owner-drivers will be exempted from the legislation and protected by state laws which specify minimum pay and conditions. It is here that some industry groups disagree with the legislation. Owner-drivers often take on a very large debt to purchase their trucks, have
very little room for error in making a profit and have little bargaining power with the big businesses they contract to.

The exemptions for owner-drivers are appropriate because owner-drivers do not operate on a level playing field. Their livelihoods would be threatened if they did not have in place rates for minimum cartage. Without minimum cartage, a driver can lose the value of a truck run, which affects the goodwill value of the truckie’s business. Without this exemption, big contracting firms would be in a position to force owner-drivers to accept cuts in their payments, which would run many small businesses into the ground.

We all know that workers do not have equal bargaining power with their boss. For example, owner-drivers tend to contract to one firm, and this is recognised by the governments in Victoria and New South Wales. Family First is pleased that this bill also provides for action to be taken against unfair contracts. Most independent contractors lack the resources of the contracting firm. For this reason the bill includes a reverse onus of proof, meaning that the employer must prove they are not taking advantage of an independent contractor. The court, in checking whether a contract is unfair, has to consider the relative bargaining strengths of the parties, whether there was undue pressure and, importantly, whether the contract offers less money and anything else the court thinks relevant.

Family First’s main concern is to ensure that this bill does not leave workers and their families worse off. But we also do not want to stand in the way of families starting small businesses. I also acknowledge that the government has announced a review, which will be done next year, to examine the issue of owner-drivers in Victoria and New South Wales and whether there can be nationally consistent laws in this area.

The associated Workplace Relations Legislation Amendment (Independent Contractors) Bill 2006 includes a range of amendments to the Workplace Relations Act. It was difficult to work through the detail of these amendments in the time available as they only arrived late yesterday. These amendments are part of a political package which offers something to workers and something to employers. For example, employees will be able to cash out sick leave entitlements and will have the assurance of minimum redundancy payments. Employers will have easier record keeping compliance rules.

But Family First is concerned about the stand-down provisions in the bill and will be considering moving an amendment to take these sections out of the bill. On balance, there are enough benefits for workers and their families and for small businesses to support the bill overall.

(Quorum formed)

Senator WEBBER (Western Australia) (11.09 am)—It is no secret that the state I represent, the great state of Western Australia, is home to the most isolated city in the world—that is, of course, our capital, Perth. While WA is blessed with significant natural resources, the prosperity of our state still relies on strong transport links with the rest of the country. This is as much to aid in the export of Western Australian goods and services as well as in the importation of eastern states’ produce. Consequently, my home state relies very heavily upon the truck drivers of this nation. That is one of the reasons I oppose the changes proposed in the Independent Contractors Bill 2006 and the companion Workplace Relations Legislation Amendment (Independent Contractors) Bill 2006.

Since the coalition gained control of this Senate following the last election, the Australian people have been witness to a series
of industrial relations atrocities perpetrated by the Prime Minister and his henchmen. The union movement has done an outstanding job, in my view, to bring this debate and the consequences of the Howard government’s industrial relations changes to the fore. The Labor Party is dedicated to ripping up these laws after the next election. Perhaps that is why these bills were so very attractive to the government. How does this government respond when people rally behind workers’ rights? It is simple: they stop calling people ‘workers’ and start calling them ‘contractors’. That may sound like a cynical assessment of these bills but that seems to be what these pieces of legislation boil down to.

My Labor colleagues and I are extremely interested in bills that clarify or simplify legal process yet, despite the significant legal problems already present in defining a contractor rather than an employee, this bill does nothing to remedy such ambiguity. As has been consistently the case with the Howard government’s industrial relations changes, this legislation is heavy on ideology but light on empathy and functionality. It must be easy for government parliamentarians to lose sight of the victims they create in these bills. One of the great things about the labour movement is that we on this side of the chamber are more regularly in contact with the people whom these laws will affect. However, the good work of the Transport Workers Union in lobbying both the government and opposition parties really should mean that the government could see exactly what it was doing. The fact that the government is pressing on underscores the mean-spiritedness of the legislation and its advocates.

I would like to spend a moment discussing the role of the Transport Workers Union in defending the rights of owner-drivers, who are one of the groups most affected by these bills. My colleague Senator Sterle, from my home state of Western Australia, you, Mr Acting Deputy President Hutchins, and several other members from the New South Wales branch of the TWU first brought this issue to my attention last year. Since that time, I have been in regular contact with the TWU about the rights of owner-drivers, and the clarity and efficiency of the union has been first-rate. The union has also claimed some success throughout the course of its campaign against these changes by gaining exemptions for owner-drivers in New South Wales and Victoria. While I am delighted to see some forward progress has been made in these states, it beggars belief that the government can admit its folly in two states but then willingly apply the same appalling legislation to the rest of the country. The justification for this seems contrived to say the least. After all, the transport industry is defined by the very process of crossing state boundaries. To argue that a driver in Victoria is worse off than a driver in South Australia seems flawed. In reality, the concession is an acknowledgement from the government that this legislation is a poison pill. In that spirit, I reiterate my congratulations to the TWU for having generated such a potent degree of awareness in the community.

I know that owner-drivers in Western Australia will be feeling particularly left out in the cold by this Prime Minister. The minerals and subsequent real estate boom in WA have placed significant upward pressure on the cost of living, and this is without taking into account the already high cost of fuel. I am aware that the government will conduct a national review of legalities surrounding owner-driver rights. They seem to be hoping, yet again, that the community will infer from this that people in the states without owner-driver exemptions will eventually be granted the same rights. Unfortunately for the government, they have asked the Australian people to take them on faith far too often.
Both this legislation and the industrial relations changes that have been rammed through this place in recent times overlook the massive impact that these laws have on hardworking Australians who are simply trying to make ends meet. What makes these reforms grotesque is that people like owner-drivers have already stuck their necks out by investing in heavy duty vehicles and maintenance. These should be the pride and joy of a government with an allegedly free market agenda—people working hard with their own capital to become active players in the market economy. It seems to me, however, that this government wants free market principles in place only when a corporate entity or an ideological ally stands to benefit. Furthermore, dismantling large working populations like owner-drivers and outworkers has the added benefit of obscuring collectivism and making life harder for trade unions.

This legislation is another hallmark of Mr Howard’s ‘divide and conquer’ regime. I harbour serious concerns about the safety of our roads upon the successful passing of this legislation. Removing the basic safeguards that come with employment means that drivers will lose security of income and therefore have to work more—for less—when the work is on offer. This means more time behind the wheel, less time and money to spend on maintenance, and ultimately the creation of a class of vehicles and drivers not fit for our roads. This is not the fault of the drivers, who are acting only out of a desperate need to provide for their families. It is the obligation of a responsible government to care about community safety—but, sadly, this bill negates that duty.

I also look at this legislation as a concession due to the government’s inability to protect the transport sector from the relative giants of the retail industry. The TWU regularly encounters members who are running truck routes at a loss because of the low rates on offer from the contractors. Often the transport companies that offer such low rates of pay for service do so because of the paper-thin or loss-making margins they have agreed to with major retail players. I grant that small margins are a consequence of an efficient market; however, deliberate loss-making ventures are not.

If the Australian transport sector is being bullied into untenable and unrealistic market positions by virtue of its small size relative to the massive retail sector, then something is seriously amiss. If the ultimate consequence of this is that Australian workers are themselves running at a loss, then we have a significant problem. No matter what the government may claim, owner-drivers and outworkers are acting as employees, not as contractors. The government is of the opinion that, by labelling these employees as businesses, the Australian community will somehow accept their ill treatment as part of the dog-eat-dog world of private enterprise. My Labor colleagues and I have a far greater respect for the Australian people. Then again, we on this side of the Senate should not be surprised by deceitful legislation from this government.

The government is telling anybody who will listen that this legislation has strong protection against anti-sham contract arrangements. The irony of this legislation itself being a sham has not been lost on those of us on this side. The Prime Minister would have you believe that he is saving small business and independent operators by clarifying the confusion that existed prior to this legislation. However, this legislation serves only to further complicate the matter and does nothing to resolve it for genuine contractors and their employers.

I would like to share some of the personal experiences of the people who will potentially be affected by the passing of this legis-
lation. I will quote from a book called *The Human Toll*, which the TWU put together in aid of defeating this legislation. While this example is from New South Wales, a state with some shelter from this bill due to the owner-driver exemptions, it is still a telling account of the victims-to-be of this legislation. Tony Upton is an owner-driver who has spent some 23 years in the industry and is someone who I think has great authority to speak on this legislation. He says:

The Contract Determination gives us an even playing field. Without it, drivers will just take the lowest rate to survive. Unable to turn down work, drivers would be accepting work for unsustainable rates, and the reality is people will be starved out by companies.

We have to keep the work coming in. The pressure to make repayments is too great. Drivers will accept work at any rate. Driving the prices too low to survive.

If you don’t have a safety net, then you don’t know how much you can spend on maintaining your vehicle. Without a safety net, you can’t figure out how much you’re going to earn in a week, so you take every job going, you don’t sleep, and you don’t stop. You just keep going and that’s when things get dangerous.

Without the state system we don’t have a safety net, and things will go back to the dog eat dog days.

I would urge every member of government in this place to obtain a copy of this book and read it. These are real Australians who are working hard and are, by the way, the backbone of the resources boom that we are currently enjoying. Without quality road transport drivers, the high productivity that mining companies enjoy in Australia would be lost. It seems illogical to me that the government would want to expose these people to the potential for unscrupulous treatment from faceless corporations. These employees deserve support, not condemnation.

Another account I found particularly moving was that of Eddie Purcell, a former owner-driver and subcontractor for Australia Post. His experience demonstrates clearly that the state system, whilst complex, was working to ensure the protection of drivers. Mr Purcell said:

I have been an operator, independent sole trader, subcontractor ... and company for over 55 years. In 2002, I was a subcontractor for a public corporation body, Australia Post. The Royal Mail then terminated my services in July 2002.

I appeared before the IRC in August 2002 and the hearing lasted for seven days. The decision was brought down in July 2003 that I was to be reinstated. Without the IRC I would not have been re-employed. I found that the IRC had industrial knowledge, experience and resolve, and if I had followed any other avenue, I would not have achieved the same result. It is clear there is nothing better we can call on; therefore, the IRC must stand.

Under the conditions set out in this legislation, people like Eddie Purcell who live outside of New South Wales and Victoria will have no access to traditional arbitration proceedings. Instead, they will have to pursue negligent and unscrupulous employers in court, a process that will almost certainly increase the time and cost of dispute resolution. A lot of contractors and outworkers who require access to dispute resolution mechanisms will inevitably be priced out of such options. This legislation stacks the process in favour of corporate entities over employees. Mr Purcell alluded to another negative impact of this legislation, in that it effectively sets aside the expertise, substantial experience and knowledge of people within the IRC around Australia.

Perhaps I am lamenting the poor treatment of workers too much. After all, the federal government has a long-term agenda to deprive all workers of their basic rights, not just contractors. I can assure the government that efforts like the Independent Contractors Bill will act as a further motivation for the labour movement to see an end to this mad-
ness at the forthcoming federal election. Unions and Labor alike are determined to see fairness restored in the workplace, including for contractors and outworkers. I would like to leave the final word with Mr Purcell. He said:

It's all about profit. Sub-contractors are a cheap source of labour, cheaper than having an employee or even a slave. You do not need to shackle a sub-contractor, you can bind him with laws and you do not have to feed them. Cancellation sub-contractors access to the IRC will place the people hiring sub-contractors in a very powerful position.

That is the reason I oppose this legislation.

Senator ABETZ (Tasmania—Minister for Fisheries, Forestry and Conservation) (11.25 am)—I thank honourable senators for their contributions to this debate. In summing up on these two bills, the Independent Contractors Bill 2006 and the Workplace Relations Legislation Amendment (Independent Contractors) Bill 2006, I note that many senators have made a contribution and I will take issue with some of the comments that have been made. It may be helpful if we reflect first on the government's intention in relation to the bills. The government's intention and firm commitment is to ensure that those who choose to work as independent contractors may do so without excessive regulation. These bills are built on the tenet that independent contracting arrangements are commercial arrangements and should not be governed by industrial legislation. This belief is reflected in our approach of having stand-alone legislation for contractors rather than including non-employment relations reforms in existing workplace relations legislation.

To briefly recap, the bills will: recognise and protect the unique position of independent contractors in the Australian workplace; override state laws which deem certain categories of independent contractors to be employees for the purposes of state industrial relations legislation; maintain existing protections under state legislation for outworkers in the textile, clothing and footwear industry; maintain existing protections under state legislation for owner-drivers in the road transport industry; replace existing state unfair contracts jurisdictions with a single national jurisdiction; and protect genuine employees from sham contracting arrangements and from threatening or deceptive behaviour aimed at making employees change their status to independent contractors. The passage of these bills will be accompanied by funding of $15 million over four years to support enforcement and education activities.

I would now like to reflect on a number of the issues raised during the debate. First of all, there was some talk about the common law definition. The use of the common law definition of an independent contractor will be that which is in the Independent Contractors Bill 2006 and the Workplace Relations Legislation Amendment (Independent Contractors) Bill 2006. I note that many senators who have made a contribution and I will take issue with some of the comments that have been made. It may be helpful if we reflect first on the government’s intention in relation to the bills. The government’s intention and firm commitment is to ensure that those who choose to work as independent contractors may do so without excessive regulation. These bills are built on the tenet that independent contracting arrangements are commercial arrangements and should not be governed by industrial legislation. This belief is reflected in our approach of having stand-alone legislation for contractors rather than including non-employment relations reforms in existing workplace relations legislation.

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The government considers that the common law is the best arbiter of the distinction between an employee and an independent contractor. The common law test looks at the totality of a relationship between a person and their hirer, not just the formal contractual arrangements between the parties. It considers all the relevant circumstances of the particular relationship, making it both flexible and fair. It is highly unlikely that a statutory definition would, as has been claimed by some, reduce the number of disputes over the status of any worker. There will always be
some doubt around the fringes of the definition that will result in a court having to determine the true nature of a person’s status.

In retaining the common law definition, the government has rejected the use of the incorporation of the alienation of personal services income test to determine who is an independent contractor for the purposes of the Independent Contractors Bill. Senator Siewert asked yesterday why the government has not accepted this recommendation. In response to the honourable senator, I say that this test has been developed to address taxation policy needs and is unsuitable for use in the context of this bill. Not only does the self-assessment nature of the alienation of personal services income test leave it open to potential manipulation, but it also requires a hirer to know details of each and every one of a worker’s income sources. This is knowledge that a hirer cannot reasonably be expected to have and demonstrates the impracticality of the use of this test in the context of this bill.

I would also like to respond to Senators Murray and Polley, who have asked why the proposed bill does not recognise so-called dependent contractors. This is, with respect, an academic rather than a legal concept, used to describe a person who provides a service to only one, or primarily one, entity and who should therefore be treated as an employee. However, the dependent contractor concept is fundamentally flawed because it fails to recognise the reality that some contractors are comfortable working for one principal or are engaged on a long-term contract. Furthermore, the concept of dependent contracting has no recognition at common law.

Secondly, let me address the exclusion of state and territory laws that deem independent contractors to be employees. The government opposes laws which deprive a person of the right to choose the manner in which they work. Deeming laws prevent a person from being an independent contractor, irrespective of the way in which they structure their business. They force people operating in prescribed industries to operate as employees. The Independent Contractors Bill will return freedom of choice to all working Australians, giving them the ability to select the working arrangements that best suit their individual needs. The Independent Contractors Bill includes transitional arrangements for workers affected by the state deeming laws at the time the proposed legislation takes effect. People covered by the transitional arrangements will continue to be deemed to be employees for up to three years. However, they may elect to switch off the state laws at any time within that period by executing a written agreement with their principal.

I should note that the Independent Contractors Bill will not override state laws that deem outworkers to be employees. The government recognises that outworkers are a particularly vulnerable section of the Australian labour market who deserve additional protections. On that note, I thank Senator Troeth and her committee for the work that they did. Whilst on the topic of outworkers, I will take a moment to set out the particular protections provided for them under the Independent Contractors Bill.

Senator O’Brien interjecting—

Senator ABETZ—It is good to see that Senator O’Brien is awake. The government’s intention has always been to exempt outworkers from the effect of the provisions which override state laws. Currently the bill seeks to provide a guaranteed minimum rate of pay for outworkers who do not have such a rate of pay guaranteed by state or territory laws. These provisions are a recognition by the government of the particular vulnerabilities facing outworkers. As senators would be
aware, the Senate Employment, Workplace Relations and Education Legislation Committee inquired into the provisions of the bills and unanimously recommended that some of the provisions in relation to outworkers be amended. I take this opportunity to foreshadow the government’s acceptance of the committee’s recommendations. The government’s proposed amendments will clarify the effect of the policy intention of the bill in relation to outworkers. These amendments were developed in consultation with the Textile, Clothing and Footwear Union of Australia, Fair Wear and the Senate committee. I would like to thank all those involved in ensuring that the provisions clearly and fully reflect the government’s intention to preserve existing protections for outworkers. This fact, with respect, seems to have been lost on senators from the other side of the chamber.

There has also been significant focus on owner-drivers in the road transport industry who are covered by existing New South Wales and Victorian owner-driver laws. The Independent Contractors Bill will maintain all existing state owner-driver protections for the time being. The proposed legislation only names those laws in New South Wales and Victoria because these are the only jurisdictions with specific owner-driver laws in operation. However, let me be clear about the extent of the preservation of these laws. It is the government’s intention to review all state and territory laws regulating owner-drivers in 2007, with a view to achieving national consistency where possible.

I will make some specific comments about amendment (4) to clause 7 of the Independent Contractors Bill, page 7, lines 22 and 23. This amendment would omit clause 7(2)(b)(iii) of the bill. That subparagraph currently provides that any instrument made under a provision of the law referred to in clauses 7(2)(b)(i) or 7(2)(b)(ii) is not affected by the general exclusion of certain state and territory laws in clause 7(1). As such, any instrument made under chapter 6 of the New South Wales Industrial Relations Act 1996 or the Victorian Owner Drivers and Forestry Contractors Act 2005 would not be excluded by this bill. This is the intention of the bill. However, clause 7(2)(b)(iii) is unnecessary because if a law is not excluded—that is, it continues to operate—then instruments made under that law are similarly not excluded, except where a law is excluded by regulations made under section 10 to the extent that the law authorises the making of an instrument. The omission of clause 7(2)(b)(iii) is therefore not intended to change the effect of the bill with respect to instruments made under a law listed in clauses 7(2)(b)(i) and 7(2)(b)(ii). Rather, the amendment would remove clause 7(2)(b)(iii) because it is a redundant provision.

I would like to take this opportunity to allay the concerns of Senator Hutchins, who took issue with proposed government amendment (4) to the Independent Contractors Bill. This amendment would omit a redundant subparagraph from the bill. It would not change the legal effect of the provision. The subparagraph currently provides that any instrument made under one of the saved owner-driver laws would continue to operate after the commencement of this bill. However, the provision is unnecessary, because if a law is not excluded then instruments made under that law are similarly not excluded and will continue to operate. Therefore, there is no need to spell this out in a separate provision. The supplementary explanatory memorandum provides more detail which makes this intention clear.

Senators Marshall and Hutchins have criticised the bill for not preventing children from being engaged as independent contractors. Interestingly enough, child labour regulation is a state and territory government re-
sponsibility. The proposed legislation expressly provides that the Independent Contractors Bill does not override state child labour laws.

**Senator Kemp**—And they are Labor governments, aren’t they?

**Senator ABETZ**—They are indeed, Senator Kemp. I now turn to the unfair contracts jurisdiction. The Independent Contractors Bill will override existing unfair contracts jurisdictions for independent contractors in those states where they exist—Queensland and New South Wales. Independent contracting is a commercial arrangement which should not be regulated by workplace relations laws that focus on employment considerations. The government considers that state unfair contracts jurisdictions have gone too far in attempting to rewrite commercial contracts which have been validly agreed between the parties. In both Queensland and New South Wales the relevant state industrial relations commissions can rewrite a contract applying to an independent contractor even where the terms of that agreement were fair when entered into. This is totally unacceptable and creates commercial uncertainty for both parties.

The new proposed jurisdiction will more appropriately focus on commercial considerations when determining whether a contract is unfair. Moreover, a single nationally consistent unfair contracts jurisdiction will minimise the confusion and inconsistency which arises from the duplication of multiple systems. To ensure that this new federal jurisdiction strikes the appropriate balance between the overly prescriptive New South Wales and Queensland jurisdictions and the absence of any contract review mechanism in other jurisdictions, I will shortly be moving a number of amendments to the unfair contracts provisions on behalf of the government.

A number of senators opposite have raised concerns about the expense of this jurisdiction. These concerns are as unfounded as they are misleading. The proposed provisions confer jurisdiction on the Federal Magistrates Court to review and vary harsh or unfair contracts. This jurisdiction will be significantly cheaper than the existing jurisdiction in New South Wales. To file a matter in the New South Wales jurisdiction and have it set down for a one-day hearing will cost a person $1,916. The same person will be charged only $769 to do the same thing in the Federal Magistrates Court—a saving of about $1,200. By conferring the federal unfair contracts jurisdiction on the Federal Magistrates Court, the government is making this jurisdiction more accessible to everyone.

Lastly, I would like to touch upon the sham penalty provisions that are proposed to be included in the Workplace Relations Act by the Workplace Relations Legislation Amendment (Independent Contractors) Bill. While the government fully supports the use of genuine independent contracting arrangements, it will not tolerate the actions of people who knowingly seek to disguise employment arrangements as independent contracting arrangements, thereby denying employees their lawful entitlements. To this end, the Workplace Relations Legislation Amendment (Independent Contractors) Bill includes four new civil penalty provisions to address sham arrangements.

Broadly speaking, these provisions would apply to persons who knowingly disguise employment relationships as independent contracting arrangements, persons who dismiss or threaten to dismiss an employee for the purpose of re-engaging that employee as an independent contractor and persons who seek to deceive or mislead others to persuade them to become independent contractors. These provisions provide substantial additional remedies where an employer seeks to
avoid the payment of employment entitlements by wrongly classifying an employee as an independent contractor or coercing an employee to become an independent contractor. A corporation that is found to have breached any of these provisions will be able to be fined up to $33,000, and an individual will be fined $6,600.

Contrary to the claims of a number of senators opposite, these penalties would be able to be sought not only in the Federal Court but also in the Federal Magistrates Court. Further actions would be able to be commenced by an employee, a workplace inspector or, with the employee’s consent, an employee’s union. I would like to take this opportunity to foreshadow the government’s intention to move amendments to these provisions during the committee stage of the debate. These amendments will provide additional remedies for persons affected by a breach of any of these provisions. They will also clarify the government’s intention with respect to persons who knowingly seek to disguise employees as independent contractors.

During the debate yesterday, Senator Marshall made reference to the government’s fair pay and conditions standard in the Workplace Relations Act as the ‘low pay and conditions standard’. What a quite absurd remark. As Senator Marshall would be well aware, the Australian Fair Pay Commission recently handed down an increase of $27 per week to the minimum wage in Australia. Under this decision, Australian employees cannot be paid less than $511 per week. According to the latest OECD data, Australia has the highest minimum wage, as a proportion of median earnings, in the OECD—a very proud achievement.

The government will be opposing the Australian Democrats’ second reading amendment, for reasons that I think would be well known to everybody in this chamber—namely, that it was never the intention of either bill to dictate the way in which independent contractors should manage their affairs. One of the most fundamental advantages of being an independent contractor is the freedom and flexibility that comes from being able to make your own choices about how you work and how you structure your working arrangements. Just in case Senator Murray was not aware, we will not be supporting his amendments either. I commend the bills to the Senate.

Senator MARSHALL (Victoria) (11.44 am)—I rise under standing order 191 to make an explanation. In his closing contribution, Senator Abetz just referred to a contribution I made in the second reading debate and sought to misrepresent what I had said. Clearly, the fair pay minimum standard, which is of course the lowest pay standard under Work Choices, only applies to employees who are covered by the Work Choices legislation. He tried to misrepresent what I said in my speech in the second reading debate which is that, in terms of the independent contractors legislation, minimum pay does not apply. In fact, under the independent contractors legislation, if you are deemed to be a contractor—

Senator Abetz—That is clearly not a point of order. I think he has learnt from Senator Brown to how to try to use air time. Could I simply suggest to you, Mr Acting Deputy President, that we get on with the vote.

Senator MARSHALL—I certainly was not raising a point of order; I rose under standing order 191, and that is an appropriate course of action.

The ACTING DEPUTY PRESIDENT (Senator Barnett)—Senator Marshall and Senator Abetz, I have again perused standing order 191 and want to draw Senator Mar-
shall’s attention to the importance of focusing on the facts of the misquote or the misunderstanding. I again draw your attention to that and ask you to confine your remarks, as required by standing order 191.

Senator MARSHALL—Thank you. And, indeed, I was. I was clarifying the misunderstanding that Minister Abetz must have about the application of the fair pay minimum standard, in terms of the minimum wage. Clearly, under the Independent Contractors Bill 2006, the minimum wage set by Work Choices does not apply to independent contractors. Independent contractors can and will be paid less than the minimum wage under this legislation.

Senator Abetz—Mr Acting Deputy President, I rise on a point of order. Clearly, the honourable senator is seeking to debate the issues. If he claims that he has been misrepresented, he needs to say exactly what he said. I would have thought that the Hansard will clearly indicate for the record what each of us have said.

The ACTING DEPUTY PRESIDENT—Minister, I take the point of order.

Senator Wong—Mr Acting Deputy President, I rise with regard to the minister’s point of order. As I understand Senator Marshall’s contribution, it was the minister’s choice to misrepresent something that Senator Marshall indicated in his speech in the second reading debate. I would have thought that Senator Marshall is entitled to indicate what was actually said and respond to the minister’s misrepresentation of those facts.

Senator Kemp—Mr Acting Deputy President, I rise on a point of order. I have been listening to the debate very carefully. Senator Abetz is absolutely correct that Senator Marshall has to specify exactly where he believes he was misrepresented and then put his version. That is how he should be corrected. He is not doing that; he is debating the point.

The ACTING DEPUTY PRESIDENT—Senator Kemp, I am about to rule on the point of order. I will rule accordingly. Senator Marshall, you must confine your remarks to areas where you believe you have been misrepresented, make those points clear and conclude your remarks accordingly.

Senator MARSHALL—Thank you. Of course, the standing order that I rise to speak to is about being misquoted or misunderstood. I have in fact made that point and have finished my contribution.

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

The Senate divided. [11.53 am]

(The President—Senator the Hon. Paul Calvert)

Ayes............. 32

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

Majority........ 2

AYES

Allison, L.F.  Bartlett, A.J.J.
Bishop, T.M.  Brown, B.J.
Brown, C.L.  Crossin, P.M.
Faulkner, J.P.  Fielding, S.
Forshaw, M.G.  Hogg, J.J.
Hurley, A.  Hutchins, S.P.
Kirk, L.  Ludwig, J.W.
Lundy, K.A.  Marshall, G.
McEwen, A.  McLucas, I.E.
Milne, C.  Moore, C.
Murray, A.J.M.  Nettle, K.
Polley, H.  Ray, R.F.
Sherry, N.J.  Siewert, R.
Stephens, U.  Sterle, G.
Stott Despoja, N.  Webber, R.
Wong, P.  Wortley, D.

NOES

Abetz, E.  Adams, J.
Barnett, G.  Bernardi, C.
Brandis, G.H.  Calvert, P.H.
Question negatived.

Question put:
That these bills be now read a second time.

The Senate divided. [12.00 pm]
(The President—Senator the Hon. Paul Calvert)

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

**AYES**

Abetz, E.  Adams, J.
Barnett, G.  Bernardi, C.
Brandis, G.H.  Calvert, P.H.
Campbell, I.G.  Chapman, H.G.P.
Colbeck, R.  Coogan, H.L.
Eggleston, A.  Ellison, C.M.
Ferguson, A.B.  Ferris, J.M.
Fielding, S.  Fierravanti-Wells, C.
Fifield, M.P.  Fifield, M.P.
Johnston, D.  Heffernan, W.
Kemp, C.R.  Joyce, B.
Macdonald, I.  Lightfoot, P.R.
McGauran, J.J.J.  Macdonald, I.A.L.
Parry, S.  Nash, F.
Payne, M.A.  Patterson, K.C.
Santoro, S.  Scullion, N.G.
Troeth, J.M.  Trood, R.B.
Watson, J.O.W.  Watson, J.O.W.

**NOES**

Allison, L.F.  Bartlett, A.J.J.
Bishop, T.M.  Brown, B.J.
Brown, C.L.  Crossin, P.M.
Faulkner, J.P.  Forshaw, M.G.
Hogg, J.J.  Hurley, A.
Hutchins, S.P.  Kirk, L.
Ludwig, J.W.  Lundy, K.A.
Marshall, G.  McEwen, A.
McLucas, J.E.  Milne, C.
Moore, C.  Murray, A.J.M.
Nettle, K.  Polley, H.
Ray, R.F.  Sherry, N.J.
Siewert, R.  Stephens, U.
Sterle, G.  Stott Despoja, N.
Webber, R.  Wong, P.
Wortley, D.

* denotes teller

Bills read a second time.

Ordered that consideration of these bills in Committee of the Whole be made an order of the day for the next day of sitting.

**COPYRIGHT AMENDMENT BILL 2006**
**Second Reading**

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

That this bill be now read a second time.

**Senator LUDWIG** (Queensland) (12.03 pm)—In terms of the Copyright Amendment Bill 2006, we have seen an extraordinarily short Senate process. As manager—I would like to put on that hat for a moment—this demonstrates a flawed process in respect of this bill. The government has brought a bill forward to deal with copyright. It has had
copyright issues for some time now. It has looked at digital review and it has looked at the copyright issue over the last couple of years. It has looked at the USFTA issue and what copyright changes were needed for that. It has also continued them. But it has produced what you could only describe as an omnibus bill very late in this sitting and put together a very short process for the Senate—and even the House of Representatives—to consider.

The Senate committee to which this bill was referred produced, I think, a good report in a very short space of time. But you only have to look at that process: it produced a wide range of views and many submissions in respect of this issue. By and large, they are divergent views. You normally find a theme running through many of the submissions about opposing sections or supporting others; in this process there were many complex submissions on a wide variety of issues which provided different views about different issues within different clauses.

Even after the committee had had a hearing and finalised its deliberations, submissions were still coming in and people were still lobbying by sending in additional issues about this or that. It was quite surprising because it demonstrates that this government failed to adequately consult and drive this agenda forward properly. I think it was a case of this government finding it all too hard. It threw its hands up in the air and said: ‘This is actually too hard, so we’ll put forward the Copyright Amendment Bill 2006. We’ll throw these provisions together. It should satisfy some, not all. It might fix up parts but not everything, and we’ll see if we can get it out of the way before Christmas.’ That seems to be what this government’s agenda has been.

The committee process was useful though because it flushed out some of the problems and demonstrated the very rushed nature of this, and it identified the really hard issues and how to handle them. It also provided a list of recommendations that would go a long way to making this bill a better bill. We are pleased—although I use that term guardedly—that the government are picking up some of the major recommendations, particularly those relating to strict liability, but I do not think they have gone quite far enough.

We are disappointed that the government have indicated they will not support all the amendments. During the committee stage we will be moving amendments to pick up some of the matters and recommendations that this government failed to adequately address in the bill, which arose out the committee process. They should have done that, quite frankly, if they were a real government with a real agenda to improve copyright reform, especially in the areas of strict liability and the TPM. Our amendments are consistent with the Senate committee. We have not gone into as much detail as we would have if we had had sufficient time. Because of this rushed process there will be limited opportunity.

Although Labor decided to improve the bill, we are not entirely convinced that it is the best way forward, because if this government were serious about copyright reform they would have gone back to the drawing board and talked far more with the constituents. Not only do they have their own concerns but there are consumer concerns and stakeholder concerns about how this bill will operate not only in the market but also in private institutions, in libraries, in educational institutions—all the way through.

But, given the current law, the government has an option to stick with what is effectively an exceptions regime rather than look at the fair use options. This bill still has some important components. It seeks to address some
of what you would say are the hard issues, some of the niggling yet substantial problems. The bill will fix a range of issues that confront ordinary consumers. It may not fix them in the way everyone would want, but it certainly goes some way to address the concerns that ordinary consumers might have, particularly libraries and educational institutions. In that, it is a good thing, because the submissions that the Senate committee had in that area demonstrated their concerns about how this bill would actually operate; that it would have a negative impact upon their operations.

There are two real major issues which seem to come through this bill: if we can fix the issue of format shifting and time shifting then everyone is fine. Unfortunately, because of the nature of this omnibus bill, that is not enough, and the government should have taken a leaf out of Mr Hockey’s book. When faced with quite a difficult decision with a families bill, he decided to go back to the drawing board and have another look. Whereas with this Mr Ruddock is clearly of the view that he will drive forward because those two major issues are important. Ultimately we agree that they are important and that they need to be dealt with.

Through the amendments, the bill also significantly tidies up many of the provisions that the original drafters missed, left out, could not see in the first place or simply made mistakes about. It is a technical area—there is no argument about that—but the drafters, the people driving this bill, have in part let the standard drop a little in how they arrived at the original bill. When you look at all the different submissions that were brought forward, they either had not engaged adequately with them or ignored them. I foreshadow I will be moving a second reading amendment to this bill.

In truth, that sums up what I have been saying. But the general comment I want to emphasise is that we are trying to work with the government to improve this bill, notwithstanding what I have said and notwithstanding the botched process this government has engaged in. I am confident—maybe not that confident—that the government has taken a big picture approach in dealing with this. It is one of those areas where you might say the government is trying to be tricky because almost no-one with a vested interest in the debate comes away feeling satisfied that issues have been aired, fully considered and dealt with in a considered way by this government. That should be a disappointment to the government; it is certainly a disappointment to me.

Our desire though is driven by a couple of issues. Firstly, it is designed to protect ordinary consumers and educational institutions. That is our first priority, and it is a reasonable priority to adopt. Secondly, it is designed to ensure that creators of copyright material or innovators of technology can get proper remuneration and have sufficient control of their material, but through use that allows more innovation. That is one of the overriding issues this government has not looked at seriously enough.

But dealing with some of the schedules—schedule 1, criminal law and strict liability—the committee recommended that the government really should go away and have another look at that area. I do not think that there was sufficient evidence or a convincing argument presented by the government to maintain strict liability. They have removed it for consumers and I am not convinced that it will not have unintended consequences for the remaining strict liability provisions. There are many strict liability provisions in this bill with far-reaching consequences and they provide significant changes. In terms of consumer impact, it might be that the worst
consequences have now been removed, but there are still the unintended consequences of how the others will operate in the marketplace, and the Australian Federal Police especially, those people charged with enforcing the law, really reserved their view about it because they had not been—as I think the record shows—consulted sufficiently to ensure that there is a working model of how the government will use its powers to enforce copyright. The Senate committee came to a similar view and will be moving amendments in the committee stage to bring the committee recommendation forward.

The government does have time. It is not linked to the Australia-US Free Trade Agreement and does not need to be proceeded with at this point. The government can come back with a model that will benefit consumers, stakeholders and owners of copyright with a proper enforcement regime, and a proper way of ensuring that they get compliance especially with the balance for consumers and the ability to use exceptions to utilise the regime. Ultimately that is what you need to be able to achieve out of this legislation. The exceptions to infringement of copyright in this area of the government’s latest amendment are a vast improvement. But still tinkering with a regime that makes our laws inevitably more complex rather than easier and clearer still remains a concern to Labor.

In terms of clear provisions, support for format shifting is a no-brainer. There should be clear unambiguous provisions for the use of this technology. It is aimed for time shifting but I think even in that area the drafters have not grasped all of the issues that surround that. I guess in time shifting there still remains the anomaly where the copy must be made in domestic premises. I think this misses the reality of what the daily lives of people entail. There may be instances where people will copy a tape at work and not have that objected to by the business or the person, and it would be difficult to prove that an offence has taken place. But ultimately that in itself creates a distraction, because there should be clarity. If you are going to bring in law that allows consumers to do (a), (b) or (c), then there should be clarity about how they do it. You should not simply try to confine it to an area which even of itself becomes a little bit difficult to single out and where consumers might find it hard to understand. Good laws are ones which are clear and easily understood and where consumers know whether they are on the right side or the wrong side, and they can then act accordingly.

As for copying for preservation purposes and going to three copies instead of one, that is sensible. But I wonder why you did not pick up on UNESCO which said four copies. Was it a matter of splitting the difference and picking three? It does not make sense, quite frankly. Maybe during the committee stage you will be able to explain where you got the three from and why you say it makes perfect sense. We will have an opportunity to do that then.

In the matter of the definition of key cultural institutions using regulation power, yes, it does allow flexibility. I cannot always be confident that regulations are the right way of dealing with these things, but if you ensure that the ABC, the SBS and the AFC and institutions like that are dealt with appropriately and fairly in the regulations, good. If you squib on it, bad. It is about ensuring that the regulations allow flexibility so that the debate is not about which institution should or should not be in; it is about ensuring that key cultural institutions are included. It would have been preferable to see it in legislation so that we could then test that. In this instance we will have to wait for the regulations and then we will get an opportunity to comment on that at that time as well.
Schedule 8 deals with the response to the digital agenda review. If you look at the communications in the course of educational instructions and caching, we are aware of a compromise position negotiated between the CAG and screenwriters, and I am not sure whether that has been finalised yet or whether that is still ongoing. This is the problem and I think it is the sharp end of where this government has failed to ensure that its bill is watertight, logical and coherent, and has the support of industry to move forward. Mistakes in this will cause costs to be unfairly distributed, and that is a point that you cannot lose sight of in this legislation. Mistakes that you make will cause costs to be generated in business, in industry and in educational institutions as people try to litigate to find out what the intention was—and that should be avoided at all cost.

Schedule 11 deals with the copyright tribunal and record keeping for educational institutions. It appears that we have got to a compromise with a regime which is workable, but I still worry whether the AVCC have had an opportunity to raise their issues and to ensure that the schedule will meet the needs of the AVCC and others in the industry. Looking at schedule 12, the TPMs, the technological protection measures, you still have not followed the original advice and have departed from it again. There is a concern that in doing that you really have made it much broader than what was originally intended. If you look at the recommendations by the House committee and now the Senate committee, I think it is important to keep the distinction between TPMs and copyright, otherwise you can and will have unintended consequences and there will be litigation, and you will be imposing costs on the litigants. Unequal bargaining positions will arise and people will use these unintended consequences to give them an advantage and countermeasures will be brought in by business. We will then have a new round, I think, all created by the unintended consequences. I could be wrong about that—I hope I am—because business wants certainty in this area. This seems to be a late change that really failed to get full support, which is a shame.

There are of course some Democrat amendments, which we will deal with in the committee stage, so I will not deal with them in this second reading debate. Overall, I think the tone of this debate and this bill match. I think the government have done a lot of work on getting it right. What we are worried about is that you still have not taken up all the committee recommendations to improve the bill, to make it as good as it should be. We will be moving an amendment to give you another opportunity to look at them in the clear light of day, to see if you can be persuaded to adopt those recommendations which will improve the bill overall. On the whole, though, in terms of ensuring consumer protection, the government get a tick; in dealing with all the broader issues, you get a cross. (Time expired)

The ACTING DEPUTY PRESIDENT (Senator Barnett)—Senator Ludwig, just to clarify: have you moved, or would you like to move, your amendment?

Senator LUDWIG—I thought I had.

The ACTING DEPUTY PRESIDENT—You foreshadowed it. I thought I would draw it to your attention.

Senator LUDWIG—I move:

At the end of the motion, add “but the Senate:

(a) notes:

(i) the rushed and inadequate process for drafting this bill and its numerous amendments, allowing little time for detailed analysis of its provisions by industry, experts and consumers;

(ii) notes the Government’s decision to not adopt a general “fair use” pro-
vision, thereby focussing debate on the detailed exceptions and necessi-
tating a stifling policy decision which limits format shifting to cur-
rent, but not emerging technolo-
gies;

(iii) notes the initial far reaching strict liability provisions (which the Government has itself recognised needed to be dropped) but flags concerns that other unintended con-
sequences may unfairly penalise consumers;

(iv) notes the concerns of the internet industry about unintended conse-
quences of this bill;

(v) notes the need for a strong public education campaign about copy-
right laws;

(vi) notes the Government’s failure to include the recommended two year re-
view in the legislation; and

(b) expresses grave reservations, despite a number of positive aspects of the bill, that the overall package it cumbersome, complex and confusing”.

Senator BARTLETT (Queensland) (12.24 pm)—Can I say at the outset that the Democrats will support the second reading stage of the Copyright Amendment Bill 2006, but we do believe it needs significant amendment before it should be passed into law. I note that the government yesterday circulated 12 pages of amendments, a total of 63 amendments, and a supplementary ex-
planatory memorandum that goes some way to addressing the many and varied concerns that were raised during the extremely brief investigation by the Senate Standing Com-
mitee on Legal and Constitutional Affairs into this legislation. The Democrats have also circulated one or two amendments; I will go to those shortly.

I think it does have to be put on the record how unsatisfactory this stage of the process is, as I unfortunately find myself saying far too often. The role of this chamber as a law-
making body, as a legislature, is not being given due regard. I do not think it has ever really been given proper regard by the media or the general public. I think there is a lack of recognition of how important the law-
making role of a house of parliament is. But that has deteriorated significantly since the government got control of the Senate. In most cases, though not all, I think it is seen as little more than an annoying, mildly irri-
tating little process that we have to go through for form’s sake.

I do note that many components of this bill are the result of quite long periods of consultation. To be balanced, I congratulate the government on having conducted quite wide-ranging consultation—discussion pa-
ers, forums, exposure drafts and the like. But, having done all that, I think it makes it all the more unfortunate that when you get right to the pointy end, right to the crunch, we suddenly have this mad rush.

The simple fact is, as the evidence given by the department to the Senate committee inquiry showed, that there is no mad rush for the bulk of this legislation. The only compo-
nents that do need to be put through before the end of the year are those that ensure compliance with the Australia-US Free Trade Agreement, and I will come back to that in a moment. But there are a range of other areas that are not linked to that and, from the point of view of getting it right—not having argu-
ments about the policy intent but just getting the law right—we would all be much better served by it not being rushed. The entire Australian community and all of the many stakeholders in this law would be much bet-
ter served if we could have scrutinised this properly to ensure that it was as close to right as possible before it became law. Whilst the key stakeholders are copyright holders in educational institutions, writers, performers, publishers, software companies and those
sorts of groups, this law will affect in many ways the vast majority of the Australian community. This is complex copyright law, and in some ways it seems arcane copyright law, but it is not a matter that affects just a small percentage of people. It has a direct and significant impact on small but important sections of the community, including the education sector and a range of businesses. Its flow-on effects literally do affect the entire Australian community, so it is important that we get it right.

There is a growing indication, as increasingly shown in practice, that this government is more interested in getting things through than it is in getting things right. The Senate committee process that followed was derisory; it was little short of a disgrace. The people who contributed to the inquiry—the people in the community who have the expertise, who actually work with the law on a day-to-day basis, who know its practical implications—pretty much all said, without fail, that the process was seriously flawed in its failure to give adequate time to examine the legislation. So, whilst I think the Senate committee across-the-board, from all parties, did a very good job—as the legal and constitutional committee does almost without fail—it was still only able to look at the issues that were brought before it. I certainly have had people raise with me since then, as I imagine other senators have, issues that they did not get the opportunity to raise in full detail during the Senate inquiry process.

Senator Ludwig—It still hasn’t stopped.

Senator BARTLETT—We are still getting representations today—that is, responses to the government’s amendments.

The government forced us to table that report more than a week before the legislation came on for debate, truncating the already brief time by an extra week, so that they would have enough time to assess the report and to draft amendments if they felt it necessary. That is understandable; that is good. I am pleased that they want to fully consider the recommendations, and I am pleased that amendments have come through. But then, once again, the Senate, the stakeholders and the wider community, those with expertise, have to rush to look at the 63 amendments in the space of a day or so. It seems that the upper hand is continually with the government, the executive, the department, and that the community and the parliament are the ones who are always having to scramble to check whether or not things are properly drafted, whether they have the impact the government says they will and, indeed, whether or that that impact will be good.

The fact is we are still getting representations from people about matters that were not able to be raised in the committee hearing. It was only a one-day hearing; it was also held when the Senate was sitting, from memory, so it had that extra flaw, which is a continuing practice that, I must say, I am finding more and more frustrating. Even when we do have public hearings into detailed legislation, we are holding them when the Senate is sitting, when the attention of some senators, and the media and others, is focused on the chamber—not that the media is usually focused on the chamber, let alone committees, but it makes it even less likely that attention will be paid to the issues and concerns raised.

As I have said repeatedly, but it cannot be said often enough, time for adequate scrutiny is not just about senators being able to satisfy themselves that what is being put forward is good or bad and properly drafted and workable; it is also about ensuring wider community awareness, input and debate into issues so that things are not pushed through quickly without people being aware of what is happening and without the opportunity for issues that we might not have thought of to be put...
There is a fair bit of talent in this Senate, in particular on the Senate Standing Committee on Legal and Constitutional Affairs, but we are not the font of all wisdom, particularly in an area as complex as copyright law. We need to have the time to hear from and cogitate upon the varying views.

In this area in particular, as we all know, there are a lot of stakeholders with competing interests, and you have to balance those up. In saying that, I appreciate that that reality makes life difficult for the government—in this area perhaps more than a lot of others. You really do have a lot of competing interests, and it is a matter of balancing all those interests—balancing the interests of the consumer with the interests of the copyright holder, the interests of the users and the institutions with those that sell product. That is always going to be a balancing act.

It is always going to mean some people are unhappy with the outcome. But when everybody is unhappy with the outcome, as they were in some areas of this legislation, I would suggest that if you upset everybody a little bit it does not mean—as the minister suggested—that you have probably got the balance right. I think it could just as easily mean if you upset everybody about it they all recognise that it is not workable for anybody. That was certainly the message that came through in the Senate committee inquiry.

Having said that, the government has produced a number of amendments that do go, to some extent, to the concerns raised. I acknowledge that, and I congratulate the minister for listening to at least some of the concerns that were raised. I will just quickly go through the bill, which has 12 main schedules, some of which contain stand-alone issues. A range of the amendments address copyright piracy. This is a difficult issue. It is very important to prevent what is theft from occurring. But you also do not want to structure the law in a way that people who are not seeking to profit inappropriately from using material get caught up in the laws. There are areas relating to criminal law, evidential presumptions, various technological definitions, civil remedies and commercial-scale online infringement with Customs seizure of imported infringing copies. All of these areas need reform, and we will look at the amendments that touch on them when we get to the committee stage.

Schedule 6 is very significant. It deals with exceptions to infringement of copyright. This includes areas like format shifting and time shifting and also so-called fair use provisions: the using of copyright material for various purposes by educational institutions, in particular—libraries, schools, archives and museums; so for non-commercial uses. It also covers use by people with a disability and use for comedy and satire. These are all areas that require some fine judgement. There are certainly some areas where the bulk of the evidence suggested that the government got it wrong. I think we have greater reason for concern particularly regarding issues that come to light late in the piece that had not been raised previously throughout all of the prolonged consultation periods.

Schedule 7 deals with clarifying who is the maker of communications. Schedule 8 contains some responses to the digital agenda review, which also follows on from quite a long consultation process and covers a range of different areas. There is another schedule dealing with unauthorised access to encoded broadcasts and another couple of schedules dealing with Copyright Tribunal amendments. Schedule 12 predominantly deals with the free trade agreement. There are amendments to implement measures relating to technological protection measures. As an aside, whilst we are now basically required to become compliant with the Australia-US Free Trade Agreement by the end of
this year, the concerns that were raised about the technological protection measures changes went partly to their workability and the way they are framed but also partly to problems in the free trade agreement itself.

I am very disappointed that the area of the free trade agreement to do with intellectual property and copyright issues did not get the sort of scrutiny that I believed it merited. It is a complex area, but I thought that particular area of the free trade agreement demonstrated that the free trade agreement was not terribly accurately named, because in some aspects in this area it does not free up trade between Australia and the US. It actually constrains trade and competition and, in this area, it constrains it in favour of US corporations, which I think is unnecessary and unfortunate. The US is not necessarily world’s best practice when it comes to copyright, and I think it was very unfortunate that we locked ourselves into some of the measures that the US wanted. They are not world’s best practice but they are obviously a major player, and I do not think it helps to be required to align ourselves to some of their practices in some of those areas. That is quite a broad topic, so I will not go into it beyond that.

I also want to comment on one thing which was not in the legislation and is particularly frustrating for me; that is, the government’s commitment to remove the licence fee cap for the playing of sound recordings on commercial radio. The legislation before us, as I have said, is the result of a long period of consultation on a range of areas—fair use consultations, digital agenda consultations and free trade agreements. Consultation was also undertaken at the same time regarding whether or not there should be the removal of the cap on what commercial radio has to pay to play sound recordings—basically, to play music. At the very same time that the Attorney-General announced back on 14 May this year that he would be implementing many of the changes that are before us now in this legislation, he also said:

... the Government has agreed to remove the legislative cap on copyright licence fees paid by radio broadcasters for playing sound recordings. The one per cent cap was adopted in 1968 to protect radio broadcasters because they faced special economic difficulties at that time. Sound recording owners (mainly record companies and artists) and radio broadcasters, who operate in a profitable and robust industry, should be able to negotiate a market rate without legislative extension. If they can’t agree on fees, they can put their case to the independent Copyright Tribunal, like any other copyright owners and users.

I completely agree with that statement by the Attorney-General. That statement is government policy and it was a government promise; there was a cabinet decision.

At the Senate committee inquiry into this legislation, it was made clear by the department that the reason the government wanted to get all this through before the end of the year, not just the free trade agreement measures, was that they wanted to get through all the reform measures to the Copyright Act in one package. I can understand that. As long as you get it right, it is efficient—do the lot once, get it all out of the way and then people can get on with it. So why is that one very simple, very discrete measure, which was announced at the same time—it was a cabinet decision—and which was clearly justifiable on the evidence, not in this reform package? If it is not in this reform package then I would suggest that there is a very strong risk that it will not be implemented before the next election—and what will happen after the next election nobody knows. So this is the key opportunity to ensure the government implements its promise, its commitment and its cabinet decision. The Democrats will be moving an amendment to keep the government honest with regard to
their announcement back on 14 May of this year.

There is no reason for this exception to exist. The exception discriminates against and economically harms artists and performers, in particular, as well as record companies, to the benefit of that section of commercial radio which plays music. There is no reason that they should be the sole exception. In Australia, users of copyright material pay fees or rates set by agreement with copyright owners or, if there cannot be any agreement, with the Copyright Tribunal on a fair market basis as determined by the tribunal without any statutory restrictions. The only exception is the broadcast licence fee for commercial radio stations, where they only have to pay up to one per cent of their overall revenue. That is completely unjust. Whatever circumstances may have existed back in 1968 to justify it, they do not exist now. It is a profitable industry, particularly given—as was, once again, clearly stated in evidence before the Senate committee inquiry—that other changes in this area, particularly to do with fair use, are likely to lead to a drop in revenue at least in an immediate sense for performers and artists.

So we are making changes that will reduce their income in one area. This would clearly balance that out. It is a cap on income, a key revenue stream for performers, particularly non-composers. I might have a bit of a bias here, having been a drummer myself in a previous life. Drummers tend not to get the songwriting credits, which is a complete injustice but that is the way of the world. That revenue stream for non-songwriting performers is critical, yet there is a price cap on what they can earn. There is no other area in copyright or anywhere else where there is that cap put on what people can earn. I cannot see why this is not put forward. There was no reason given at the Senate committee hearings as to why it was not put forward, other than the government has decided not to proceed with it now. I do not think that is justified, frankly. If there is any time to put this in, it is now, and I will seek to do that on behalf of the Democrats when we get to the committee stage of the debate.

In conclusion, I do think this is very important law, because of its complexity. Unfortunately, it does not get the attention it deserves, although it does impact on a wide range of people across the Australian community. Everybody, pretty much, consumes or uses material that has copyright involved in some way, shape or form but usually we do so unknowingly. We want to make sure that there are no inadvertent breaches. But there are a lot of key, immediate stakeholders, revenue streams, incomes, profitability, business opportunities and business barriers that all need to be factored in as well, and we need to get it right. With the amendments that are in this bill, we have got a bit closer to getting it right, but I think it needs further scrutiny. I look forward to doing that in the committee stage of the debate.

Debate interrupted.

MATTERS OF PUBLIC INTEREST

The ACTING DEPUTY PRESIDENT (Senator Hutchins)—Order! It being nearly 12.45 pm, I call on matters of public interest.

United Nations Peacekeeping

Senator PAYNE (New South Wales) (12.44 pm)—This year the global community celebrates and acknowledges 50 years of United Nations blue helmet peacekeeping. Fifty years after the creation of the first UN peacekeeping operation at Egypt’s Suez Canal, the international community now makes extensive use of the so-called ‘blue helmets’ deployed in various trouble spots across the globe. The Suez UN Emergency Force, UNEF, was tasked with ‘securing and supervising the cessation of hostilities—including
a withdrawal of the armed forces of France, Israel and the UK from Egypt’ and historically has been seen as a great success. In a message to mark this anniversary in 2006, the UN Secretary-General, Kofi Annan, noted:

Sixty missions later, UN peacekeeping operations have become an indispensable weapon in the arsenal of the international community.

Australia, in particular, has a long and proud history of helping to keep peace in many of the world’s trouble spots. Indeed, since the end of the Second World War, the Australian Defence Force has contributed to more than 37 peacekeeping operations, and the Australian Federal Police and its predecessor organisations have contributed to six. The contribution and the professionalism of the ADF and the AFP have earned the respect and admiration of governments and fellow participants around the world. It has most certainly earned mine and, I would think, that of all members of this parliament.

Since 1947, Australia has made significant military and police commitments to UN humanitarian operations. These include UNICEF’s evacuation of South Vietnamese orphans in 1975; the UN Mine Clearance Training Team deployed in Afghanistan from 1989 to 1993; assistance to Cambodian refugees in Thailand from 1989 to 1993; assistance to Kurdish refugees in Turkey and northern Iraq in 1991; and assistance in Cambodia with UNTAC in 1992, in Somalia from 1992 to 1995 and, more recently, in East Timor in a number of incarnations, including UNAMET, INTERFET, UNTAET and UNMISET.

Australia’s first experience with multinational peacekeeping was on our own doorstep at the close of World War II. We participated in the UN Commission for Indonesia—UNCI, which was authorised under UN resolution 31 of 1947—from August 1947 until April 1951. At the end of World War II, the Dutch sought to re-establish their rule in the then Netherlands East Indies. The newly self-proclaimed Indonesian Republic resisted that and, effectively, war broke out. In August 1947, the UN established a Good Offices Commission, as it was known, to delineate and supervise a ceasefire between the Dutch and the Indonesians and to eventually supervise the withdrawal of Dutch forces to the Netherlands. That ceasefire was, like many, tenuous at the best of times and broke down very seriously in December 1948. Given the very strong feelings on both sides and the generally chaotic situation at the time throughout the Indonesian archipelago, the UNCI’s efforts in preventing large-scale disaster were a valuable baptism of fire for UN peacekeeping.

Our contribution in the UNCI began in early August 1947 when locally based diplomatic staff were seconded to the GOC. Four military observers were sent—one from the Royal Australian Navy, two from the Army and one from the RAAF—later that month. When it was reorganised from the GOC and renamed the UNCI in January 1949, the Australian contingent increased to 15 and stayed at that level until their task ended in April 1951.

I think one of the interesting side issues about that first engagement of Australia in such a task was what some might describe as poor treatment of that mission by later UN historians. As it was the first UN peacekeeping operation which involved military observers, the procedures which were used to establish and staff the UNCI were quite different from those that were later developed for subsequent missions. The particular differences were that the military observers were drawn only from countries that had diplomatic representation in Indonesia, and they were loaned to the UN through the diplomatic missions. They were not directly
posted to the UN. Because current criteria have been perhaps incorrectly applied to past situations, some lists of UN peacekeeping missions do not include the UNCI. I am prepared to bet that those who were among the Australian participants would certainly have seen it as a peacekeeping mission.

The UN currently has 18 operations: the United Nations Integrated Office in Sierra Leone and the United Nations Mission in Afghanistan, which are both special political missions; UNTSO, in the Middle East, between Israel and Palestine; UNMOGIP between India and Pakistan; UNFICYP in Cyprus; UNDOF between Israel and Syria; UNIFIL in Lebanon; MINURSO in the Western Sahara; UNOMIG in Georgia; UNMIK in Kosovo; MONUC in the Congo; UNMEE in Ethiopia and Eritrea; UNMIL in Liberia; UNOCI in the Ivory Coast; MINUSTAH in Haiti; ONUB in Burundi; UNMIS in Sudan; and, of course, UNMIT in Timor-Leste. These missions have deployed a historic 93,000 personnel in the field across the world. In fact, once the UN Interim Force in Lebanon, the UNIFIL force, and the UN Integrated Mission in Timor-Leste, UNMIT, complete their full deployment, and if—as is potentially the case—the UN Mission in Sudan expands its operations in Darfur as authorised, there will be more than 140,000 blue helmets, police officers and civilian staff in place in 2007. That is a phenomenal world commitment. The cost of running so many operations with such enormous numbers of staff is scheduled to top $6 billion and will increase.

I think it is important to note, in relation to the role and operation of peacekeeping, that it has to accompany an effective peace process. It cannot be a substitute for a peace process. As the Secretary-General said in observing this anniversary: ‘For peace to take root and grow, comprehensive measures are needed to address security sector reform, disarmament, demobilisation and reintegration.’ That is in the very formal sense. There are so many other things that also need to be done.

In addition to our Defence Force personnel contributing to military tasks, including in four current missions, Australia has played a significant role in supporting developing democracies both in our region and abroad. I have spoken in the chamber a number of times about the valuable work of Australians in operations like RAMS1—which is not a UN operation but more a Pacific home-grown one—and in East Timor, but we have also made very significant contributions to other UN tasks. From 1947, we contributed diplomatic negotiators to the UN task in Greece of negotiating her borders with her then-Communist neighbours. In 1984, 1986, and 1987 we provided a scientific expert, Dr Peter Dunn—a very highly regarded part of the UN Secretary-General’s four-member team investigating chemical weapon use by Iraq during the first Gulf War. At considerable personal risk, that team was instrumental in proving that chemical weapons had been used by Iraq against the neighbouring Kurdish population. In the late 1980s, we have provided a number of Army engineers to the UN mission in Afghanistan that worked to clear that country of mines.

As I mentioned though, UN peacekeeping missions in and of themselves are never going to be enough to ensure a lasting peace. The contribution of blue helmets is an important role that, of course, we are more than prepared to play, but I think it is fair to say that we also see our role holistically. Assisting in building peaceful and sustainable societies which are driven and eventually built by local communities based on the rule of law and with effective governance should be the broad aim of that sort of international support.
I want to talk briefly about the effective use of Australia’s police personnel, particularly the Australian Federal Police, but with reference to the state forces too. This use has also been an important step in pursuing viable long-term peace in so many places, particularly in our region. As we know, and as we have discussed in the chamber on several occasions, police cannot and should not take military roles in peacekeeping operations. But they are a very essential part of a package of measures, if you like, which might also include the military and diplomacy that are available to Australia in such circumstances.

We have been contributing police to peacekeeping operations for over 40 years, primarily through the AFP and its predecessor organisations. The initial contribution of police that we made to the UN force in Cyprus was intended to last three months. It had a mandate to end hostilities and to promote a peaceful solution. That initial deployment of 40 police was sent in May 1964. It is a touch more than three months later, and we are in fact still there. The island finds itself demarcated by a green zone buffer between the two factions, and there are 1,300 troops stationed there still, including a rotation of 15 Australian police—so the situation remains relatively calm and stable. I guess at some point, some day, it will come to the international community to ask what the resolution in that particular area will be.

In relation to policing, the International Deployment Group in the AFP was formed in 2004 to manage the development of Australian and Pacific Island police offshore to do a number of important things—in multilateral law, capacity building missions, in bilateral law, enforcement capacity building programs which occur under the auspices of the Law Enforcement Cooperation Program, in international monitoring missions and in international peacekeeping missions as civilian police with the United Nations. In August of this year, the government announced an increased commitment in funding of over $490 million to strengthen the AFP’s capacity and to respond to international crises. That funding will boost the IDG’s staffing levels, it is envisaged, by hopefully 400 personnel over five years.

Even in recent weeks we have seen very fast and effective deployments of highly skilled Australian police and members of the ADF to address urgent situations in places in our region, like Tonga, where the importance of that IDG came once more to the fore. In addition to our commitment to Cyprus, we also have police forces currently deployed in Timor-Leste, Jordan, Nauru, Sudan, the Solomon Islands and Vanuatu. As Australians, we are very significant contributors to global peacekeeping operations. On another level, multinational peacekeeping has provided both the ADF and the AFP with considerable operational experience. Just as importantly, the professionalism that has been displayed by our deployed members has been of fundamental practical humanitarian benefit for the victims of the conflicts that they seek to work in.

In early 1993, which marked somewhat of a high point in our peacekeeping commitments, Australia had nearly 2,000 ADF and AFP personnel deployed in seven UN and three other multinational peacekeeping operations. When we withdrew from UNITAF in Somalia that figure was halved, and it was halved again as UNTAC wound down on schedule in late 1993. Australia’s record of 37 UN and 10 other multinational peacekeeping operations is indeed one of which we can be very proud. I have seen it in action myself, as I know many other members of this chamber have. My personal very high regard for those men and women of the ADF and the AFP who engage in these very imp...
important operations has been put on the record in this place before.

I have also had the opportunity, as both chair of the Human Rights Subcommittee of the Joint Standing Committee on Foreign Affairs, Defence and Trade and chair of the Senate Standing Committee on Legal and Constitutional Affairs, to visit both the ADF peacekeeping centre at Williamtown and the International Deployment Group at Majura, here in the Australian Capital Territory, to be well briefed and to have a good look at the sorts of preparation and effort that both the agencies make in relation to their work. That was a very reassuring opportunity.

We can be particularly proud of our contributions to the harder and more dangerous military operations in, for example, Korea, Lebanon, Kuwait, Sarajevo and Somalia, of what have been very arduous missions in Kashmir and Iran and for our very professional and technical expertise which we have displayed in Cyprus, the Sinai, Namibia, the Western Sahara and Cambodia. None of this is easy. None of it is simple. It takes an enormous commitment from those deployed and also from Australia as the deploying nation in supporting our personnel.

In a statement that the Secretary-General of the United Nations released to mark the anniversary, he noted:

... so long as peacekeeping has the political and practical support and commitment of the international community, as expressed through the main organs of the United Nations, anything is possible. The task ahead will be demanding, but we will fulfil it. Australia’s peacekeeping engagement over many years is a mark of our preparedness as a nation to meet very significant international obligations, to utilise the highly developed skills of the ADF and the AFP, to support nations and to support people in very difficult times. The exceptional job that those Australians do is reflected in the very high regard in which they are held in the UN system and by other participants in those deployments. Both the Australian Defence Force and the Australian Federal Police have a very proud tradition of support to UN missions—a tradition which I think is always underscored by the phrase embossed on every UN campaign medal: ‘In the service of peace’.

Australian Citizenship

Senator FAULKNER (New South Wales) (12.59 pm)—The government discussion paper Australian citizenship: much more than a ceremony has utterly failed to recognise the strengths of our citizenship system. At the same time, no matter how hard they try, the Howard government cannot point to any particular problems the system has. Instead of analysis, the discussion paper is filled with assertion. Instead of addressing the special and particular needs of our society, it talks about irrelevant systems in countries with vastly different migration histories and vastly different societies and social policy circumstances. It posits tests for new arrivals that cannot assess commitment and loyalty and which we would never dream of requiring of existing citizens. Worst of all, it does not reflect the generous-hearted community sentiment that has underpinned the great success of our migration program since 1945.

Making it harder to obtain citizenship does nothing but cramp the ability of new arrivals to contribute to the life and welfare of the country. The citizenship discussion paper is an attempt, one of many by the Howard government, to pander to our worst instincts. The discussion paper says:

... Australian citizenship is the single most unifying force in our culturally diverse nation. It lies at the heart of our national identity—giving us a strong sense of who we are and our place in the world.
This puts the cart before the horse. If simply being a citizen could do all these things, then we should reduce the barriers, rather than raise them.

A genuine and broadly encompassing sense of national identity is a matter of hearts and minds. Citizenship is a formality that recognises that our hearts and minds are in the right place. It is a result, not a cause. Citizenship should not require people to conform to a rigid conception of national identity imposed by government ideologues. It should be founded on a sympathy with the essentials of a society and a willingness to support and contribute to it, everyone as best they can.

We are a pluralist society and that is one of our great strengths. Therefore, the prime objective of public policy should be the provision of assistance to enable those who have adopted Australia to fit comfortably within it as quickly as possible. Australia has a good record in helping new arrivals to adapt to its life and, despite having lost some of the important associated symbols—like the Good Neighbour policy—it is these strengths that we should be building on: better English language training, better assistance with finding employment, better information on the working of the society and better awareness of legal obligations and acceptable community norms.

The discussion paper approaches the provision of these services in a curious way. It asserts that a formal citizenship test covering English language ability and ‘common values’, including ‘the rule of law’ and ‘the spirit of a fair go’ ‘would provide a real incentive to learn English and understand the Australian way of life’. The paper goes on to claim that such a citizenship test ‘could provide the mechanism through which we can be assured that new citizens have sufficient English and knowledge of Australia to maximise the employment and other economic opportunities which benefit the individual and Australia’. That is absolutely spurious. It fails to recognise that new arrivals not able to speak English have every incentive in the world to learn it and that they typically try doing so with great energy and motivation. Making the existing language test for citizenship more formal and more strict would add nothing by way of a further meaningful incentive to learn. Helping migrants to learn English is overwhelmingly a matter of supply, not demand. Moreover, there will always be a significant number of fine new citizens from other countries who simply will be unable readily to pick up a new language, no matter how hard they try.

A test on civics—respect for freedom and democracy, compassion for those in need, the rule of law and what is called the ‘spirit of the fair go’—is even less necessary. It fails to acknowledge that many migrants are attracted to Australia because they have a profound yearning for freedom and democracy and because they have been deprived of them in the places of their birth. It is just possible that many migrants place a higher value on such things and understand them more keenly than long-term citizens who could be inclined to take them for granted. Indeed, there might be a case for further promoting the virtues of freedom and democracy with Australian-born people, especially those trying to con the public into thinking that migrants are second-class citizens who should earn their human rights in artificial ways. If the Howard government are so keen on the idea of a fair go, they might like to apply it to Work Choices or the treatment of refugees.

The discussion paper makes much of higher level language and civics tests for citizenship in Canada, the United Kingdom and the United States of America. While they may be of interest, they are less than useful,
for many reasons. For example, within the last 10 years the Quebec secessionist movement in Canada came to within an ace of splitting the country in two. The population and societal pressures in the United Kingdom, to a significant extent the consequence of its imperial history and the more recent movement of people from eastern Europe, have no counterpart in our experience. And the United States has immense pressures on its southern borders quite unlike anything in Australia. These examples tell us nothing about our needs, any more than do the practices in those countries with citizenship tests similar to our own.

Australia should design its citizenship arrangements according to what best promotes the interests of our country. With citizenship, of all things, we should be able to stand on our own feet. Language and civics tests will tell us nothing about the fitness of new arrivals for citizenship and its rights and obligations. They cannot measure the willingness and commitment of individuals to strive to do their best for the country, nor can they assess an individual’s loyalty or patriotism.

A prominent commentator has said that the discussion paper ‘embodies Howard’s aspiration to rebalance from multiculturalism to social cohesion’. Just how social cohesion is promoted by applying pointless tests for full entry into the life of the country is not explained. Rather, we should appreciate that those who are prepared, for whatever reasons, to leave their countries and live in Australia are paying us a great compliment. People want to migrate to Australia because they already appreciate what we are and what we stand for.

The government’s discussion paper fails its most fundamental test: it makes no mention whatsoever of practical new measures to better assist migrant integration. The Australian community strongly backs our immigration program, so admirably supported by the existing citizenship system. Making citizenship harder to obtain is a risk to our immigration program and our international reputation. The Howard government is struggling to deal with a host of problems it has on its plate, without deliberately adding to them one that does not exist. The Howard government would be well advised to put the citizenship discussion paper on the shelf and concentrate on real problems that do matter.

Tasmanian Forests

**Senator BOB BROWN** (Tasmania—Leader of the Australian Greens) (1.10 pm)—This week the grandest trees now targeted by the loggers in Tasmania’s Upper Florentine Valley have been dynamited by the logging industry, and with them the habitat of a great range of wildlife in this World Heritage value forest. It is a forest that, instead of being celebrated by this nation, made a national park by the Labor government in Tasmania and nominated for its World Heritage value by the Howard coalition government, is being destroyed in what is nothing other than an environmental obscenity against Australians and their future.

Look at the Stern report and do the figures. Sir Nicholas Stern, in warning about climate change, said that the fastest thing we can do is to turn around the logging of forests in the world. That would have a better effect than stopping all the transport systems of the world in helping to save the world from the onrush of catastrophe from climate change. According to his figures, by stopping the destruction of the forests by Labor and the Liberals, Tasmania would get somewhere between $6,000 and $24,000 per hectare for keeping the forest standing in an age of carbon trading. As it is, we are getting much less than half the lower of that figure from destroying the trees and sending the woodchips, through Gunns, to the rubbish dumps.
of the Northern Hemisphere. So it is not only an environmental obscenity; it is an economic absurdity.

But there is not one Labor or coalition member of this parliament who speaks out against it—not one. That includes the Labor shadow minister for the environment and it includes my old friend Peter Garrett. I would have expected that Peter would be at the forefront in this parliament in bringing to book in the House of Representatives government policies that are so catastrophic for this nation’s future. After all, the Midnight Oil anthem says: ‘Oh, the power and the passion. Sometimes you’ve got to take the hardest line.’ That is, you have to stand up and be counted, even among your peers, when such a travesty of political judgement is being carried out against the interests of the nation. I raise this matter because of Peter’s intervention in the Victorian elections last week. I was there when he came, and went, to lobby for the Labor Party in the marginal seat of Melbourne. What Peter did—

The ACTING DEPUTY PRESIDENT (Senator Hutchins)—Senator Brown, you must refer to him as Mr Garrett.

Senator BOB BROWN—What the member for Kingsford Smith, Peter Garrett, did was to deceive the voters of Victoria by an onslaught which included letterboxing a personally written letter to all the voters of Melbourne, and indeed Northcote, implying that the Greens had made a favourable deal with the Liberal Party, particularly in relation to preferences, against the interests of the Labor Party and that inter alia the Greens were letting down the environment. Indeed, he called it a Liberal-Green alliance.

The outcome of the election shows that Labor will have a big majority. In some 25 of the seats it has won which have gone to preferences, that majority will come in on Greens or other preferences. In other words, Labor has received a huge boost from Greens preferences in Victoria. The Greens in no seat preferred the Liberals. Peter was very careful about not stating that directly, but his letter to the voters, which was so deceptive, said that the Greens were helping the Victorian Liberal Party. It talked about the Liberal-Green alliance and about the fact that there was a Greens preference deal which was assisting the Liberals. In fact, the Greens preference arrangements were mightily assisting Labor, and he knew it.

The point was to stop the Greens from winning in the seat of Melbourne, which was marginal, and I think he was successful. Effectively, he has stopped a passionate Green voice for the environment in the lower house of Victoria as against a Labor voice, which is another proponent of Labor policy for logging the water catchments of Victoria, for failing to tackle climate change, for boosting the burning of coal and for putting a tollway through Royal Park—a whole range of policies which the environmental groups made clear in their assessment of policies when going to the election when they gave the Greens nine out of nine but the ALP only 4½ out of nine. The point is that Peter went in to bat against the environment and the environmental advocates.

The question is: what is going to happen now? How is this powerful personality going to affect politics? I refer to Laurie Oakes’s column in the current Bulletin magazine. Mr Oakes said:

Victoria also provided a lesson for Beazley, exposing the stupidity of his refusal to revamp his shadow cabinet. On election day, the Greens underperformed—due, I might add, to Mr Garrett’s appearance, amongst other things—but in the final week of the campaign they—that is, the Greens—
had Labor running scared. Polling suggested they would defeat Health Minister Bronwyn Pike and stood a chance of winning three other inner-city seats. Labor’s response was to rush Peter Garrett into the campaign. Personalised letters from Garrett were also mailed to voters in the threatened electorates. The Green challenge was seen off. What further proof does Beazley need that Garrett should be on the frontbench in a role that properly uses his profile and talent?

I have no quibble with Laurie Oakes’s assessment of the profile, nor of Peter’s talent, but the question is: talent for what? Talent for ending uranium mining in this country? No, he has changed his policy on that. Talent for preventing nuclear ships coming into the ports of Sydney, Melbourne, Hobart, Perth, Brisbane and other cities of Australia? No, he has changed his mind on that. Talent for protecting Australia’s old growth forests and beleaguered wildlife? No. As I explained, he has gone quiet on that. Talent for preventing tollways and instead getting behind Greens policies on public transport—fast, efficient, clean—and helping to turn around climate change? No, he supports tollways, including now the east-west link being in a private-public partnership, perhaps in the wake of this election, through Victoria’s Royal Park. Peter has said that—

The ACTING DEPUTY PRESIDENT—Senator Brown, please remember that it is Mr Garrett or the member for Kingsford Smith.

Senator BOB BROWN—I will remember it is Mr Garrett. I have forgotten in my long-term familiarity with him. Mr Garrett has said that he wanted to join mainstream politics because he thought from there he could effect change. We have seen the change effected. He has not affected the Labor Party one iota; the Labor Party machine has taken him over and turned him into an anti-Green campaigner. One has to say that it would be a smart thing for the Labor Party to have Peter Garrett of old as an environmental campaigner, but this new Peter Garrett is an anti-Green campaigner who supports Labor policies which are destructive to the environment and which go nowhere near fostering this nation’s environmental amenity, its wildlife, its rivers, its seashores, its interior, its snow-capped mountains and its wild forests—as the Greens will do whenever we get the opportunity.

I remind you again that sometimes ‘you’ve got to take the hardest line’. We get vilified for being hardliners. I am proud of it, because I do not want to be a weak-kneed party functionary who caves in to party dictates against conscience. Worse still, I do not want to be used as an Exocet against my former friends, against my former beliefs, against a lifelong held philosophy of doing everything possible and of standing tall and strong against those who maraud this planet and its environment, and against our obligation to future generations to stand up for it. We are going to hear a lot more of Peter Garrett in the coming year in the run-up to the federal election. Let me say at the outset that I welcome taking him on. It is not a joust between the man and the man; it is a joust between a philosophy and a philosophy; it is a joust between Labor and the Greens. The Greens are here because Labor has failed, and Peter Garrett has not made one iota of difference to that; in fact, he has made it worse. He has made it worse because he has sold out on key environmental issues on which he was such a grand advocate.

I note that the first thing that he did during the last federal election was go to my friend Michael Organ’s seat to advocate against the Greens there. In this election he was parachuted into Melbourne to campaign against
the Greens there. If it was done on the basis of, ‘Our policies are better than the Greens policies on the environment,’ one would have to accede to it. But it is not. It is done on the basis of trying to trash the Greens and our strong environmental policies as in some way or other being supportive of the very people whom we oppose—the coalition in office here and the Labor Party in several states. Letter writer Stephen Kress from North Carlton perhaps put it most succinctly in yesterday’s Herald Sun. I will read from that letter:

Analysis shows that Labor won many seats on Greens preferences alone. So much for the Labor lies during the campaign of a ‘Green-Liberal alliance’. But it appears that the Labor smear campaign against the Greens scared enough of their wavering inner-city voters to save Bronwyn Pike and neighbouring seats for the ALP. How such a well-educated and supposedly savvy demographic could fall for such a blatant Labor con job is mind-boggling. The tens of thousands of letters to inner Melbourne from Peter Garrett may have saved Ms Pike, but for me they trashed his reputation as an honest politician. Perhaps next time inner-city folk won’t be such suckers. To quote a Midnight Oil song: ‘Just another ridiculous steal/ain’t no doubt about it’.

What we are seeing here is a tragedy. We need young people inspired. We need people looking up to leaders who are consistent, particularly when the going gets tough and who, in the words of that anthem, take the hardest line. But instead of that they have a transformed Peter Garrett. (Time expired)

Western Australian Government

Workplace Relations

Senator JOHNSTON (Western Australia) (1.25 pm)—Today I want to alert the Senate to the appalling state of affairs in my home state of Western Australia. My state is currently being run by what must now be described as the most poorly managed, badly run, shoddy and crooked government since the WA Inc. years of the 1980s. I do not make that comparison lightly because, as we in this chamber all know, the WA Inc. years, led by Mr Brian Burke, had enormous ramifications and reverberations for my state that are still being felt today.

The latest of many examples of the Carpenter government’s appalling attitude to accountability and the good governance of our state’s affairs is their participation in the recent High Court challenge to the Howard government’s Work Choices reforms. On the day that the High Court announced their decision that the Work Choices reforms did not breach any constitutional law, the state Minister for Employment Protection, Mr John Bowler, admitted that taking the issue to the High Court was ‘always a long shot’. They took a matter to the High Court on behalf of a state and took schools of lawyers across to the High Court in Canberra on a long shot. Was there any legal advice which the government took as to whether or not there was some viability in this action?

What concerns me is that the state minister could not say how much the High Court challenge had cost WA taxpayers and that the challenge had been undertaken using the state Crown Solicitor’s Office and was essentially a politically and publicity motivated challenge in the highest court in the land. When asked by a reporter how much the High Court challenge had cost in exact figures, he could not answer. He either did not know or would not say. Perhaps, as he has admitted previously, he was awaiting a call from Mr Brian Burke before admitting anything at all. Who knows how things work inside the state Labor government in Western Australia these days.

Going to the High Court is a most expensive exercise and beyond the financial capacity of almost every Western Australian and not something undertaken lightly or friv-
lously. But this profligate state government mounted this challenge in the full knowledge that it was, to quote the minister, 'always a long shot’. I wonder if the Carpenter government would have been so cavalier if they were using their own money from their own pockets to mount this challenge. Would they have been so keen to undertake the long shot in such circumstances?

If I or any ordinary member of the public wanted to take an issue to the High Court, we would have to weigh up the cost factors of mounting the challenge against the probability that the action would be successful or unsuccessful, a process requiring prudence and good judgement. If it appeared that what was involved was indeed a long shot, I put it that no-one in their right mind would risk their own money to proceed. In my past life, I was always advising clients to be very mindful and careful to weigh up the costs against the likelihood of success. In a High Court challenge, you have a liability factor for your own costs—and the state government has incured high costs in running this case, such as the cost of hiring the team of lawyers, including barristers, their airfares, accommodation et cetera. But you also run the very real risk of losing and having to pay the other party’s costs, too—the defendant’s costs, or the respondent’s costs in this case.

This is exactly what has happened. The state minister has the nerve to claim that he is worried about families with mortgages who are apparently facing the loss of their jobs as a result of workplace reform—a completely false assertion. This is a state government that has absolutely milked the home owners and home buyers of Western Australia with its exorbitant stamp duty rates and outrageous utility charges. Stamp duty has been turned into the greatest cash cow the state has ever seen—particularly on the back of soaring house prices in Western Australia, comparable only with those in New South Wales. Many Western Australians cannot afford to get a home in Western Australia because of the extra burden of state stamp duty. The government in Western Australia has stubbornly and consistently refused to lower stamp duty, particularly for first home buyers, although my guess is that that may change in the lead-up to the next state election. Unfortunately for everybody concerned, that is not until 2008.

If the state minister is so concerned about families with mortgages, he should go to the premier and ask him to use the considerable cash reserves because, after all, this is the wealthiest state government my state has ever known. Mining royalties and stamp duty, not to mention the GST windfall, have generated more revenue than my state of Western Australia has ever known. If he was in earnest and being honest about his concern, the minister would go to the premier and say, ‘Let’s give some tax relief back to these families.’ Is this simply just a political charade played out for the benefit of his union masters? I suggest that that is exactly what it is and that the frivolous High Court challenge that cost us so much was simply a stunt.

The problem is that Mr Bowler, like his federal colleagues Mr Beazley and Mr Smith, is desperately trying to find real-life examples to back up his outrageous and hys-
terical claims about workplace reform. Let us look at the reality. In WA we currently have the highest rate per capita of people on Australian workplace agreements. Historically, we have the lowest unemployment across the country at about 3.2 per cent—and I say that in the context of having the highest percentage of Aboriginal people in our population—and the highest rate of average weekly earnings across all sectors. This is happening in Western Australia and yet the state government is complaining about workplace reform. Workers on AWAs are not just employed in the mining industry; they are also very much employed in the industries of retail, tourism, hospitality, manufacturing and many others. The reason Western Australian workers would rather be on an Australian workplace agreement is because they offer, firstly, higher wages and, secondly, more flexible conditions than awards. It is that simple. People in Western Australia have voted with their feet. They love Australian workplace agreements and they are going to see that the scare campaign, rhetoric and scaremongering of Mr Beazley, Mr Smith and now Mr Bowler are simply not the facts in the reality of industrial life in Western Australia.

I now want to go to the building and construction industry in my home state. The past six months have seen the most industrially peaceful period in commercial construction—previously, it was a battleground—because of the Howard government’s workplace reforms. It has been the most productive period in commercial construction in Western Australia for several decades, all because of the Howard government’s legislative initiative. This scare campaign matches precisely the scare campaign, utterly lacking in credibility, run against the GST. Of course, the states bow their heads and go deathly quiet when someone talks about the GST because they are the principal beneficiaries of it. They have never had so much money; they are rolling in it. If Mr Bowler and the Carpenter government want to continue with this scare campaign, let them go ahead, but they should not be wasting taxpayers’ money in the process. The High Court challenge was a blatant abuse of power and a disgraceful waste of the money of Western Australian taxpayers, and I want to be on the record roundly condemning that. This was, in the words of the minister, ‘always a long shot’.

Contrasting with this attitude of ‘We need to protect the workers’, another issue that has come to light in Western Australia is that of the salaries the Carpenter government is paying its fat cat public servant bosses in the inflated bureaucracy it has created since coming to power in 2001. It is completely and utterly hypocritical for the minister and the state government to feign concern for families as a response to Work Choices and the effect of IR reform while the state government in Western Australia has given pay rises three times the rate of the CPI to the director-heads in the Public Service. Talk about mates. Since the current government has been in power, these fat cats have received pay rises of a whopping 39.9 per cent while the CPI for Perth has risen only 12 per cent in the same period. This is an outrageous scandal.

What makes this situation even more appalling is that higher salaries have not guaranteed better run departments or any type of accountability when something goes wrong. Both the Director-General of the Department of Education and Training, Paul Albert, and the Director-General of the Department of Community Development, Jane Brazier, have left their departments and flown the coop in scandalous circumstances with major problems in their departments—and all of this has happened on the state Labor Party’s watch. Both public servants received massive pay rises during their tenure. Jane Bra-


Ms Brazier’s pay went from $184,000 per annum in 2002 to a whopping $284,614 just before she was sacked. During that time the Department of Community Development was rocked by one scandal, blunder and fiasco after another—all at the expense of Western Australian children and their families. In the meantime, Ms Brazier walks away having made tremendous financial gains from her position and is comfortably set up for life, and none of this financial benefit is linked to her performance or to the performance of her department. There were no KPIs, no quality assurance targets and no productivity benchmarks. There was no accountability whatsoever, just high wages and enormous pay packets.

While the Carpenter government consistently rewards the fat cats at the top of an increasingly bulging bureaucracy in Western Australia, they fail to hold these bureaucrats to any level of accountability or standards whatsoever. The public of Western Australia are being left in ambulances at the front of hospitals. In fact, beds are now measured by how many ambulances—they are included in the count—are parked at the front of a hospital. A hospital bed is in fact an ambulance in Western Australia. This is an absolute outrage. Parents still have no idea how their children are doing at school. Indeed, under the current minister, the education department is in a state of utter turmoil. It is a national disgrace. Commuters are still waiting for their rail line to transport them between Perth and Mandurah. The rail line is late, overdue, over cost and over budget—another national disgrace. On average, there is currently a three-hour wait for a taxi in Perth on a Friday night. I could go on. Mental health is an absolute fiasco in Western Australia at the moment. There are power blackouts and utility blackouts all over the place. The roads are in a state of chronic disrepair. The Great Eastern Highway is absolutely scandalous for its neglect and danger to public users. And so it goes on.

The problem for Mr Carpenter, and his very profligate and dilatory Western Australian government, is that he needs to knuckle down and fix these problems and not pay money to public servants who do not deserve it and who do not come forward with any achievement. Obviously the Premier’s time is being taken up with enormous scandals, where he has had two cabinet ministers wiped out by CCC inquiries. There have been scandalous phone taps and gross abuse of public office. This is the hallmark of a state government that is in absolute decline and decay. The public of Western Australia have a right to feel let down and lied to by this government. It is the worst government the state has probably ever seen—certainly the worst since the fiasco and the scandals of the WA Inc. years. The extent of the links between the two is currently being revealed. Many of them commenced when the Premier, upon taking up his position as Premier of Western Australia, said, ‘We can go back and talk to Brian Burke.’ That was the beginning—and they are paying big time for it now.

Women’s Sport

Senator LUNDY (Australian Capital Territory) (1.39 pm)—The Senate inquiry into women in sport in Australia was an important one. It was important not only because it found that there were still disparities in the level of participation and opportunity among females at all levels of sport and recreation—from grassroots to elite sport, media portrayal and leadership—but also because it placed all these issues on the record, something that had not been done in any form for over 10 years. The inquiry was also important because it drew together insights from all over Australia into how some organisations and individuals are attempting to ad-
dress these inequities and improve the opportunities available. The report, entitled *About time! Women in sport and recreation in Australia*, made some 18 recommendations from grassroots participation, elite sport and media issues through to leadership roles, governance, coaching and administration. The first section of the report went to the health benefits of women’s participation in sport and recreation, and this really puts the report in context.

Participation in sport and recreation is not always just about winning medals at the Olympics. In my view, first and foremost, the aim of any sport and recreation policy should be to provide all Australians with opportunities to participate in sport and recreation to maximise their wellbeing. Anything beyond that is an important bonus and an important part of the sports policy, but we need to recognise the fundamentals. We know from this Senate report and other sources that participation in physical activity contributes to the overall physical and psychological health of individuals of all ages and social groups. Physical activity has been found to reduce the risk of cardiovascular disease, which is a leading cause of death in Australia. Physical activity has also been found to reduce the incidence of other diseases such as diabetes, osteoporosis, depression, some forms of cancer and injury, particularly amongst older people. Public investment in recreational and sporting activities provides an important social dividend in public health and social cohesion. Some reports have suggested that healthcare costs for illness related to a lack of physical activity are estimated at some $5.6 billion per year. If the number of Australians who were sufficiently active increased from 56 per cent to 66 per cent this would, according to the report, save taxpayers $1 billion per year. Getting people active through publicly funded programs for sport and recreation is not just about getting overweight or obese people active, although that is an important element of it; it is about getting all Australians sufficiently active. It is about providing children with the knowledge and opportunities to set themselves up for lifelong wellbeing.

The Senate report went on to discuss the level of participation in sport and recreation. It showed that girls are less likely than boys to participate in organised sport even when dancing—a popular activity, particularly amongst girls—is included in the analysis. This is reflected in Australian Bureau of Statistics data that show that, across all children aged five to 14, 69 per cent of boys participated in organised sport compared with 54 per cent of girls. When we reflect back on the health benefits, it is a concern that up to 46 per cent of girls aged five to 14 may not be sufficiently active. This also highlights an entrenched gender inequity in participation for girls that ought to be addressed. Statistics relating to participation for those aged 15 and over showed that there were generally similar levels amongst males and females in both organised and non-organised participation.

In relation to organised sport, data suggests that about 45 per cent of males were active compared with 41 per cent of females. Participation in non-organised activity told a different story: the level of participation in non-organised activity is greater for females than males. Research and evidence highlighted the popularity of outdoor, unstructured recreational activities like walking, cycling and swimming amongst adult women. A study in Victoria, which was cited in the report, looked at whether the level of participation was actually enough to reach the recommended threshold of physical activity to maintain a reasonable level of health and fitness, but only 44 per cent of women within that cohort were found to reach the minimum recommended physical activity

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threshold. While there is a need for greater levels of physical activity amongst all parts of the population—and this certainly would help our rising obesity rates—the need appears to be most pressing amongst girls and women.

A recurring theme throughout the evidence given to this inquiry was the massive dropout rate for girls aged 14, 15 and 16. Womensport and Recreation Victoria suggested that the dropout age for girls had in fact dropped to somewhere between the ages of 10 and 14 years of age. But we know that, between the ages of 10 and 16, there is an unacceptable level of dropout for girls in their participation in sport. It was this point where the dropout statistics come into play that showed the greatest disparity between girls and boys in their levels of physical activity.

Research in Sydney among women aged 20 to 25 showed that most women were active in sport when they were younger; however, on leaving school they showed a marked decline in physical activity. The opportunity for social sport and recreation decreased as they became older. Issues such as negotiating time pressure became more important and non-physical social activities such as shopping and going out with friends became a higher priority for young women.

Motherhood was also shown to be a large factor in the reduction of physical activity, with women’s inactivity increasing with the number of children. Qualitative research has shown that time, money, lack of partner support, lack of leisure companions, poor access to venues and lack of good-quality child care were significant barriers to participation for mothers. The committee noted that that some sporting organisations are taking these drop-out issues seriously and are putting in place some positive steps to try and address the problem.

Most submissions to the inquiry were able to effectively comment on the barriers to women and girls’ participation in sport and recreation, and I would like to summarise some of the observations in the evidence presented. Poor self-image or self-confidence and the feeling that they have a lack of skill to participate in sport was identified as a barrier, as was the dress code. What girls are expected to wear is a barrier for some. Flexibility is the key, with some girls quite attracted to the idea of the flashy lycra suits—but, equally, some girls are put off by that. So it is about getting the right balance. The committee felt that flexibility within those dress codes was the best way to ensure the greatest participation. A lack of positive role models impacts right down to the grass roots. If girls do not see women playing sport, and it is portrayed as a blokey thing through lack of promotion and coverage of sportswomen on television, that has an disincentive impact on girls’ choices to play sport.

The role of family and peers is important in a girl’s perception and experience of sport. Girls whose parents are active are more likely to continue their involvement in sport than girls whose parents are not. Physical education in schools is seen as a critically important key to girls continuing physical activity for life. Learning the physical skills and gaining the confidence to participate at school addresses one barrier—that fear, that self-consciousness of not having the skill set to participate in sport.

I acknowledge the work of the states in this area. The report did compile an analysis of physical activity requirements in state schools. There are many concerted efforts around the country with an emphasis on fundamental movement skills. The inquiry looked into the mandates the states set and found that all states and territories require a level of physical activity in schools.
There are other barriers which particularly affect adult women, including a lack of time—I certainly am familiar with this one! We are all getting busier in our lives and, as the report found, women tend to take the greater responsibility for housework, caring for their children and caring for other members of the family such as the elderly, and they will prioritise that before their own opportunity to participate in physical exercise.

The cost of participation is a substantial factor for women. The costs of participating can be prohibitive, especially where women have a family—they prioritise the costs associated with their children and family members before their own. Access to appropriate, regular and affordable childcare options for many women, particularly single mothers, is a comprehensive barrier to their participation and use of facilities such as gyms and pools. Most community sporting organisations are unable to provide such a service. There are some, but this came out as a consistent theme in the report.

Finally, the lack of appropriate facilities was seen as a large barrier affecting women. Whether it be training space that was prioritised for men’s teams, the lack of female change rooms or the lack of transport to appropriate club facilities, the committee identified good gender balance in the provision and access to facilities as being of the utmost importance. This is being addressed by some councils around Australia and by some sporting clubs, but again the inequities were able to be observed, so something ought to be done.

An important aspect of the inquiry was using the experience and insights of witnesses to inform suggested strategies to overcome some of the barriers. I have mentioned a few through this commentary. Specifically, I would like to identify: improvements to physical education in schools, particularly to ensure girls are comfortable and able to participate fully; relaxing the dress codes; providing programs that emphasise participation and enjoyment rather than the competitive aspects of sport; developing programs that cater to different needs and different abilities; and developing programs in non-traditional or alternative sports to add variety to the opportunity for sports and recreation experience. There is no one sport that everyone is going to love and want to be involved in—so, without that variety, many girls and women are just not going to find their particular niche.

For women, strategies suggested include the consideration of time constraints, costs and work-life support, such as flexible working hours, job sharing, day care subsidies and so forth. The issue of child care ought to be further explored, to look at options for affordable and accessible child care for mothers participating in regular physical activity. As I have mentioned a few times now, with regard to access to facilities, the emphasis needs to be on fair and equitable scheduling of facility use and on facilities that effectively cater for both genders. Quite often it is something as simple and basic as having two change rooms, not just toilets. So the physical infrastructure needs quite a bit of work.

The report also went to other issues in relation to women in elite sport. I have focused so far on general participation issues stemming from this inquiry but I just have a few minutes left to traverse other substantial parts of the report. Those points relate to governance and leadership of women in senior positions in sport and—something that attracted some media attention—the appalling inequity in the amount of women’s sport coverage by Australian broadcast and print media. In the analysis of the committee, this lack of coverage came down to a number of commercial drivers that sit behind the broadcast media model. We have made a substan-
tial recommendation that there be some subsidy provided to intervene and assist these organisations to get over that hump of a commercial risk that comes with new content and developing the advertising revenue, desirability and ratings of that new women’s sport content.

In a way that recommendation calls the bluff of media organisations who say that people do not want to watch women’s sport and that is why they do not put it on. If this recommendation is pursued by the government then I think it really will put these broadcast media organisations on the spot. They will not be able to hide behind that commercial risk factor any more because hopefully the subsidies will be there and we can test out whether or not there is sexism entrenched in the decision making.

The bottom line is that this cycle created by a lack of media coverage means that there is no revenue stream for the sports, which means that there are no professional salaries for female players—our elite sportswomen—which means that sports do not develop and, most importantly, young girls and women do not get to see their female sporting role models on their television sets and in the media. And that has a cyclical effect of depriving them of the inspiration to participate in sport in the first place—and that goes back to my opening point. (Time expired)

Sitting suspended from 1.55 pm to 2.00 pm

QUESTIONS WITHOUT NOTICE

Oil for Food Program

Senator O’BRIEN (2.00 pm)—My question is to Senator Minchin, representing the Prime Minister. Is the minister aware that the recent comments by the member for O’Connor that ‘the dogs have been barking’, about corruption in AWB for years, mirror comments from the well known Victorian grain trader, Mr Ray Brooks? Isn’t the member for O’Connor right when he says that the government was guilty of trusting a mob of agri-politicians with close ties to the National Party? Didn’t Mr Brooks confront the then agriculture minister, Mr Warren Truss, in 2002 with concerns about AWB only to be told by the minister: ‘Don’t give me that bull’—and I will not repeat the last word? Aren’t both the member for O’Connor and Mr Brooks right when they say the National Party ministers were quick to dismiss concerns about the actions of their mates in AWB because they put personal interests ahead of their responsibility as ministers?

Senator MINCHIN—No, they are absolutely wrong. As reported by the Cole commission of inquiry, they are completely wrong. The Cole commission of inquiry has found that there is nothing to indict the behaviour of the Prime Minister, the foreign minister, the Minister for Trade and the Deputy Prime Minister. It is the Labor Party that has got egg all over its face on the matter of the Cole commission of inquiry, running around the country and slandering ministers of this government without foundation at all, and has been found to be out of line by the Cole commission of inquiry.

As far as Mr Brooks and Mr Tuckey go, they are also wrong to the extent they suggest there has been any improper behaviour on the part of National Party ministers. They are both wrong. I reject completely out of hand any insinuations made by the member for O’Connor against members of the National Party. They have acted honourably in every respect, as found by the Cole commission of inquiry. I stand by my National Party colleagues in the cabinet and the ministry.

Senator O’BRIEN—Mr President, I ask a supplementary question. Of course those ministers have been found guilty of incompetence in the court of public opinion. But does the minister agree with Senator Joyce—
Senator Robert Ray interjecting—

Senator Ian Campbell—Say that outside!

The PRESIDENT—Order! Senator Ray and Senator Ian Campbell, Senator O’Brien has the call.

Senator O’BRIEN—Does the minister agree with Senator Joyce, who has defended the bribes paid to Saddam Hussein as a legitimate way of doing business in the Middle East and who defends the continuation of the single desk? Or does the minister agree with the member for O’Connor that the National Party are guilty of condoning corruption and are now ‘running around, trying to see what form of corrupt community we could put together’ for any future role for the AWB and the single desk?

Senator MINCHIN—For the Labor Party to have the audacity to come in here and seek to play out differences that may appear in the coalition is incredible given that these people are all trying to knock off their own leader. They are undergoing the most extraordinary annual event: let’s play the game of undermining the leader. Here we have Mr Beazley deflating before us while Mr Rudd and his supporters continue to seek to destroy their own leader.

Honourable senators interjecting—

The PRESIDENT—Order! Senators on both sides of the chamber will come to order.

Senator O’Brien—Mr President, I rise on a point of order. The question was about the machinations within the government; it had nothing to do with the Labor Party. I know that the minister is seeking to not answer the question, but the question was about Senator Joyce and the member for O’Connor’s comments, and nothing to do with the Labor Party. He should address the question and you should draw his attention to it.

The PRESIDENT—The minister has 37 seconds to complete his supplementary answer.

Senator MINCHIN—We are all much more interested in the machinations inside the Labor Party than anything else and, no doubt, you would be doing your best to cover them up. The government, of course, does not defend bribery in any respect. That is why we set up the Cole commission. We are the only government in the world to set up a fully-fledged, independent inquiry as a result of the Volcker report. There are 2,200 companies involved. We are the only country that set up a commission of inquiry to examine it. AWB have been found out by the commission and prosecutions will no doubt ensue. No-one defends bribery and no-one in this government defends bribery.

Cervical Cancer

Senator PATTERSON (2.05 pm)—My question is to the Minister for Ageing, Senator Santoro, in his capacity as Minister representing the Minister for Health and Ageing. I ask the minister: would he advise the Senate of measures the government is taking to protect Australian women from cervical cancer?

Senator SANTORO—I thank Senator Patterson for her question and also for her strong advocacy of women’s health issues in the broader community. Having recently listed Herceptin for breast cancer on the PBS at a cost of $470 million, I am now pleased to inform the Senate that the Howard government has today decided to fund the cervical cancer vaccine, Gardasil, for girls and women aged 12 to 26 from 2007. The expected cost of the vaccine is $433 million between 2006-07 and 2009-10. Gardasil will be put on the National Immunisation Program on an ongoing basis for 12- to 13-year-old girls and will be delivered through schools. The government will also fund a two-year catch-up program for 13- to 18-
year-old girls in schools and 18- to 26-year-old woman to be delivered through GPs.

The initial submission from the vaccine’s maker, CSL, was considered by the Pharmaceutical Benefits Advisory Committee in early November. At that time the PBAC was unable to recommend funding of Gardasil due to concerns about its cost effectiveness. Given the possibility of introducing an immunisation program through schools in 2007, the minister for health asked the PBAC to consider a revised submission from CSL in an extraordinary meeting. The government would like to thank the PBAC for agreeing to this unusual request.

I am able to inform the Senate that CSL agreed to reduce the price of Gardasil and provide the PBAC with additional information about its long-term effectiveness. CSL has undertaken to make a substantial contribution to any booster program that becomes necessary in the next 20 years and to the cost of setting up a national register to link vaccination data to the latest cervical screening records. The PBAC found that Gardasil is cost-effective at the new price offered. I think that is welcome news for everybody.

All of the usual PBAC processes have been undertaken in the consideration of the revised submission for Gardasil. The accelerated time frame for consideration has not compromised in any way whatsoever the quality of the decision-making process, and the drug was proven to be effective. We believe that it was very important for the government to adhere to the PBAC process to ensure that taxpayers got the very best savings and, indeed, that the drug was to be effective. As the shadow minister for health herself has said about the primacy of the PBAC’s role:

You want experts to look at drugs. You do not want politicians going, ‘I’ll pick that one and not that one.’ That is what Julia Gillard said on 9 am with David and Kim on 3 February this year. The Commonwealth government is now calling on the state and territory governments to implement a school based immunisation program in 2007. We will also work with doctors groups to establish processes for vaccination for eligible women who are no longer at school. This is an excellent outcome for Australian women and I am delighted that this government has been able to make such an important announcement today.

**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 People’s Republic of China, led by Mr Zheng Wantong, Secretary-General of the Chinese People’s Political Consultative Conference National Committee, accompanied by Her Excellency, Madam Fu. I welcome you to the Senate and particularly to Australia.

Honourable senators—Hear, hear!

**QUESTIONS WITHOUT NOTICE**

**Petrol Sniffing**

Senator MOORE (2.09 pm)—My question is to Senator Santoro, the Minister representing the Minister for Health and Ageing. Is the minister aware of reports that six petrol stations in Alice Springs that had agreed to stock non-sniffable Opal fuel have now stopped using it because of community fears that it could damage car engines? Further, is the minister aware of the concerns that these misplaced fears have arisen because of the lack of information about this important fuel? Didn’t the use of Opal fuel in Alice Springs reduce the number of known petrol sniffers from 100 to fewer than six? Is the minister aware of the concerns that these misplaced fears have arisen because of the lack of information about this important fuel? Didn’t the use of Opal fuel in Alice Springs reduce the number of known petrol sniffers from 100 to fewer than six? Is the minister aware of fears that, with unleaded fuel back into pumps and with the onset of the wet season, the number of petrol sniffers and the pain to the community will again
start to increase? What action is the government taking to respond to the decision by petrol stations in Alice Springs to stop stocking Opal?

Senator SANTORO—I am not aware of the specific answers to the questions that are being asked by Senator McLucas. However, I do undertake to seek specific—

Opposition senators interjecting—

Senator SANTORO—Senator Moore, I am sorry. I do undertake to seek specific information and get back to Senator McLucas.

Senator MOORE—I hope, Minister, you will get back to at least one of us; that would be useful. Mr President, I ask a supplementary question. Didn’t the government promise a $2 million information campaign about fuel in this place last year? Isn’t providing strong information the best way to allay the fears of motorists about the impact of Opal fuel on car engines? Will the government take immediate action to ensure that petrol stations at Alice Springs go back to stocking the fuel to help eliminate the scourge of petrol sniffing?

Senator SANTORO—I will certainly undertake to find out specifically what the federal government is doing in relation to petrol stations in Alice Springs. I undertake to get back to Senator Moore as soon as possible.

Centenary House

Senator BRANDIS (2.11 pm)—My question is to Senator Abetz, the Minister representing the Special Minister of State. Will the minister update the Senate on recent developments in the ongoing scandal of the Australian National Audit Office’s lease of office space in the Canberra property, Centenary House? What do the proposed new leasing arrangements say about the ANAO’s 15-year lease with the former owners of Centenary House which will expire in mid-2008?

The PRESIDENT—Senators on my left will come to order!

Senator ABETZ—I thank Senator Brandis SC for his question and I note his ongoing pursuit of the Centenary House rort. The Labor Party’s dirty deal in 1992—when, might I add, Mr Beazley was the minister for finance—to lease most of Centenary House to the Australian National Audit Office was nothing more than a blatant rort. It was a grab for taxpayer cash which Commissioner Hunt found to have cost the taxpayer some $42 million more than market rates would have dictated—a rental rip-off unheard of in commercial leasing circles. Commissioner Hunt found:...

The rent it—that is, the Commonwealth—has paid for the Audit Office space in Centenary House has always been well over market and will probably remain so.

How right he was, for, as the Australian newspaper reports today, the new owner of Centenary House, Cromwell Corporation, has negotiated a new lease of the property to ANAO at just $385 per square metre. That is just one-third of the previous rate imposed upon the taxpayer by Labor, which will be ratcheted up to $1,300 per square metre before expiry. As Cromwell’s asset manager, Paul McDonnell, said today:

We were aware when we bought the property—and that was last year—there was going to be a large rental flow for a period of time, and then that would cease when it went back to market levels ...

If you need any evidence about the nature of the deal which Labor imposed on the Australian taxpayers, you need look no further than the annual report of 2004-05 of John Curtin House Ltd—the ALP entity which until recently owned Centenary House. This report
reveals rental income of some $6,700,000 as opposed to borrowing costs, depreciation and property maintenance expenses of just $1.81 million. And yet somehow John Curtin House Ltd only recorded a net profit of just $1 million. So where did the other $3 million go?

I did a bit of research, and guess what they disclosed? Conscience, I thought, had finally got to them, because in their annual report they had a section: donations, $3 million. I thought: how benevolent; how charitable! Finally, conscience has got to them and they are going to make up for this absolute rort. But, of course, I should have known that we were dealing with the Australian Labor Party. So, when I searched further, I thought: why is it that John Curtin House would not disclose to whom the donation was made? So guess to whom the donation was made? And we discover, not from the annual report but from the Australian Electoral Commission reports, that it was made to those opposite—a $3 million donation courtesy of the taxpayer to the Australian Labor Party.

I say this to Mr Beazley and the Labor Party: until such time as they apologise to the people of Australia and repay the $42 million that they owe the Australian taxpayer, every Australian is entitled to believe that if Labor were ever to get back into government they would commit the same sort of rort again. Until such time as they apologise, they will be unfit to govern this great country. (Time expired)

Senator Robert Ray interjecting—

The PRESIDENT—Order! Senator Ray, I have called you to order many times, and I will ask you to cease because your colleague has the call.

Nuclear Energy

Senator CROSSIN (2.16 pm)—My question is to Senator Vanstone, the Minister representing the Minister for Education, Science and Training. Is the minister aware of the Minister for Education, Science and Training’s assurance on 2 November that radioactive waste dump sites would not go ahead unless:

... the owners of the land in question have understood the proposal and have consented to the nomination, and that other Aboriginal communities with an interest in the land have also been consulted.

Didn’t Minister Bishop also give an assurance that the government would not proceed with nominated sites if these criteria were not met? Isn’t it true that the government’s proposed laws completely undermine Minister Bishop’s assurances by making it clear that a radioactive waste dump will be able to proceed even if communities are not consulted and do not give their consent? Why should this government be able to ignore the views of a community before it sets up a radioactive waste dump?

Senator VANSTONE—Senator, I do not have a brief that enables me to answer the detail of your question and I do not have in front of me either—

Senator Chris Evans—Don’t you come with briefs any more?

Senator VANSTONE—I do have briefs but I do not have one that enables me to answer the question nor do I have the text of what the particular minister allegedly said. Senator Crossin, I do not recall having an experience with you where things have been taken out of context but, as a matter of caution, I would have checked it anyway. I will get you an answer very quickly on that matter.

Senator CROSSIN—Mr President, I ask a supplementary question. The government are not having a good day, are they? Can I also ask you to consider this: why is the government denying Northern Territorians any legal right to be consulted before a radioac-
tive waste dump is established? Does this mean that the government are happy to ride roughshod over local communities to get what they want? Perhaps you could answer this, Minister: is this a sign of things to come under the Howard government’s plans for a nuclear Australia?

Senator VANSTONE—Senator, you may be one of the few people in Australia that do not think Australia should always be looking at what its energy opportunities are for the future. You may be one of the few people that wants to stay like a dinosaur in the past and you may be one of the few people who cannot see the merit in a government quite sensibly, as this government always does, looking to Australia’s long-term national interest.

We will always look to Australia’s long-term national interest. We will not simply, on the basis of an idea we had in the past, refuse to look to the future. Of course we are looking. Of course we have asked for a report to be done. We have received that report and, of course, we will give it proper consideration. By your question, Senator, you confirm every reason why you lot should never be put back over here.

Opposition senators interjecting—

The PRESIDENT—Order! Senators on my left will come to order!

Economy

Senator WATSON (2.19 pm)—My question is directed to Senator Minchin, the Minister for Finance and Administration. Is the minister aware of recent statements by the OECD in relation to the Australian economy, and are these OECD statements supported by any recent surveys regarding business confidence in Australia? What conclusions can be drawn about federal and state government policies from these surveys?

Senator MINCHIN—I thank Senator Watson for that timely question because, in fact, the OECD last night released its latest economic outlook presenting forecasts for the OECD economies, including our own. It found that Australia’s real GDP will grow by 2.6 per cent in 2006 then accelerate to three per cent in 2007 and 3.4 per cent in 2008. The OECD predicts a rebalancing of Australian growth away from domestic demand, following strong private investment growth in recent years, towards increased exports as the large resource projects of recent years come on stream.

The OECD expects the labour market to remain strong and the unemployment rate to remain at its current low levels and expects inflation to ease back in 2007 after its peak this year. In other words, the OECD is predicting that the Australian economy, having had 15 years of continuous economic growth, will now achieve at least a 16th and 17th year of solid growth combined with low inflation and low unemployment.

I was asked about other surveys, and the latest Sensis small business index was also released yesterday. It shows continued growth in confidence amongst small and medium enterprises, the backbone of the economy: 65 per cent of SMEs surveyed felt confident about the next 12 months compared with only 15 per cent reporting feeling worried. So that is a net 50 per cent feeling positive, feeling confident about the economy and their prospects, an increase on both the August and May surveys of this year. The confidence of SMEs was broadly based across states and across industries, although of course confidence is particularly high in Western Australia and somewhat lower in areas affected by the current disastrous drought. Since the last quarter expectations about sales, employment, profitability and capital expenditure have all increased among SMEs.
The Sensis survey also asked small businesses about whether government policies were supportive or worked against the interests of their businesses. When they were asked about the federal government, SMEs that saw current policies as supportive far outweighed those that saw them as working against small business interests. On the other hand, when asked about all the state Labor governments, these were seen on balance by SMEs to be working against the interests of small business, not surprisingly to us. The worst offender of course was the Iemma government in New South Wales where only 14 per cent of SMEs felt the government was supportive, whereas 38 per cent felt that the Iemma government was working against their interests.

The survey also found a positive reaction to Work Choices, our new industrial relations arrangements, amongst small and medium enterprises. Those SMEs that stated that Work Choices was having a positive impact on the businesses outnumbered those who had a negative view by a ratio of two to one in favour of Work Choices. When asked what changes business had made as a result of Work Choices, the Sensis survey reported: The main changes that businesses reported having made were having a new workplace agreement, employing on a contract basis, hiring new employees, and increased pay and remuneration of employees.

In other words, the main changes being reported to Sensis by small business as a result of Work Choices are: more jobs, higher pay.

What has Labor been doing? It has been running around scaring the living daylights out of everybody and accusing the government of engineering mass sackings and reduced wages. The backbone of the economy, the businesses that hire people and pay their wages, are reporting that as a result of Work Choices they are increasing pay and they are hiring more people. The OECD report and the Sensis small business index reinforce the strength of the Australian economy and the results of the strong economic management of the Howard government.

Petrol Sniffing

Senator SIEWERT (2.24 pm)—My question is to Senator Santoro, the Minister representing the Minister for Health and Ageing, and it is also about petrol sniffing. I understand that the advertising and public education campaign explaining the safety and importance of the non-sniffable Opal fuel was completed sometime ago but has not been implemented. Can the minister explain why the government has failed to act to counter misinformation and negative stories about Opal in the Alice Springs media? Can the minister explain what proportion of the money allocated to the education campaign has already been spent and does he expect that ads will be placed in local media?

Senator SANTORO—I appreciate the question from Senator Siewert because it enables me to meet my commitment to get back to the Senate as quickly as possible in relation to an issue about which I have now received a brief. I inform the Senate that the only information—and this needs to be stressed—and this needs to be stressed—and this needs to be stressed—on the potential increase in petrol sniffing is from anecdotal sources. I can inform the Senate that due to concerns about the impact of unleaded Opal fuel in Alice Springs, Mobil and Caltex reverted to supplying regular unleaded fuel rather than the unleaded Opal fuel. Both companies have agreed that they would only return to supplying unleaded Opal fuel when there was a substantial education information campaign in Alice Springs to support the reintroduction of unleaded Opal fuel and when the BP Australia guarantee on unleaded Opal applied to their outlets as well as compensation for the replacement of pump seals.
A recent supply chain audit on unleaded fuel in Alice Springs conducted by BP Australia indicated that the seven retail samples taken met specifications and quality standards for unleaded fuel. This demonstrates that the unleaded Opal fuel complies with the Australian fuel standards as a 91 octane unleaded fuel product. There were two fuel samples taken from customer complaints. In the first customer sample associated with engine failure, the fuel was premium unleaded and was not in fact unleaded Opal fuel. The second customer sample was a fuel mixture that included unleaded Opal fuel which showed signs of ageing along with discoloration and low vapour pressure. The original fuel in the tank—not unleaded Opal fuel, I stress—had passed its use-by date. Therefore the problems do not appear to be as a result of unleaded Opal fuel.

On 18 October—getting very specifically to Senator Siewert’s question—the Ministerial Committee on Government Communications endorsed a proposal for market research. The market research was undertaken in mid-November 2006 with a series of focus group tests and in-depth interviews with the fuel and motor industry and community members in Alice Springs. The discussion from the focus groups indicated that there is insufficient information for residents to understand or make an informed decision about using unleaded Opal fuel. Negative publicity needs to be countered with clear and factual information about Opal. The department intends to take a comprehensive communications strategy, including creative public relations and research briefs, to the MCGC for their approval on 12 December 2006.

The strategy and briefs have been informed by the recent market research undertaken. On 25 October 2006 the department met with all fuel distributors, including Shell and Woolworths, in Alice Springs to discuss strategies for the complete replacement of regular unleaded fuel with unleaded Opal fuel. All fuel distributors indicated that they are committed to full replacement with unleaded Opal fuel. However, a detailed communications strategy to overcome negative public opinion is required to support the product’s reintroduction, and this needs to be done, I am advised, along with very serious consultation with members of the communities up there in Alice Springs. It is expected that the communications material will be ready to be released in February 2007 to support the full replacement of unleaded Opal fuel in Alice Springs. The strategy will focus on educating residents and tourists in Alice Springs about the effectiveness of unleaded fuel to overcome negative public perceptions.

I wish to stress that the reason why the campaign is being rolled out in this way is that there is a very real commitment by the government to involve members of the Aboriginal communities in Alice Springs, particularly the elders, to produce a communications strategy that will be effective. It is no use throwing good money after bad. Unless the communications strategy has the imprimatur and the acceptance of the leaders of that community, the advice the government has is that it will fail.

Senator SIEWERT—Mr President, I ask a supplementary question. I thank the minister for that information but it did not actually address some of my specific issues. I ask specifically: can the minister confirm that campaign materials have already been produced and that these were referred to and held up by the Ministerial Council on Government Communications? Can the minister inform us who objected to the campaign materials and on what grounds were they referred to the ministerial council?

Senator SANTORO—I do not have specific answers to those specific questions in
relation to the ministerial council, but what I can reiterate for the benefit of Senator Siewert and other senators in this place is that the advice that the government has received is that the communication strategy that has particular relevance to that community needs to be made relevant to that community through the creative participation of that community. I have been advised that there could be issues relating to the availability of some of the people who are able to present that particular advice. I think that the government is acting expeditiously and sensitively to the needs and desires of the local Aboriginal community in Alice Springs.

Australian Customs Service

Senator IAN MACDONALD (2.30 pm)—My question is to Senator Ellison in his capacity as the Minister for Justice and Customs. I think all in this chamber would congratulate the Australian Customs Service on the work they do to ensure the security of our borders. I ask the minister if he could update the Senate on measures being taken by the Australian government to enhance the capacity of the Australian Customs Service, particularly in its maritime area, so that it can do even better in its work on securing our borders.

Senator ELLISON—I thank Senator Ian Macdonald for an important question, one which all Australians regard as very important, particularly in his native state of Queensland. I can say that what the Customs Service announced the other day were contracts in excess of $15 million to use private vessels for the purposes of towing suspected illegal fishing vessels back to port and also transporting those illegal fishermen who have been apprehended at sea. It comes from a total package of $389 million which was announced earlier this year in relation to our efforts to combat illegal fishing in our northern waters—and we saw, just recently, Senator Abetz having a roundtable with fishing ministers. This is another part of the whole-of-government approach to securing our borders. It is a contract with 20 private vessels. What it does is free up the time that Customs vessels and naval vessels can be on patrol, looking out for the security of our borders and looking out in particular for illegal fishing. This has been a big issue for us.

In fact, I recall that, when Senator Ian Macdonald was the fishing minister, discussions started with the fishing industry then in relation to the use of private vessels. It is something that the industry supports very strongly. What we are going to do is use assets in the northern sector of Australia which are there for other purposes, such as fishing, mining, oil and gas, in a very efficient, cost-effective manner, whereby we can use those vessels with experienced crew to assist us in towing vessels back to port which otherwise would take up the time of naval vessels and Customs vessels. This frees up those vessels to get out on-station and keep on patrolling Australia’s borders. It is something we announced earlier this year, and we are very pleased to have the cooperation of the private sector in this regard.

These vessels will be operating from Dampier, Broome, Cairns, Townsville and Darwin and will be available on a stand-by basis. The strategy involved is that we will be using a pool of vessels—as I say, 20. Two of those will be used both for towing and for transporting illegal fishermen, 16 will be used solely for the purposes of towing suspected illegal fishing vessels and the remaining two will be used to bring back to port those suspected illegal fishermen.

The opposition can carp and whinge and criticise this, but what they are doing is ignoring the very good work, as pointed out by Senator Ian Macdonald, that the Australian Customs Service is doing with Navy in pa-
trolling our borders. This is a sensible initiative, one which the private sector and other stakeholders supported and one which is cost effective. It means that we can use those assets which are on station to assist us in freeing up Navy and Customs vessels to get out there and have more time to patrol our northern borders, especially in relation to illegal fishing, which is of great concern to this government and of course to the fishing industry in this country. This is another solid initiative in the whole-of-government approach to securing our borders.

Workplace Relations

Senator MARSHALL (2.34 pm)—My question is to Senator Abetz, Minister representing the Minister for Employment and Workplace Relations. Is the minister aware of reports that Commonwealth Bank employees are being asked to sign AWAs that remove 46 award entitlements like overtime, penalty rates, leave loading, shift allowances and rostered days off? Is it also true that these employees are not guaranteed to get any pay increase for the next five years, despite the loss of these conditions? Can the minister confirm that the Commonwealth Bank is able to do this because there is no requirement in the government’s workplace laws to compensate employees for the loss of any of these conditions? Why is the government happy to allow employers to offer AWAs that take away penalty rates and overtime on the one hand but offer no guarantee of anything in return on the other?

Senator ABETZ—Once again we have the Australian Labor Party, through Senator Marshall, seeking to misrepresent the wonderful impact of Work Choices on the Australian community. The wonderful impact has been the creation of over 200,000 new jobs—compared to the situation which Labor presided over when they were in government where one million of our fellow Australians were on the social scrap heap of unemployment. In relation to the specifics of this matter, I understand that the Commonwealth Bank have said this: ‘We have been offering AWAs to our staff since 1997’—some nine years now; and of course the Work Choices legislation only got through in March of this year—’so staff on an AWA get a higher salary—

Opposition senators interjecting—

Senator ABETZ—They do not want to hear this, Mr President: what the Commonwealth Bank is saying is that staff on an AWA get a higher salary.

Opposition senators interjecting—

Senator ABETZ—And if they keep interjecting, I will just repeat it: they get a higher salary. That is why workers want AWAs—because they get a higher salary. But they also choose not to have overtime or rostered days off, or some of the other award based allowances. So they are getting remuneration in place of some of the allowances they previously received. What we have is a situation where the Commonwealth Bank is offering flexibility.

As Mr Combet himself has indicated, the High Court decision has removed all constitutional doubt. And it is very interesting: that was another of the Labor Party’s criticisms, that this was unconstitutional. It was fully and wholly upheld by Australia’s High Court. So the Labor Party were wrong on that score as well. But I do welcome the fact that I have been able to embarrass the Australian Labor Party into finally asking another question about Work Choices, given the drought of some 30 weeks since they last asked a question on Work Choices.

Senator Chris Evans—Have you ever wondered why people don’t ask you questions, Eric? It is because you don’t know anything.
Senator ABETZ—What they—such as Senator Evans with his ongoing carping and interjecting—do not want to hear is that people on AWAs are getting higher wages and that jobs have been created for over 200,000 of our fellow Australians. I welcome the opportunity to talk about Work Choices—and I trust there will be a supplementary question—because every time we talk about it Mr Beazley’s rating goes down in the polls.

Senator MARSHALL—Mr President, yes, I do ask a supplementary question. I ask the minister: how is it fair—or, in his words, how is it so wonderful—for employers to deprive employees of penalty rates and overtime without any compensation? Don’t many middle- and low-income families rely on these payments to pay their mortgages? How does the minister expect the families of Commonwealth Bank employees who sign AWAs to get by when they lose their penalty rates and overtime but get nothing in return?

Senator ABETZ—I did not think question time should be a remedial class, but I think that is what it is turning into. I will try to assist the honourable senator yet again. As I indicated in the initial answer, workers are not deprived of their entitlements; it is their choice as to whether or not they have an Australian workplace agreement. In the circumstances of an Australian workplace agreement, as the Commonwealth Bank itself has said, the workers get a higher salary, so they do get paid more. I repeated that a number of times against the interjections of the Australian Labor Party. The chances are that Senator Marshall, who sits on the back row—where he belongs—did not hear that.

Opposition senators interjecting—

The PRESIDENT—Order! Senators on my left will come to order. There is too much noise in the chamber.

Senator ABETZ—The reality is that workers on AWAs enjoy a higher salary, and that is something Labor never wants to hear. (Time expired)

DISTINGUISHED VISITORS

The PRESIDENT—Order! I draw the attention of honourable senators to the presence in the President’s gallery of a delegation from the Republic of Indonesia, led by Dr Eva Sundari MP, Deputy Chief of the House of Representatives Working Group on Performance. I hope you have learnt something here today! On behalf of all senators, I wish you a warm welcome to Australia and, in particular, to the Senate.

Honourable senators—Hear, hear!

QUESTIONS WITHOUT NOTICE

Visas

Senator STOTT DESPOJA (2.40 pm)—My question is addressed to the Minister representing the Attorney-General. Is the minister aware of reports that Mr Ruhel Ahmed, a British Muslim whose story has been told in the movie Road to Guantanamo, has been banned from entering Australia due to an adverse security ruling by ASIO? Is the minister aware that Mr Ahmed has apparently been given visas to Denmark, France, Germany, Iceland, Ireland, Kosovo, Turkey, Spain and South Africa? Can the minister explain to the Senate now exactly why Mr Ruhel Ahmed has been refused entry into Australia?

Senator ELLISON—I am aware that the Department of Immigration and Multicultural Affairs has refused the issue of a visa to a UK national intending to travel to Australia following a prejudicial security assessment by ASIO. ASIO makes security assessments independently on the basis of all information available at the time and in accordance with the provisions and requirements of part 4 of the ASIO Act. Publicly available and classified information about the nature and type of an applicant’s activities may be used to make
assessments. Owing to the confidential nature of these security assessments, it would be inappropriate for me to comment on individual cases or specific information that underpins assessments. Any person who believes ASIO has acted inappropriately may make a complaint to the Office of the Inspector-General of Intelligence and Security. Other than that, I can make no further comment.

Senator STOTT DESPOJA—Mr President, I ask a supplementary question. I thank the minister for his answer. I ask the minister to ensure that the government will provide to Mr Ahmed the reasons for the rejection of his visa application. I understand that he has been deemed a risk, indirectly or directly, to the security of this nation as per section 4 of the ASIO Act, which defines security as: protecting people from espionage, sabotage, politically motivated violence, attacks on Australia’s defence system, the promotion of communal violence and acts of foreign interference. I think Australians and people around the world want to know exactly which of these criteria Mr Ahmed meets in terms of ASIO’s assessment of him. Given other countries have allowed this man to go to their countries to promote a movie, why is Australia standing in his way?

Senator ELLISON—Assessment by other countries in relation to their own domestic matters is a matter for those countries. As I have said previously, I cannot comment on aspects of a specific case, especially in relation to information that underpins the assessments that are made.

Workplace Relations

Senator CAROL BROWN (2.43 pm)—My question is to Senator Abetz, the Minister representing the Minister for Employment and Workplace Relations. Can the minister confirm that last month the Office of the Employment Advocate issued a memo to staff stating: Leave will not be approved for staff to participate in the National Day of Community Protest— on 30 November. Can the minister indicate whether the Minister for Employment and Workplace Relations or his office was consulted before the OEA issued this memo? Did the minister or his office request or approve the ban on leave at any stage? Does the minister consider it acceptable for government agencies to engage in such blatantly political behaviour and dictate what employees can do in their own free time?

Senator ABETZ—It is always great, during a heated question time, to get asked a question with some humour in it. I thank Senator Brown for the mirth that she has injected into this question time by her suggestions of blatant political intervention in circumstances when we know that that is exactly what the Australian Labor Party and the trade union movement are trying to achieve with a particular event tomorrow.

In relation to the Office of the Employment Advocate, they are able to manage their affairs as they deem appropriate, and they do. If they provide a memorandum to their workers, that is their right to do so. In the event that that memorandum contains information which may be incorrect, it is the right of the worker to challenge that. As I understand it, that is what the worker did with the support of the union. It then went to the appropriate court for hearing and, on appeal, a decision was made. We on this side have always believed in the rule of law in industrial matters, and that is why we have such things these days as the Australian Building and Construction Commission, something which those opposite oppose. In relation to the minister’s alleged involvement—because there is no hint at all that he did—
Senator Chris Evans—She asked you a question.

Senator ABETZ—Senator Evans interjects and says, ‘It was just a question’. That is the way the Australian Labor Party always behave. There is the smear, there is the imputation and there is the suggestion when they have no basis in fact to make that assertion during question time. That is why the people of Australia are just not buying the nonsense that the Australian Labor Party are continually putting forward about Work Choices, because each time you examine their assertion, each time you examine the smear or the innuendo, it is found to be completely and utterly without foundation.

Senator Chris Evans interjecting—

Senator Abetz—Mr President, on a point of order: I have suffered a barrage of interjections from the would-be leader and I suggest that he withdraw his comment.

The PRESIDENT—I did not hear the comment, Senator, but if he did say—

Senator Minchin—Mr President, Senator Evans did call Senator Abetz a hypocrite. I do understand that is unparliamentary.

The PRESIDENT—If that is the case, Senator Evans, would you withdraw that comment.

Senator Chris Evans—Mr President—

The PRESIDENT—No, I ask you to withdraw.

Senator Chris Evans—I want to make a point.

The PRESIDENT—No. I have asked you to withdraw. ‘Hypocrite’ is unparliamentary. Senator Evans, you will resume your seat. I am on my feet, Senator. I have asked you to withdraw that particular statement.

Senator Chris Evans—I just want to make the point that I was rising as Senator Minchin rose to interrupt. Mr President, I am always happy to withdraw an unparliamentary remark. If the sook of a minister is really upset, he ought to get out of the kitchen.

The PRESIDENT—I remind you too, Senator, that when I am on my feet, you resume your seat.

Senator CAROL BROWN—Mr President, I ask a supplementary question. Can the minister confirm media reports that, in its decision to overturn the ban, the Federal Court raised concerns that the OEA’s actions may have breached the Public Service Act? Given these concerns, can the minister explain what action is now being taken to investigate whether a breach of the Public Service Act has in fact occurred? Can the minister guarantee, in light of the OEA’s behaviour, that no employee who does take leave on 30 November will suffer any adverse consequences in the course of their employment?

Senator ABETZ—Clearly, that does not fly. What has to happen under employment law is that somebody has to legally get leave and make the appropriate application to their employer. Therefore, of course we cannot guarantee that anybody who seeks to take leave on the day to attend a rally will not be breached. It depends on how they go about it. If they do it lawfully, as determined by the Federal Court, then they have no worries. We on this side believe that the law ought be settled not by the trade union movement but ultimately by the judiciary of this country. I think the Federal Court in this case has made a decision of which trade union members, employers and those involved in the Public Service should take note.

Telecommunications

Senator NASH (2.49 pm)—My question is to the Minister for Communications, Information Technology and the Arts, Senator Coonan. Will the minister advise the Senate of any developments in the delivery of mo-
bile phone coverage in rural and regional areas and how the government will continue to ensure existing coverage and services are protected? Further, is the minister aware of any alternative policies?

**Senator COONAN**—I thank Senator Nash for the question and for her ongoing interest in ensuring that rural and regional Australia does have world-class communication services. Mobile phones have now become an essential communication device for most Australians. There are now almost as many mobile phones as there are people in Australia, with close to 19 million subscriptions. The government recognises the importance of reliable mobile phone coverage, especially in rural areas. The $180 million targeted funding has already extended mobile phone coverage to 98 per cent of the population. The quality of services in regional areas is being transformed once again as Telstra’s new 3G mobile phone network, Next G, is rolled out across Australia.

Telstra is to be congratulated for this important investment, which provides both improved mobile phone features and a wireless broadband service. However it is important that, when the existing CDMA network is eventually switched off in 2008, there is no deterioration in mobile phone coverage in Australia. To that end, I have sought and obtained an assurance from Telstra that rural and regional areas will enjoy the same, or indeed better, coverage and services under its replacement network, Next G.

Furthermore, coverage audits of both networks by the Australian Communications and Media Authority will help to verify both the quality and reach of coverage. Unlike Labor when in government, which shut down the old analog mobile network without a replacement rural network in place, this government and Telstra have a process in place to ensure a successful transition. ACMA’s field testing will assess voice coverage of more than 80 sites, including city and regional centres, but will focus more heavily on rural areas. The field tests cover a representative selection of sites, including flat, mountainous and average terrain over several states.

ACMA released a request for tender on 19 October to obtain expert assistance in conducting field testing. I am very pleased to inform the Senate that ACMA has today appointed the independent auditor Zamro International. While ACMA’s audit process has already begun, the actual testing of coverage in the field, with the assistance of Zamro International, will commence next month and continue into 2007. It is very important that the people concerned about getting mobile coverage know that this government is committed to achieving a smooth transition to the Next G network and these coverage audits of course will help assure both the government and mobile phone users that a seamless transition to the new network is being achieved.

I was asked about alternative policies. One certainly sticks out. As Senator Nash would recall, we only need to compare this government’s approach with the kind of treatment rural mobile phone users got under the last Labor government. The previous Labor government simply decided to close down the old analog network leaving rural phone users absolutely stranded with not a plan in place and leaving it up to this government to put in place a new network. Unlike Labor, this government will not leave consumers stranded without a mobile phone. We are committed to providing quality communications services to all Australians irrespective of where they live. We can deal with the new technology and we can implement it for the benefit of all consumers.
Job Network

Senator POLLEY (2.53 pm)—My question is to Senator Abetz, the Minister representing the Minister for Workforce Participation. Is the minister aware of recent criticism of the Howard government’s management of Job Network from one of its biggest and most highly regarded members? Is it not the case that a new report from Catholic Social Services Australia confirms that the government provides ‘perverse incentives to delay finding work for job seekers’? Didn’t the report also demonstrate that the government spends over $250 million of Job Network funds on administration and that Job Network staff spend up to half their time on administration rather than on direct client contact? Is it not the case that another major Job Network provider, the Salvation Army, has backed this report? When will the government pull its head out of the sand and acknowledge that Job Network operations require a major revamp?

Senator ABETZ—I thank Senator Polley for her question and recognise that, from time to time, people in the opposition are simply handed questions to ask on behalf of the tactics committee, and so I understand that Senator Polley has been given the unfortunate task of asking this question. Since 1998 the Job Network has in fact been extremely successful in helping unemployed Australians to move from welfare to work, placing over 640,000 job seekers into jobs in the last 12 months. And yet we are being asked to believe, by the honourable senator opposite, that somehow the Job Network process is not working.

From time to time the way we as a government administer Job Network or, indeed, any other activity from government can be informed by suggestions from those within the community. We are not beyond listening to some of those suggestions and, in fact, dealing with them. There are a whole host of examples where we have been responsive. To suggest that the Job Network process has not been working is to fly in the face of all the objective data which shows that the Job Network process has been extremely successful.

Of course, if we cast our minds back just a few years, when the Australian Labor Party were trying to administer getting people out of welfare into work through the Commonwealth Employment Office, you see the fantastic result that we have been able to deliver to the Australian community not only by creating the environment where jobs are being created at a very substantial rate—

Senator Chris Evans—Mr President, I rise on a point of order going to relevance. Senator Abetz was asked a specific question by Senator Polley which went to the report of Catholic Social Services and criticism echoed by the Salvation Army when they suggested that there were perverse incentives that needed to be addressed. I ask you, Mr President, to draw the minister’s attention to the question, rather than having him waffle on, so that he provides an answer to that concern raised by providers, which we think deserves a serious response.

The PRESIDENT—that is a very long point of order, Senator Abetz, you have a minute and a half to complete your answer and I would remind you of the question.

Senator ABETZ—it is a bizarre thing when the Australian Labor Party has asked a question—which Senator Evans himself acknowledges is a criticism of the Job Network process—and somehow I as the government minister am not allowed to defend the Job Network process because Senator Evans does not want to hear the statistics about how well the Job Network process has been working. As I have acknowledged, no system invented by humans has ever been perfect. We...
have never asserted, Mr President, that that which are we are doing is perfect, but I can tell you that it is a damned lot better than that which the Labor Party had in place when we won government in 1996. Last year there were 640,000 Australians who are able to attest to the veracity of that statement that I have just made.

Senator POLLEY—Mr President, I ask a supplementary question. It is pretty obvious that the minister has not read the report. Doesn’t the Catholic Social Services report help to explain why, on the Howard government’s watch, the number of people on Newstart for two or more years has increased by 100,000? Doesn’t this report confirm that even Job Network providers do not believe the Howard government’s Job Network is working?

Senator ABETZ—In relation to the very last part of that question—the suggestion that Job Network recipients do not believe that Job Network is working—as I said in my answer to the previous question, 640,000 of our fellow Australians last year experienced the efficiency of the Job Network processes. There are 640,000 Australians—I do not know how many MCGs that would fill—who can attest to the fact that the Job Network is working. Senator Kemp, the Minister for the Arts and Sport, just told me that that would fill about seven MCGs. That is the success of Job Network. Without a policy of their own, the Labor Party seek to grab around in a desperate attempt to put a dent in us. (Time expired)

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

QUESTIONS WITHOUT NOTICE: ADDITIONAL ANSWERS

Iraq

Oil for Food Program

Senator MINCHIN (South Australia—Minister for Finance and Administration) (3.00 pm)—I wish to add to an answer I gave to a question asked of me by Senator Bob Brown on Monday in relation to military action in Iraq. Senator Brown asked about SAS training in advance of our commitment. I can add to my answer that, as a matter of prudent military planning, the ADF is continually engaged in contingency planning for a range of possible operational scenarios.

I would also like to add to an answer I gave to a question from Senator Faulkner yesterday in relation to OMA reports to DFAT with respect to the oil for food program. The report of the Cole inquiry says, at pages 54 to 57 of volume four, that 15 unassessed intelligence reports were relevant to the scope of the inquiry, and some of these reports indicated that Alia Corporation, based in Jordan, was involved in circumventing UN sanctions on behalf of the Iraqi government. There is a need to place the status of the 15 unassessed intelligence reports in context. The 15 reports are spread over a six-year period, from 1998 to 2004. During this period, the intelligence community produced more than 750,000 unassessed intelligence reports. Although most of the 15 reports refer in some way to corruption in the oil for food program, none mentions AWB and only one refers to wheat.

The issue of government knowledge was comprehensively addressed in Commissioner Cole’s report. The government has no concerns about the extent and timeliness of ONA’s assessments on this matter. I emphasise again that the critical finding of Commissioner Cole’s report is that AWB delib-
ately and repeatedly misled the government and the UN on these issues.

QUESTIONS WITHOUT NOTICE: TAKE NOTE OF ANSWERS

Oil for Food Program

Senator O'BRIEN (Tasmania) (3.02 pm)—I move:

That the Senate take note of the answer given by the Minister for Finance and Administration (Senator Minchin) to a question without notice asked by Senator O'Brien today relating to the Australian Wheat Board and the United Nations Oil-for-Food Programme.

My question was regarding the AWB debacle and this government’s miserable performance in relation to AWB. Despite the con-fected rage of this government—and of Senator Minchin, in particular, in answer to my question—there can be no hiding from the fact that this government has effectively been an effigy of the three wise monkeys in relation to AWB. They have heard no evil, they have seen no evil and they have spoken no evil. In fact, when they have had an opportunity to actually do something, they have put their hands over their ears and closed their eyes. They have done everything possible to avoid taking action and disclosing to the public—or to themselves, for that matter—just what AWB was up to.

In June 2003, when the American wheat industry was talking about corruption and suggesting that bribes were taking place, I put out a press release that said, ‘We haven’t seen any evidence, but Mr Vaile and Mr Truss should investigate this matter.’ What did they do? Nothing. Of course, when the Wheat Export Authority was exposed, by a Senate committee on which the government had a majority, as a paper tiger with limited power—limited power that Mr Truss and Mr Vaile had known about—we found that the government had known about the difficulties since the year 2000 and had done nothing.

So, when the game was over, they were prepared to act.

Did they, when they had the chance, do anything about the Wheat Export Authority, which has been exposed by their commission of inquiry as absolutely useless? No. They left it in power. Wilson Tuckey, the member for O’Connor is right. He said, ‘The dogs have been barking about corruption for years. A number of people who were not Liberals were constantly out in the marketplace saying it was the way you did business in the Middle East.’ Senator Joyce is still saying that. That is what the National Party was saying within the coalition party room for all of those years. That is why nothing was happening.

Senator Heffernan interjecting—

Senator O'BRIEN—Senator Heffernan is drawing my attention to the fact that he has also said that that is the way that business is done in the Middle East. I am not sure if he is saying that that is why the Australian government condoned it. But let us face the facts.

Senator McGauran—That is a most serious reflection upon a senator—Senator Heffernan.

The DEPUTY PRESIDENT—I hear what you say, Senator McGauran, but I did not take it that way.

Senator O'BRIEN—At least Senator Heffernan knows which party he wants to be in. Senator McGauran has had a lot of trouble in that regard. The point has been made that, since Senator McGauran joined the Liberal Party, they have done worse in Victoria than the National Party has—whose vote has actually gone up. But let us not touch upon that. What we are talking about is the absolute incompetence of this government. It is no excuse to say that the nobbled Cole commission of inquiry, with its limited terms of reference, could say anything about the in-
competence of this government. Of course it could not.

You only have to look at Steve Lewis’s column in the *Australian* yesterday where he says that, because the government has control of this Senate, they are not going to be asked the questions that they should be asked. They could not have been asked those penetrating questions at the Cole commission of inquiry because the commission had no power to investigate how incompetent this government was, what they really knew and what they did about it. In fact, when the three wise monkeys of this government appeared before the inquiry, there were very great limitations on the questions that could be asked of them. We now know that, certainly in respect of Mr Vaile and Mr Downer, they made sure that they saw no evil, because they would not read anything; and they heard no evil, because they would not listen to anything; and, of course, they did not say anything that had anything to do with the wheat export corruption, because they claimed they knew nothing about it.

Time will tell whether or not that is true, but the fact is that the Cole commission of inquiry was nobbled from the start. It could not do its job because its terms of reference were limited. In effect, what Commissioner Cole said was that he could not inquire into matters other than those specifically contained within the terms of reference. It was immaterial whether the government was incompetent or not; that was beyond the terms of reference of the inquiry. So here we have a government that is prepared to hide behind its own nobbling of a commission of inquiry. It is prepared to try and attack the opposition and say how terrible we are for attacking this government for incompetence. But everyone in the public knows that this government, in relation to AWB, was totally and utterly incompetent. It missed every signal. It closed its eyes, it closed its ears and it did nothing.

(Time expired)

**Senator EGGLESTON** (Western Australia) (3.07 pm)—The Labor Party is trying to trivialise and drag down what has been a very serious and important inquiry into one of the greatest scandals that has ever involved Australian business. It is a very sad thing that this has occurred, and I think that the Labor Party is behaving in a very irresponsible and quite disreputable manner in attacking the government in this way. The truth of the matter is that Labor has not been able to substantiate accusations of misde-meanour by the Prime Minister, other ministers, the Department of Foreign Affairs and Trade, our ambassadors or anybody else in the Australian government.

The truth of the matter is that the full nature of the oil for food scandal only became apparent after the fall of Saddam Hussein 3½ years ago. The toppling of the Hussein regime gave the United Nations access to Iraqi government documents for the first time and led to the UN setting up the Volcker inquiry on 21 April 2004. It is a matter of record that the Australian government cooperated fully with Volcker and urged AWB to do likewise.

The simple matter is that nobody believed that a great Australian business organisation like AWB—

**Senator Sterle**—Is absolutely corrupt.

**Senator EGGLESTON**—You are right. Nobody believed that a great Australian business organisation like AWB would be engaged in corrupt practices. Nobody believed that because we believe that Australian businesses act in an ethical way. There is no doubt at all that the findings of the Cole commission of inquiry exonerate the government. AWB systematically misled not only the Australian government but also the United Nations. The Volcker report unveiled corruption throughout the United Nations oil
for food program involving no fewer than 2,200 companies from 66 countries while Saddam Hussein was in power. But even though there were 66 countries involved, only one country set up a commission of inquiry, and that country was Australia.

Senator Forshaw—What do you want, a medal?

Senator Eggleston—Yes, I think we do deserve a medal. We do deserve to be praised. We do deserve to be recognised for acting in an ethical and responsible manner and for looking into the facts of what AWB had done. That has been done through the Cole commission of inquiry, and now the government will move on into a second phase of dealing with the outcome of the Cole commission of inquiry.

One of the approaches Labor seems to use is that this is the end of the matter—that the government has closed the book on this issue. In fact, the tabling of the report is just the end of stage 1 of this matter. The Howard government will establish a task force of relevant Australian government agencies to consider, in consultation with the Commonwealth Director of Public Prosecutions, possible prosecutions. Furthermore, the government will introduce legislation and seek its passage in this sitting fortnight to facilitate access by the task force to the many documents held by the Cole commission of inquiry so as to enable prosecutions to proceed.

Commissioner Cole has recommended a number of changes to strengthen Australian enforcement of United Nations sanctions and the conduct of future commissions of inquiry. The government will move speedily to consider those recommendations of Commissioner Cole. Like Commissioner Cole, the government is disappointed that a major Australian company could be involved in such inappropriate conduct. Australia, let me say, does not tolerate corruption—here or in any other part of the world. That is something we as Australians have every reason to be proud of.

Let us look at Labor. We have been told that a couple of Labor MPs told the Australian Financial Review that in private, in the Labor Party caucus room, Kim Beazley conceded that he did not expect the opposition could claim any government scalps. So this is just a beat-up by the Labor Party. It is a fairly disgusting exhibition of gutter behaviour and of larrikins in the street trying to besmirch a very responsible commission of inquiry and a very responsible government. I think you should all be ashamed of yourselves. You should respect the outcome of this inquiry and the integrity of the government in dealing with this matter so speedily. (Time expired)

Senator Forshaw (New South Wales) (3.12 pm)—The defence that has been mounted by Senator Eggleston reminds me of Bart Simpson. He is surveying the wreckage around him and his response is: ‘I wasn’t there. I didn’t do it. Nobody told me. I didn’t see it. It wasn’t my fault.’ But this issue is far more serious than that.

Senator Eggleston has just attacked the Labor Party again. Let us remember that it is this Liberal-National coalition that is in government and has been in government for 10 years. It is this Liberal-National Party coalition government that determined to send our troops into Iraq. You can talk all you like about the other 65 countries, and you can say as much as you like about the other 65 countries, and you can say as much as you like about the fact that you set up an inquiry, but the fact of the matter is that this government, the Department of Foreign Affairs and Trade, in particular, and the minister responsible, Minister Downer, were asleep at the wheel all through this scandal.

They were happy to make decisions to send troops into Iraq and they were happy to
assert that there was evidence of weapons of mass destruction, but now they are saying: ‘We did not know. No-one told us. We were kept in the dark about the greatest corruption scandal in the history of governance in this country.’ Yesterday in question time, Mr Howard said, in answer to a question:

I have found over the years that the best friends the wheat growers of Australia have are members of the Liberal Party and members of the National Party.

What a statement!

Senator Sterle—With friends like that—

Senator FORSHAW—With friends like that, who needs enemies? The problem is that, when it came to AWB, Saddam Hussein was not really the enemy. Whilst this government had the stewardship of trying to ensure honesty and integrity in the export marketing of our wheat, we had a situation where it was full of scandal. The share price of AWB has collapsed and the company effectively is going to have to be wound up or disappear or whatever because the administration of the wheat export industry is a joke. We actually recommended to this government back in 2003 that the Wheat Export Authority should be wound up because the growers had no confidence in it.

This is a scandal of monumental proportions. I have sat in this parliament now for 10 years. I heard members of the now government when they were in opposition—and they still do it today—try and blame the Labor Party because when we were in government there were some scandals, such as the meat substitution situation with AQIS or the Midford situation with Customs. On those occasions the Labor Party took responsibility. We said, ‘Yes, these things happened on our watch and we have to fix them up.’ But what is the position of the government now? They conveniently want to ignore the history of this scandal up until Commissioner Cole’s report on Monday. They now somehow want to claim some credit, some high moral ground, and award themselves a medal, as Senator Eggleston said, because they established an inquiry. The fact of the matter is there would never have been the need to have an inquiry if the Department of Foreign Affairs and Trade and Minister Downer had been doing their job. Mr Cole himself acknowledged that when he said:

The critical fact that emerges is that DFAT did very little in relation to the allegations or other information it received that either specifically related to AWB, or related generally to Iraq’s manipulation of the Programme. DFAT’s response to the information and allegations was limited to seeking AWB’s assurance that it was doing nothing wrong.

They asked the question: ‘Is anything corrupt going on here?’ AWB said no, and they said, ‘Oh, well, that’s all right; we’ll accept that and go off.’ But that sort of scrutiny was totally inadequate. It is not the sort of scrutiny that even this government have applied to other issues, but why did they apply it to this issue?

We know now that the ‘best friends’ that Mr Howard talks about may be people like Trevor Flugge, a person who has a long history of association with the National Party and is even a former candidate for the National Party. For once I actually agree with Mr Tuckey in his criticisms. The government cannot escape responsibility. It was under their stewardship that this gross scandal occurred. The fact is that the Liberal and National coalition parties are not the best friends of the wheat growers; they are the best friends of the best friends that Saddam Hussein ever had. (Time expired)

Senator LIGHTFOOT (Western Australia) (3.18 pm)—I want to correct something quite reprehensible that the previous speaker, Senator Forshaw, said. He said that AWB would be wound up. That is totally incorrect.
Let me put it into some perspective, because it is very important that this sort of information about Australian companies is not given any sort of credibility. The AWB wheat arm—the selling arm, the overseas export arm—is small by comparison with the rest of the assets and businesses of AWB. For instance, Landmark in AWB is by far its biggest employer. AWB is also concerned with finance, with the large retail sector, with farming and with other industries.

Senator Forshaw’s erroneous comment only adds to the misinformation that the Labor Party has been peddling over this very important issue. It seems to be an integral part of the Labor Party that it does not matter what you say as long as you say something that some people are going to believe. I think the only people who will believe the words that Senator Forshaw uttered this afternoon will be the Labor Party people who are going to vote for him anyway. The other people are going dismiss and find quite abhorrent the comments that Senator Forshaw made here today.

We must remember that the most decent, moral and hardworking people in the world are Australian farmers. No group of people in any other industry have the moral backbone that Australian farmers have. All those words that have been spoken here this afternoon will be the Labor Party people who are going to vote for him anyway. The other people are going dismiss and find quite abhorrent the comments that Senator Forshaw made here today.

There is something else I want to say in the very short period I have left—the time always seems too short in these debates on motions to take note of answers to questions. Labor said that there is no joy with the ministers or the Prime Minister. What Commissioner Cole found is that no blame whatsoever can be pointed at the Prime Minister or at any of the Prime Minister’s ministers, either cabinet ministers or outer ministry ministers. No blame can be pointed at them. There is no question that I would rather take Commissioner Cole’s words—his printed words, the words of an eminent judge, a man who has given his life to the law—over the words of those people on the other side who have given their lives to the trade union movement, as commendable as they think that might be. You cannot speak against someone who has that authority and respect and who is an integral part of the system of Australia, which props the whole of Australia up.

Do you know that Mr Beazley actually had briefings on AWB sometime ago, Mr Deputy President? Did the opposition blow the whistle then? Of course they did not. Mr Beazley had the same briefing as the government had on this. Was the whistle blown then by anyone in the Labor Party? No, it was not. They sat on it. They as an opposition sat on their hands, and now we are suffering because they failed as an alternative government. They failed the people of Australia. They failed abysmally.

I think back to those days in the late eighties of the piggery. Remember the piggery scandal? What about that? What was that? The Prime Minister of the time was mixed up in one with of the greatest scandals leading to self-profit of any Prime Minister of Australia. That was absolutely disgusting. I think again of Centenary House. You ripped $43 million above what the rental value was—

Senator Forshaw—Mr Deputy Speaker, I rise on a point of order. I ask that that statement ‘you ripped money’, meaning the members of this side of the parliament, be withdrawn. That is a gross misrepresentation. I also remind the Senate that there were two
royal commissions that found that there was no case to answer by the Labor Party.

The DEPUTY PRESIDENT—There is no point of order.

Senator Forshaw—I took it personally, Mr Deputy President.

The DEPUTY PRESIDENT—Senator Forshaw, I do not care how you took it; there is no point of order. Senator Lightfoot, you have 36 seconds to go.

Senator LIGHTFOOT—Thank you. That is very generous of the clock. I will wind up by saying this: I do not support what happened with that $290-odd million that was paid out in bribes. I do not support that at all. I also do not support the fact that AWB is penalised by the United States and the European Union when they pay billions and billions of dollars in annual subsidies to their farmers that our farmers do not get. If you are going to have a level playing field, the United States and the European Union should remove subsidies. Then perhaps some of these gross misdeeds that have happened, and that undoubtedly have happened to AWB, will be put to one side. (Time expired)

Senator STERLE (Western Australia) (3.23 pm)—I rise to take note of answers given today by Minister Minchin about the Howard government’s disgraceful handling of the AWB wheat for weapons scandal. What a pathetic performance it was. It is clear to me that the minister is still shaken by the heated meeting in the government party room yesterday and that his nerves have not quite recovered. You can understand why his nerves have not quite recovered. You can understand why his nerves would be so shaken, given the considerable tension within the government ranks over this issue.

On the front page of the Australian newspaper today is an article telling us that Mr Alby Schultz MP launched into an expletive-laden attack on Senator Joyce in which he is reported to have told Senator Joyce that he had ‘slit the throats of better animals than you’. Though, to be fair, the West Australian reported that Mr Schultz said that he had ‘cut’ the throats of animals worth more than Senator Joyce. It is possible that in their haste to spill their guts to the media the National Party leakers may have got the exact wording of the exchange mixed up. The report then went on to say that Senator Joyce offered to take the conversation with Mr Schultz outside, until that renowned gentleman and peacemaker, Senator Heffernan, intervened. I have to be honest with you: for what it is worth, I would have had my money on Senator Joyce. After all, you can imagine that Senator Joyce is a bit sensitive about the prospect of so many of his National Party stooge mates facing jail.

Once upon a time in WA we used to call crooks ‘colourful Sydney racing identities’. I think a better name nowadays could possibly be ‘disgraced, failed Nationals candidates’. There is gun-toting Trevor Flugge, former director and chairman of AWB, who was paid over $900,000 out of the AusAID budget for a few months work in Iraq. He is a former National Party candidate. There is Darryl Hockey, AWB’s government relations manager, who is a former adviser to the last National Party leader, the member for Gwydir. They are part of the dirty dozen. They all have deep National Party ties, and what a pack of crooks they are. But do not take my word for it. The member for O’Connor had this to say:

If our side—
and by that I think he means the Liberals and not their coalition partners, The Nationals—is guilty of anything, it’s of trusting a mob of agri-politicians—all of which have close connections with the National Party.

There you go. I would not have a clue what is up with these right-wing numpties who like to travel around the Middle East toting
their guns and getting their photos taken. It is a shame that Senator Lightfoot has left the chamber, because I would like to hear his response to that. He may be able to inform us at a later date.

What the Cole inquiry uncovered was a systematic failure by the Department of Foreign Affairs and Trade for which its minister, Alexander Downer, must take primary responsibility. You can imagine the likes of Mr Downer’s grandfather, one-time Senator Sir John Downer, being somewhat disappointed at his grandson’s cavalier disregard for the Westminster doctrine of ministerial accountability. Sorry for bringing up such an archaic concept. I know it has been a long time since senators in this place have seen this doctrine in action. Foreign Minister Downer’s grandfather may have told him that the doctrine of ministerial responsibility is important because it motivates ministers to closely scrutinise the activities within their departments. They probably even taught Foreign Minister Downer about it at Radley College.

But, sadly, this idiot son of the aristocracy has no regard for the Westminster doctrine of ministerial accountability, despite the fact that he was the decision maker responsible for approving 41 AWB contracts with Iraq over a five-year period. Under the Customs regulations, Mr Downer was required to satisfy himself and to certify that exports to Saddam Hussein’s Iraq did not breach Australia’s obligation to uphold UN sanctions against the regime. He did not, and now he wants an apology. Boo-hoo! Foreign Minister Downer should be the one to apologise. He should apologise to Australia’s wheat farmers, who have lost valuable markets because of his incompetence. He should apologise to Australian taxpayers, who subsidised AWB’s $290 million kickback to Saddam Hussein’s regime to the tune of $90 million.

(Time expired)

Question agreed to.

Petrol Sniffing

Senator SIEWERT (Western Australia) (3.29 pm)—I move:

That the Senate take note of the answer given by the Minister for Ageing (Senator Santoro) to a question without notice asked by Senator Siewert today relating to funding for an education campaign concerning Opal fuel and petrol sniffing.

In his reply, Senator Santoro made a number of interesting statements. He said that market research in Alice Springs was undertaken in mid-October with local fuel distributors, despite the fact that Opal was rolled out in September. He said that a detailed campaign strategy is in the process of being prepared to be run out in February. This is five to six months after the initial rollout of Opal. He said that the target audience was predominantly Alice Springs residents and tourists.

It is very interesting to note that he acknowledges that the audience for the campaign is tourists and Alice Springs residents. The marketing campaign obviously needs to target these people, yet he then said that he was consulting Aboriginal elders in Alice Springs and that the reason for the delay was the difficulties involved in contacting them. This is extremely disingenuous when it is actually tourists and Alice Springs residents that need to be convinced about Opal, not the Aboriginal community. The Aboriginal community already know about the significant benefits of Opal. In fact, it was the Aboriginal community that called on government to roll out Opal across Alice Springs. They do not need to be educated about the benefits of Opal. Education campaigns about petrol sniffing are already going on in Aboriginal communities. They are not the target audience. As I said, it is extremely disingenuous of the government to say that that is the reason for the delay in rolling out an education campaign.
Senator Santoro said that some briefing notes had been prepared about research into vehicles being affected by Opal which proved conclusively—a fact we already know, because millions of litres of Opal are already being used—that Opal was not responsible for the malfunctioning of engines. But this information has not been communicated to the local media, and an ongoing, negative campaign has been run by the Advocate, for one, in Alice Springs, to dissuade people from using Opal.

Did the government take out ads or make any other effort to communicate this vital information to the residents of Alice Springs? No; there was nothing. Did the government contact local petrol stations with this information? Not that I know of. Did it send them posters, pamphlets or other information that showed the outcomes of this research? From what I have been able to find out from people in Alice Springs, the answer to that question is no.

The point here is that a communication strategy needed to be developed and run out as a matter of urgency as Opal was rolled out. It was a grave mistake to put Opal onto the market when it was known there would be confusion, misinformation and distrust, because this information was available on the occasions when it has been rolled out in the past. Plenty of evidence was given to the Senate committee that looked into petrol sniffing that this was what had happened. So the government knew that there would be a campaign of misinformation and that they needed to get information out to the community to let them know the benefits of non-sniffable fuel and the prospect of a decrease in the number of petrol sniffers. They also needed to let people know that it would not have a negative impact on people’s cars.

Eight out of the 13 petrol stations in Alice Springs converted to Opal in September. Now, because of the negative campaign that has been run by the local media, that number has decreased to two. This will inevitably lead—it already is leading—to an increase in the number of people coming into town seeking sniffable fuel again. So it is highly likely that the benefits that were gained initially through rolling out Opal have been lost. It is not only the people in the community of Alice Springs who will suffer because of that; it will also affect the surrounding community. That is one of the reasons why Opal needed to be rolled out across Alice Springs—to help the regional strategy across the broader region.

I understand that money has already been spent on developing an advertising campaign, but that has not been rolled out. It has stopped in the ministerial committee process. We desperately want to know why this has happened, and who did it, so that we can understand why such a sensible campaign has been stopped. It is having such a deleterious effect on the implementation of this program involving the rollout of Opal fuel, which is such an important component of dealing with the scourge of petrol sniffing that is affecting Aboriginal communities so seriously.

One would have to ask why the government have not moved to urgently address this misinformation. Weren’t they informed? Weren’t they monitoring the rollout? How could they so mishandle such an important part of this campaign? (Time expired)

Question agreed to.

NOTICES

Presentation

Senator Humphries to move on the next day of sitting:
That the Senate—
(a) notes:
(i) the maturing relationship between Vietnam and Australia, the high-level contacts between Prime Ministers, Australia’s development cooperation program of approximately $81 million per year, and the strong people to people links,

(ii) continuing international concern about human rights issues in Vietnam, including gaoling, administrative detention, harassment of human rights activists for their advocacy of democracy, and religious freedom,

(iii) the importance of addressing the cases of individuals such as the Most Venerable Thich Quang Do and Thich Huyen Quang, Hoa Hao Elderly Mr Le Quang Liem, Pastor Nguyen Cong Chinh, Dr Pham Hong Son, journalists Nguyen Khac Toan and Nguyen Vu Binh and many ethnic Montagnard people such as Siu Boch, A Brih, and Y Tim Bya,

(iv) the Australian Government’s active support and promotion of democratic freedoms and human rights in Vietnam, including through the annual human rights dialogue, and other cooperation programs, and encourages the Government to continue these efforts; and

(b) asks the Government to consider introducing legislation into the Senate in the sitting week commencing 4 December 2006 to provide that for a period of 15 months or two seasons the final approval power for wheat export licences be transferred to the Treasurer.

Senator Siewert to move on the next day of sitting:
That the Senate—
(a) notes:
(i) there have been calls by land owners in the Ramsar-listed Gwydir Wetlands for it to be de-listed as a Ramsar site due to its degraded condition, and
(ii) the declining condition of Gwydir Wetlands, Macquarie Marshes, the Coorong and other Ramsar Wetlands of International Importance; and

(b) calls on the Federal Government to establish an independent review of the health and management of Ramsar wetlands in Australia.

Senator Siewert to move on 5 December:
That the 2006/07 SBT Australian National Catch Allocation Determination, made under sub-clause 17(2) of the Southern Bluefin Tuna Fishery Management Plan 1995, be disallowed.

Senator Bartlett to move on the next day of sitting:
That the following bill be introduced: A Bill for an Act to remove the privative clause in the Migration Act 1958, and for related purposes. Migration Legislation Amendment (Restoration of Fair Process) Bill 2006.

Senator McLucas to move on the next day of sitting:
That the Senate—
(a) notes that:
(i) 3 December marks the International Day of People with Disability,
(ii) the International Day of People with Disability was established in 1992 by the United Nations General Assembly to promote an understanding of disabil-
ity issues and mobilise support for the dignity, rights and well-being of persons with disabilities and to increase awareness of gains to be derived from the integration of persons with disabilities in every aspect of political, social, economic and cultural life,

(iii) one in 5 Australians (approximately 3.95 million people) has a reported disability and, of those who have a disability, only 53 per cent are in the workforce, compared with 81 per cent of people without a disability, while the unemployment rate among people with disability is 8.6 per cent, compared with 5 per cent for people without a disability, and

(iv) there are more than 2.5 million Australians who take on a caring role and provide some assistance to people who require help because of their disability or age; and

(b) calls on the Government to recognise that advocacy for people with disability is an essential service and that people with disability need access to advocates to speak on their behalf and direction both individually and systemically.

Senator Brandis to move on the next day of sitting:
That the time for the presentation of the report of the Economics Committee on petrol pricing in Australia be extended to 7 December 2006.

Senator Brandis to move on the next day of sitting:
That the Economics Committee be authorised to hold a public meeting during the sitting of the Senate on Thursday, 7 December 2006, from 3.30 pm, to further consider the 2006-07 supplementary Budget estimates.

Senators Payne and Stott Despoja to move on the next day of sitting:
That the Senate—
(a) recognises that 1 December is World AIDS Day, and the theme for 2006 is ‘HIV/AIDS: Let’s talk about it: many faces, different stories’;

(b) notes:
(i) the efforts of those who work to raise consciousness in the community about HIV/AIDS issues and the need for ongoing development of education and prevention initiatives, and
(ii) that according to UNAIDS, the Joint United Nations Programme on HIV/AIDS, there are 39.3 million people globally living with HIV, including 4.3 million new infections in 2006, 960 000 of which are in east, south and south-east Asia, and 7 100 in the Oceania region;

(c) recognises that the Australian Government spends approximately $48 million directly each year on HIV/AIDS initiatives and supports steps to combat the effects of HIV/AIDS through the Asia-Pacific Business Coalition on HIV/AIDS, the AusAID-Clinton Foundation Partnership, and the Asia Pacific Leadership Forum on HIV/AIDS and Development; and

(d) notes the work of private and public institutions and non-Government organisations in the fight against HIV/AIDS.

Senator Nettle to move on the next day of sitting:
That the Senate—
(a) notes:
(i) the decision of the Land and Environment Court of New South Wales to require climate change impacts to be considered in environmental assessments of new projects such as coal mines,
(ii) that coal from the proposed Anvil Hill mine in the Hunter Valley when burnt will cause 27 000 000 tonnes of greenhouse gas emissions, the equivalent of 4 million extra cars on our roads,
(iii) the growing community opposition to the mine, including miners, wine makers and farmers, and
(iv) the 42 per cent growth in coal exports in the 2005-06 financial year; and
(b) calls on the Government to:

(i) ensure that the impact of major projects on climate change be a requirement of all future environmental assessments and federal government decisions, and

(ii) recognise that the continued expansion of the coal industry is not compatible with curbing climate change.

COMMITTEES

Selection of Bills Committee

Senator FERRIS (South Australia) (3.34 pm)—I present the 14th report of 2006 of the Selection of Bills Committee.

Ordered that the report be adopted.

Senator FERRIS—I seek leave to have the report incorporated in Hansard.

Leave granted.

The report read as follows—

SELECTION OF BILLS COMMITTEE

REPORT NO. 14 OF 2006

(1) The committee met in private session on Tuesday, 28 November 2006 at 4.28 pm.

(2) The committee resolved to recommend—

That the following bills not be referred to committees:

• Migration Legislation Amendment (Duration of Detention) Bill 2006
• Migration Legislation Amendment (Restoration of Human Rights) Bill 2006
• Tax Laws Amendment (2006 Measures No. 6) Bill 2006.

The committee recommends accordingly.

(Jeannie Ferris)

Chair

29 November 2006

NOTICES

Postponement

The following items of business were postponed:

General business notice of motion no. 608 standing in the name of Senator Nettle for 30 November 2006, relating to water resources of the Murray-Darling Basin, postponed till 4 December 2006.

General business notice of motion no. 646 standing in the name of Senator Murray for today, relating to donations, loans and gifts from developers to political parties, postponed till 30 November 2006.

General business notice of motion no. 647 standing in the name of the Leader of the Australian Democrats (Senator Allison) for today, relating to carbon dioxide emissions, postponed till 30 November 2006.

COMMITTEES

Rural and Regional Affairs and Transport Committee

Extension of Time

Senator FERRIS (South Australia) (3.35 pm)—At the request of the Chair of the Rural and Regional Affairs and Transport Committee (Senator Heffernan), I move:

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.

Question agreed to.

Corporations and Financial Services Committee

Meeting

Senator FERRIS (South Australia) (3.36 pm)—At the request of the Chair of the Parliamentary Joint Committee on Corporations and Financial Services (Senator Chapman), I move:

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 opera-
tions 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.

Question agreed to.

INTERNATIONAL DAY FOR THE ELIMINATION OF VIOLENCE AGAINST WOMEN

Senator STOTT DESPOJA (South Australia) (3.36 pm)—I move:

That the Senate—

(a) notes that:

(i) 25 November was White Ribbon Day, the United Nations’ International Day for the Elimination of Violence Against Women,

(ii) White Ribbon Day marks the start of 16 Days of Activism Against Gender Violence, a world-wide event encouraging action to end violence against women, which ends on International Human Rights Day on 10 December,

(iii) 2006, which is the 16th anniversary of the 16 Days of Activism Against Gender Violence campaign, celebrates activists who have made the campaign a success and honours women human rights defenders who have suffered intimidation and violence for their activism,

(iv) it is estimated that more than 1 million women have experienced violence in a relationship and that for more than two-thirds of women victims of violence, their children had witnessed the violence, and

(v) the White Ribbon Day campaign receives no government funding; and

(b) calls on the Government to fund the 2007 White Ribbon Day campaign, as a demonstration of its commitment to preventing violence against women.

Question put.

The Senate divided. [3.41 pm]

(The President—Senator the Hon. Paul Calvert)

Ayes............. 32
Noes............. 34
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. 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. Nettle, K.
O’Brien, K.W.K. Polley, H.
Ray, R.F. Siewert, R.
Stephens, U. Sterle, G.
Stott Despoja, N. 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.
Eggleston, A. Ellison, C.M.
Ferguson, A.B. Ferris, J.M. *
Fierravanti-Wells, Fifield, M.P.
Heffernan, W. Humphries, G.
Johnston, D. Joyce, B.
Kemp, C.R. Lightfoot, P.R.
Macdonald, I. MacDonald, J.A.L.
McGauran, J.J. Nash, F.
Parry, S. Patterson, K.C.
Payne, M.A. Ronaldson, M.
Scullion, N.G. Troeth, J.M.
Troad, R.B. Watson, J.O.W.

PAIRS

Campbell, G. Boswell, R.L.D.
Conroy, S.M. Santoro, S.
Evans, C.V. Vanstone, A.E.
Faulkner, J.P. Minchin, N.H.
Sherry, N.J. Mason, B.J.
* denotes teller

Question negatived.

LOGGING IN TASMANIA’S WELD RIVER VALLEY

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (3.44 pm)—I move:

That the Senate calls for a halt to all logging destruction in Tasmania’s Weld River valley until and unless:

(a) the Government completes a World Heritage evaluation of the forests;

(b) the Tasmanian Government shows that there is no prudent or feasible option to that destruction;

(c) an independent evaluation of the valley’s long-term economic value, including its tourism potential and carbon sink value, has been completed; and

(d) the full loss of water, carbon, biodiversity and honey production value from the destruction proposed is known.

Question put.

The Senate divided. [3.45 pm]

(The President—Senator the Hon. Paul Calvert)

Ayes………….. 8
Noes…………… 53
Majority……… 45

AYES

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

NOES

Abetz, E. Adams, J.
Barnett, G. Bernardi, C.
Bishop, T.M. Brandis, G.H.
Brown, C.L. Calvert, P.H.
Carr, K.J. Chapman, H.G.P.
Colbeck, R. Coonan, H.L.
Crossin, P.M. Eggleston, A.
Ellison, C.M. Ferguson, A.B.
Ferris, J.M. * Fielding, S.

Fierravanti-Wells, C. Fifield, M.P.
Forshaw, M.G. Hogg, J.J.
Humphries, G. Hurley, A.
Johnston, D. Joyce, B.
Kemp, C.R. Kirk, L.
Ludwig, J.W. Lundy, K.A.
Macdonald, J.A.L. Marshall, G.
McEwen, A. McGauran, J.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. Stephens, U.
Sterle, G. Troeth, J.M.
Troid, R.B. Watson, J.O.W.
Webber, R. Wong, P.
Wortley, D.

* denotes teller

Question negatived.

COMMITTEES

Scrutiny of Bills Committee Report

Senator ROBERT RAY (Victoria) (3.50 pm)—I present the 11th report of 2006 of the Senate Standing Committee for the Scrutiny of Bills. I also lay on the table Scrutiny of Bills Alert Digest No. 14 of 2006, dated 29 November 2006.

Ordered that the report be printed.

Senator ROBERT RAY—I move:

That the Senate take note of the report.

In its Alert Digest No. 12 of 2006, the Scrutiny of Bills Committee drew senators’ attention to certain provisions in the Environment and Heritage Legislation Amendment (No.1) Bill 2006. The committee’s comments ran to 12 pages and the issues raised were such that they prompted government and opposition senators to join me in expressing concern at the apparent lack of rigour in the drafting of this bill, particularly in the drafting of the explanatory memorandum that accompanies it.
The bill was the subject of examination by the Senate Standing Committee on Environment, Communications, Information Technology and the Arts. That committee noted the Scrutiny of Bills Committee’s concerns and expressed the hope that the minister’s response to the questions raised by the committee would address these concerns. I am sorry to say that for the most part they do not, and the committee continues to draw a number of these concerns to the attention of the Senate in its 11th report of 2006.

The committee’s general concern with this bill is that it introduces a range of significant and intrusive powers and fails to provide the detailed explanation and justification which this committee and the Guide to Framing Commonwealth Offences, Civil Penalties and Enforcement Powers expects in such exceptional circumstances. In responding to the committee’s request as to the justification for the imposition of strict liability in the bill, the minister has responded in detail, setting out the justification in each case with relevant background and examples and assuring the committee that the principles set out in the guide and in the committee’s sixth report of 2002 were given due consideration in drafting the provisions. The committee regrets that these clear explanations have not been included in the explanatory memorandum to the bill.

The committee is less than satisfied with the minister’s responses to its concerns in relation to other provisions. For example, the committee noted that the bill provides for the removal of merit review by the Administrative Appeals Tribunal for decisions made personally by the minister in relation to various types of permits. The committee’s concerns are not allayed by the minister’s statement that these complex and sensitive decisions are considered sufficiently important to be taken by the minister as an elected representative and therefore should not be overturned by an unelected tribunal such as the AAT. The committee notes the submission of the Law Council of Australia that these provisions do not appear to allow for the position where the minister in applying the law under this act may have applied the law incorrectly.

Similarly, the committee continues to have concerns in relation to a lack of clarity regarding the types of searches provided for under certain provisions. The primary act distinguishes between frisk searches and ordinary searches. The committee was concerned to note that certain provisions in the bill make no such distinction, leaving it unclear as to the exact nature of the incursion on personal rights and liberties under such provisions. The minister has responded, stating that the searches in question are ‘essentially the equivalent of frisk searches’ and that it is unnecessary to specify the nature of the search in these particular provisions. The committee is not persuaded by this. These provisions permit a degree of intrusion upon an individual’s rights and liberties and the provisions should be quite clear as to the extent of this intrusion, particularly as the act already provides the means to achieve this.

Finally, the committee remains concerned at the limited justification provided for the insertion of the power to conduct strip searches. The committee draws no comfort from the minister’s statement that it is considered highly unlikely that it would ever be necessary to conduct strip searches of environment detainees and that similar powers under the Migration Act have only been used once since January 2003. This statement does little to demonstrate a need for the introduction of such exceptional powers.

Statements like these underscore the committee’s long-held view that parliament needs to exercise caution when considering legislative proposals containing such intru-
sive powers. Where such powers are provided, there is a need for greater accountability and review in relation to how and when they should be used. The committee notes that in other jurisdictions the exercise of police powers such as these is monitored by parliamentary committees. The committee considers that the extension of such powers to other agencies must be accompanied by clear accountability and reporting mechanisms.

The committee notes the minister’s statement that the Department of the Environment and Heritage will be working closely with the Department of Immigration and Multicultural Affairs to establish mechanisms and protocols for the implementation of these amendments. The committee expects that these mechanisms and protocols will be tabled in the parliament, as is the case in relation to similar powers exercised under the Migration Act, on which these amendments are modelled. I urge senators to give due consideration to the concerns set out in the committee’s 11th report of 2006.

Senator BARTLETT (Queensland) (3.56 pm)—I would also like to speak to this report. It is important that senators do give consideration to this report. The Scrutiny of Bills Committee is one of the underrecognised committees in this place, in part because it goes about its work in a non-partisan way and because it deals with issues that are in broad terms outside of policy debate. It assesses legislation not on its policy merits but on whether it meets basic guidelines, including the adequacy of the drafting of explanatory memorandum to legislation and some basic legal principles.

This report flows on from the Alert Digest, as Senator Ray has said, and it is important to draw attention to it. It relates to the Environment and Heritage Legislation Amendment Bill (No. 1), which is due to be debated. Debate on that will probably start later this evening or else tomorrow. I do not wish to pre-empt debate on that but I do want to draw attention to the report because I think it is important that all senators—and obviously particularly all senators on the government side, who, one would assume, are more likely to vote for the legislation unamended—consider the issues raised in this report. I assume it is a unanimous report, as is almost always, if not always, the case from this committee. That means that it should be taken even more seriously than other reports. It deals with the basic legalistic framework of legislation and particular matters such as those raised by Senator Ray.

It is also important because the responses given by the minister, at least in some of the concerns that are raised, draw on the rationale: ‘We’re doing this to make it consistent with other acts.’ In relation to these powers about, for example, strip searches, searches without warrants and other types of searches, the minister has said: ‘We’re doing this to make it consistent with the Fisheries Management Act.’ I recall that it was in the middle of last year when the Fisheries Management Act was amended to make it consistent with the Migration Act.

I certainly agree that consistency in legislation is a good thing, but the report of the committee draws attention to the important fundamental principle that you do not give these sorts of extraordinary powers to conduct searches without warrants and strip searches to general Commonwealth officials. These are not Federal Police officers; they are Commonwealth officials, Fisheries officers and Customs officers. An extremely good reason for not giving those sorts of powers is that you will not then have the problem of a slippery slope starting to operate, where, once it is in place in one act, you can say: ‘It’s already done in this act. We’re just putting it in another one; we’re putting it
in a third one.’ The in some ways counterintuitive argument from the minister is: ‘We’ll put in these strip-search powers. It’s highly unlikely we’ll ever need them but we’ll put them in anyway because it makes it consistent.’ It being highly unlikely you will ever need them is not exactly the most compelling argument for introducing powers like these. You should have a compelling argument before you bring them in.

Similarly, with the strict liability offences, including strict liability offences that have jail terms, there have been quite comprehensive responses from the minister, and I acknowledge that. As the committee has said, it would have been rather more helpful if many of these points had been put in the explanatory memorandum in the first place—that is what explanatory memoranda are for. They are not just for us as legislators but for people in the community so they can read them and understand why we are doing something. It is no use having explanatory memoranda that say, ‘Clause x does y.’ You can read that in the bill. You need to know why it is justified and what the reasoning is for introducing strict liability offences, in particular where they have jail terms attached. People can make their own judgements about whether the explanations warrant imprisonment being attached to the strict liability offences. But the committee has repeatedly stated that these things should be explicitly reflected in the explanatory memorandum, and it is a significant problem when they are not.

The other area I draw attention to is the minister’s response with regard to removing the merits review of ministerial decisions preventing appeal to the Administrative Appeals Tribunal. The rationale given by the minister is:

... where these decisions are sufficiently important to be taken by the Minister as an elected representative, those judgement calls should not be able to be overturned by an unelected tribunal such as the AAT.

Senator Robert Ray—Tell the High Court.

Senator Bartlett—As Senator Ray says, it is a nice argument—try that out on the High Court, which is also unelected. It is a nice rhetorical flourish, I appreciate that. We are all elected; they are not. That does not mean that we can do whatever we want and everyone else can get lost. We do have a system of checks and balances in our Constitution and in our political system. It is not as strong as I would like it to be, but it is still there. Again, I point to the danger of the slippery slope—if you adopt the argument that this is a difficult, complex decision and if I make it as an elected official then someone who is unelected cannot tell me I am wrong. I am sorry, but that is not really my idea of checks and balances or my idea of accountability and scrutiny. It is my idea of quite a dangerous precedent, particularly if that is the reason given for that precedent.

If there is some other reason—for example, if it is a problem for environmental protection, national security or something like that or if there needs to be certainty in decisions and no merits review; there are areas in other acts where merits review of some decisions is not allowed, including the Migration Act—then let us put that reason. But to just say, ‘I am an elected official and the AAT is not, so it should not be able to overturn my complex and sensitive decisions,’ is not only a flimsy but quite a dangerous precedent to put in place. I note that the committee in its report says:

The committee finds the explanation that such important and complex decisions ‘should not be able to be overturned by an unelected tribunal such as the AAT’ obscure.

It is an interesting word to apply—‘obscure’. I can think of words other than ‘obscure’ but
it certainly suggests the committee is less than satisfied with the adequacy of the explanation put forward by the minister. I again urge all senators to read this report. I am sure all senators regularly read the Scrutiny of Bills Committee reports but perhaps occasionally they may have fallen short of doing so, particularly in recent times with all the other work to do. If they have fallen out of the habit of reading every single Scrutiny of Bills Committee report, I suggest that if there is one that they are going to read it should be this one, and if they are going to read it they should do it pretty soon. If this legislation comes on for debate within the next day or so, some of these matters, frankly, should not pass without further scrutiny and examination in the committee stage of the debate. I hope that at least some of them are not allowed to pass into law at all.

Question agreed to.

PARLIAMENTARY ZONE
Proposal for Works

Senator COLBECK (Tasmania—Parliamentary Secretary to the Minister for Finance and Administration) (4.05 pm)—In accordance with the provisions of the Parliament Act 1974, I present a proposal to provide directional and interpretive signage in the Parliamentary Zone. I seek leave to give a notice of motion in relation to the proposal.

Leave granted.

Senator COLBECK—I give notice that, on the next day of sitting, I shall move:

That, in accordance with section 5 of the Parliament Act 1974, the Senate approves the proposal by the National Capital Authority to provide directional and interpretive signage in the Parliamentary Zone.

DELEGATION REPORTS
Parliamentary Delegation to the Republic of Korea and the United States of America

Senator JOHNSTON (Western Australia) (4.05 pm)—by leave—I present the report of the Australian parliamentary delegation to the Republic of Korea and the United States of America which took place from 13 to 24 September 2006. I seek leave to move a motion to take note of the document.

Leave granted.

Senator JOHNSTON—I move:

That the Senate take note of the document.

I will speak briefly to this report because I know that there are other speakers on this matter. The Senate Standing Committee on Foreign Affairs, Defence and Trade is exploring a reference relating to Australia’s capability with respect to naval shipbuilding. Pursuant to that reference we wrote to the Hon. Dr Brendan Nelson, the Minister for Defence, and asked him if the committee might go to see Hyundai and Daewoo in South Korea and then some other naval shipbuilding operations in mainland United States. Thankfully, the minister was very supportive of the committee’s inquiry and assisted us by writing to the Prime Minister endorsing the proposal, and the Prime Minister authorised and further endorsed the proposal. I want to say thank you to Dr Nelson, firstly, and of course to my Prime Minister, importantly, for assisting us to get to the places that are set out in the report. So I thank my Prime Minister and my Minister for Defence for their assistance in facilitating this delegation, which really is more accurately described as a working trip in support of a reference.

I want to thank Senator Mark Bishop and Senator Steve Hutchins, the two members of my committee who accompanied me, for all of their assistance and hard work. This was a
very difficult trip to many places—which I will set out in a moment—in the course of nine days. I also want to thank the officials who came with us. Ms Lisa Fenn, from the secretariat, was a tireless worker who greatly assisted the committee in our endeavours; indeed, our report would not have been the success that I believe it is without her hard work. And I thank Mr Martin Quinn, counsellor with the Australian Embassy in Seoul in the Republic of Korea; Mr Jim Gledhill, Defence Materiel Attache in Washington, who was of enormous assistance to the committee; and Lieutenant Commander Peter Mingay, a specialist marine engineer on exchange assignment in San Diego with the United States Navy, who assisted the committee with matters of technical information relating to engine systems, power systems etcetera.

The trip left Sydney on a Wednesday. We got to Seoul on Thursday morning at about 7.30. We got to Pusan at about 9.30, got in a helicopter and went to Daewoo. We had a look at their operation, which is large heavy ship building, and saw some submarines and other vehicles that they have been constructing for both South-East Asian countries and for their own government. We went to Hyundai on the following day and to Poongsan, a munitions factory that provides munitions for our five-inch guns on our Anzac frigates. On Friday we left for Los Angeles and on Saturday we arrived at New Orleans in Louisiana. On Monday we went to Northrop Grumman at Pascagoula to see Arleigh Burkes and LHDs being manufactured. We had an outstanding tour of that facility and learnt many things. On the following Tuesday I must say that as a Western Australian I was very proud to visit Austal’s premises in Alabama to see the construction of a very large, fast ferry for Hawaii and the new littoral combat ship which Austal has secured a contract to construct in Alabama. Austal is doing quite amazing things in the United States; from the things that we saw, I think they are going to go from strength to strength. I want to thank all of the staff at Austal for their assistance and for their support of the committee’s work in assisting us to understand exactly what they are doing.

We went to Lockheed Martin and were privileged to meet the CEO and chairman of the board, Mr Bob Stevens—the famous Bob Stevens in charge of one of the largest defence contractors in the world, at Lockheed Martin. Of course, Lockheed provide to us the Aegis system that is going on board our air warfare destroyers. That was at Moores-town in Pennsylvania. Then on the Thursday we went up to Raytheon at Tewksbury in Massachusetts to see the defence systems integration facility there. This was a most outstanding visit. The logistics and work being carried out by Raytheon in preparing and understanding systems to be integrated in defence platforms had to be seen to be believed. On the last day, the Friday, having been away for just over a week, we went to the General Dynamics operation at Bath in Maine to see where the Arleigh Burkes are manufactured. The Arleigh Burkes are the US Navy’s principal vessel as a platform for the Aegis phased array radar system, which will be the centrepiece of the new air warfare destroyers.

Having said all of that, I do not want to go on other than to say, again, thank you to the Minister for Defence for supporting the committee in the way that he did. The overall report is due to be tabled next week. It is a very large report, as one would expect, with the committee having travelled and done the work that we have done. I reiterate my thanks to all those people who assisted us. It was an outstanding trip and I think the committee benefited greatly from understanding what the world’s leaders in ship manufacture and construction are doing.
Senator MARK BISHOP (Western Australia) (4.12 pm)—I rise to make a few remarks on the report of the Australian parliamentary delegation to the Republic of Korea and the United States of America. I am quite content to endorse the basic thrust of the remarks made by the leader of that delegation, Senator Johnston, in his report. I want to make a few comments for the record and, at the outset, acknowledge the support of the Prime Minister, the Minister for Defence and, interestingly enough, the head of the Defence Materiel Organisation, Dr Gumley, who, I have been made aware, was instrumental in informing the Prime Minister that it would be of value to the members of the committee to visit those two countries to inspect the relevant shipyards and to meet with representatives of those major companies. To those three persons—the Prime Minister, the defence minister and the head of the DMO—acknowledgement must be made of their support because it is most unusual. I think it is the first time in all of my time in this place that a domestic Senate committee has been able to travel overseas, so I acknowledge that support.

The purpose of the visits was for committee members who have been involved in a fairly intensive inquiry into the utility or otherwise of Australian domestic manufacturing of naval craft to become exposed to and familiar with some of the practices that occur in competitor countries, in particular the Republic of South Korea, which is a world leader in the manufacture of large commercial craft and has a growing indigenous naval industry, and the United States, which has a longstanding naval construction industry. As Senator Johnston said, we met with major companies in regions of South Korea and the United States.

The underlying theme of the inquiry of which this overseas visit was a subpart is whether outcomes of the naval construction industry in this country should be market driven, remote from and not dependent at all upon government involvement or intervention or whether there is justification for Defence involvement to affect market outcomes in defence orientated industries. That really is the intellectual divide that is emerging in a range of the submissions to the committee.

It is clear from our visit to the eight or 10 sites in the United States and South Korea that major international ship manufacturers and major international defence supply operators are heavily integrated with government at all levels in the operations of their companies in those two countries. In South Korea we met with representatives of the Hyundai and the Daewoo shipbuilding companies. Those companies are world leaders in the manufacture of oil and gas tankers, overseas and undersea oil and gas platforms and container ships.

Both companies have a heavy commercial focus and bias permeating all aspects of their operations. The involvement of those companies in naval shipbuilding is done at the express request of their own governments, which, as a policy decision, have a desire to have an indigenous strategic manufacturing capability for defence purposes. Indeed, it was clear to us that if both of those companies could get out of the naval shipbuilding side of their business they would do so at a rate of knots. It is significantly different to the commercial shipbuilding side, where they have scale and scope advantages over competitors and where they are really doing quite well. They do not want to be allocating any funds or time at all to a much more difficult task.

In the United States the committee visited a range of shipping sites in Louisiana, Missouri and Maine. Again, it is clear that in the United States there is a policy call by government that there be two large shipbuilders
maintained in that country, and there is clearly managed competition. There is heavy private sector involvement at all levels. It was clear from discussions at those sites, and with the two major companies, that commercial considerations in all of their deliberations at a company level and a site level are paramount, particularly where there are long supply orders going over decades.

There is also heavy government involvement in Navy procurement in terms of process and regulation, and there is significant input into decisions to award contracts worth billions of dollars over decades from members of the House and the Senate in the United States. Representatives in shipbuilding areas from both of those houses are regularly briefed by companies and regularly participate at all levels in the decision making as to the awarding of contracts—a different system to that of this country.

In Louisiana, Austal, an Australian company, is establishing a large manufacturing base in naval shipyards. Interestingly Austal is heavily involved in the design and manufacture of the US Navy’s littoral combat ship. Committee members were told there is significant city and state assistance provided by local authorities to attract and retain Austal as a major manufacturer in that region. Indeed, it is the largest manufacturer in that part of the United States. Further detail of that extensive city and state assistance provided regularly can be found at paragraph 3.28 on page 17 of the report.

There is a critical point and a clear message from exposure to those two major world leaders of shipbuilding, and that is that there is large, persistent, continuing and significant involvement at all three levels of government in all facets of naval shipbuilding. The United States government, for instance, is involved in strategic planning, strategic management, managed competition, procurement allocation, financial assistance, tax incentives, labour market planning and assisting joint venture operations between competitor companies. In addition to that level of involvement from the United States government, and similarly in South Korea, there is significant and ongoing interchange between military and civilian personnel. There is extensive political involvement of elected representatives in contract allocation.

What is the point of this recitation? It is that there is no pure market in naval shipbuilding in either the United States or South Korea. We know from available evidence that similar assertions can be made concerning major shipyards in both Spain and France. Thus there is no apparent reason why Australian defence naval manufacturing, hull construction, systems fit-out and systems integration should not be done 100 per cent in this country. There is no pure market in this country, there is no pure market in the United States, there is no pure market in South Korea and there is no pure market in Spain or France. Government involvement, direction, regulation, assistance and purpose are all predicated on national objectives relating to strategic industry policy, a subset of defence policy as determined by respective governments in those countries.

For us to say that we do not need the industry, we should not be paying the extra costs and we should not be calculating the premium that is required to establish, maintain, grow and develop an industry for an island continent is really to say, ‘We are different from the rest of the world, who have made decisions opposite to those.’ That is clearly the thrust of this. This is clearly a conclusion that can be made from the report under discussion. I suspect it will become a feature of the eventual report of the committee itself, which is to be tabled late next week.
Finally, I too want to express my appreciation for the assistance provided by Ms Lisa Fenn, who was the secretary of the committee in its travels overseas. Her courtesy, her planning, her organisational skills and her ability to relate with a range of people at a most senior level in both countries was remarkable. I should put on the record our appreciation of her for the work she has done to date, particularly the drafting of this report and her commitment elsewhere.

Question agreed to.

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

JUDICIARY LEGISLATION AMENDMENT BILL 2006

PRIVACY LEGISLATION AMENDMENT (EMERGENCIES AND DISASTERS) BILL 2006

Returned from the House of Representatives

Messages received from the House of Representatives returning the bills 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

TELECOMMUNICATIONS AMENDMENT (INTEGRATED PUBLIC NUMBER DATABASE) BILL 2006

CUSTOMS LEGISLATION AMENDMENT (NEW ZEALAND RULES OF ORIGIN) BILL 2006

First Reading

Bills received from the House of Representatives.

Senator COLBECK (Tasmania—Parliamentary Secretary to the Minister for Finance and Administration) (4.23 pm)—I indicate to the Senate that these bills are being introduced together. After debate on the motion for the second reading has been adjourned, I will be moving a motion to have two of the bills listed separately on the Notice Paper. I move:

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

Question agreed to.

Bills read a first time.

Second Reading

Senator COLBECK (Tasmania—Parliamentary Secretary to the Minister for Finance and Administration) (4.24 pm)—I move:

That these bills be now read a second time.

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

Leave granted.

The speeches read as follows—

ANTI-MONEY LAUNDERING AND COUNTER-TERRORISM FINANCING BILL 2006

The Anti-Money Laundering and Counter-Terrorism Financing Bill and the Anti-Money Laundering and Counter-Terrorism Financing (Transitional Provisions and Consequential Amendments) Bill 2006 (Consequential Bill) are the first part of a legislative package that will reform Australia’s anti-money laundering and counter-terrorism financing (AML/CTF) system. The primary purpose of the legislative package is to ensure Australia has a financial sector that is hostile to criminal activity and terrorism.

The reforms will bring Australia into line with international standards set by the Financial Action Task Force’s (or “FATF”) Forty Recommendations and Nine Special Recommendations on Terrorism Financing. The FATF recommendations provide an enhanced and comprehensive frame-
work of measures for combating money laundering and terrorism financing.

Business has supported the development of this legislative package as it will ensure that Australia’s financial sector remains robust and internationally competitive. The international financial services sector must take into account adequacy of AML/CTF compliance when dealing with foreign counterparts and jurisdictions. Australian business faces reputational risk and financial loss if Australia fails to observe international standards.

As a significant contributor to the development and implementation of AML/CTF systems in our region, Australia needs to take the lead in meeting international best practice.

The current legislative package implements the first tranche of AML/CTF reforms covering the financial sector, gambling sector and bullion dealers as well as lawyers and accountants, but only to the extent that they provide services in direct competition with the financial sector. The second tranche will cover real estate agents, jewellers, lawyers and accountants. Work on the second tranche reforms will commence after implementation of the first tranche has been started. The second tranche legislation will be tailored to meet the particular needs of the small business sectors to which it will apply.

The Anti-Money Laundering and Counter-Terrorism Financing Bill will impose a number of obligations on businesses called reporting entities under the legislation, including customer due diligence, reporting, record-keeping and developing and maintaining an AML/CTF program. The banking sector will also be obliged to conduct due diligence on its correspondent banking relationships and ensure appropriate identifying information is included in international electronic transfers of funds.

Under the legislative package, the Australian Transaction Reports Analysis Centre (AUSTRAC), which will have a range of new regulatory functions, will receive an additional $139 million over four years. Further to its enhanced role as a financial intelligence unit, AUSTRAC will now have a significantly expanded role as the national AML/CTF regulator with supervisory, monitoring and enforcement functions over a diverse range of industry sectors. AUSTRAC will also have a major role in education, awareness raising and providing guidance on AML/CTF compliance for businesses.

The Government is committed to ensuring that Australians understand their new obligations under the legislation and has provided $13.1 million for a public education and awareness campaign.

Consistent with the Government’s commitment to reducing regulatory burdens on business, the legislative package implements a risk-based approach to regulation. Reporting entities will manage operational risks through AML/CTF programs developed in accordance with operational Rules. AUSTRAC will monitor compliance with these programs and will assess the reasonableness of the entity’s risk assessment.

The risk-based regulatory approach recognises that reporting entities have the experience and knowledge needed to assess and mitigate risk. It will also help mitigate compliance costs by providing industry with the tools to concentrate their resources on areas where money laundering and terrorism financing risk is higher. Industry has endorsed the risk-based approach. Australia’s risked-based approach is similar to that taken in the United States and the United Kingdom.

The Anti-Money Laundering and Counter-Terrorism Financing Bill will be implemented in stages, with the most complex and costly obligations to be implemented twenty four months after Royal Assent. This will allow industry time to develop necessary systems in the most cost efficient way. There will also be a period of twelve months after each stage is implemented during which AUSTRAC will focus on education, with punitive action only being taken if a business is making no reasonable attempt to move towards compliance.

The Anti-Money Laundering and Counter-Terrorism Financing Bill extends the current regulatory regime imposed by the Financial Transaction Reports Act 1988. This Act was developed at a time when most financial transactions were conducted face to face and over the counter at branches of financial institutions. The Financial Transactions Reports Act regime needs to be upgraded to combat the substantial changes to money laundering and terrorism financing risks.
associated with the increase in cashless, non face to face electronic transactions and global development in value transfer technology.

Most of the provisions of the Financial Transactions Reports Act will eventually be superseded by the Anti-Money Laundering and Counter-Terrorism Financing Bill, however, those provisions which apply to cash dealers who are not reporting entities under the bill will continue to apply.

The new regime will impact on privacy but the impact is a proportionate response to the problems caused by money laundering and terrorism financing in the current climate of heightened organised criminal and terrorist activity. The legislative package includes provisions to ensure that the privacy of legitimate customers is not unnecessarily affected by the legislation. The Government is confident that the legislative package strikes a balance between privacy interests and the needs of law enforcement agencies for targeted information about possible criminal activity.

The Government recognises that AML/CTF compliance may impact small business. The first tranche of AML/CTF reforms will, however, only affect a small number of small businesses which will receive additional guidance and assistance from the Government through AUSTRAC and the Office of the Privacy Commissioner. Initial funding of $1.8 million over four years has been provided to the Office of the Privacy Commissioner for this purpose.

Finally, I am pleased to say that the legislative package is the product of extensive consultation between Government, business, and the community. Since December 2003 we have all been working together to develop a regulatory regime that is robust but ensures the impact on business is minimised. The Government is now confident that the legislative package achieves a balance between the Government’s law enforcement obligations and industry’s day-to-day operational reality. The Government will continue to work closely with affected sectors in ongoing refinement of this new regulatory regime to ensure that the impact on legitimate business activity is minimised.

I commend the bill.
(AUSTRAC) to the AUSTRAC Chief Executive Officer.

The Consequential Bill also amends other Acts to mirror the existing interaction of these Acts with the Financial Transaction Reports Act.

For example, the Financial Transaction Reports Act currently excludes decisions from review under the Administrative Decisions (Judicial Review) Act. The Consequential Bill amends the Administrative Decisions (Judicial Review) Act, to also exclude decisions made under the Anti-Money Laundering and Counter-Terrorism Financing Bill from judicial review pursuant to the Administrative Decisions (Judicial Review) Act.

Amendments to the Freedom of Information Act will exempt reports of suspicious matters under the Anti-Money Laundering and Counter-Terrorism Bill. This mirrors the existing exemption of suspicious transaction reports made under the Financial Transaction Reports Act.

Amendments to the Commonwealth Electoral Act permit a copy of a Roll or an extract of a Roll to be given to a reporting entity or agent of a reporting entity for the prescribed purpose of the reporting entity or its agent carrying out an applicable customer identification procedure under the Anti-Money Laundering and Counter-Terrorism Bill. The provision is equivalent to provisions in the Commonwealth Electoral Act that apply to the Financial Transaction Reports Act.

Amendments to the Crimes Act, dealing with pardons, quashed convictions and spent convictions, change the existing exemption for AUSTRAC, allowing disclosure of pardons, quashed and spent convictions for the purposes of AUSTRAC assessing prospective members of staff or consultants or other persons assisting AUSTRAC.

The Consequential Bill will also amend the Criminal Code Act by expanding the definition of “dealing in money or property” to include proceeds of State and Territory indictable offences. Money laundering offences in Chapter 10 of the Criminal Code Act will therefore relate to a wider range of predicate offences. The application to State and Territory indictable offences has been limited by another amendment in the Consequential Bill to ensure that their inclusion does not violate the Commonwealth’s constitutional power to make legislation under the external affairs power.

The Consequential Bill also amends the Privacy Act, bringing small business operators under the umbrella of the Privacy Act for the purposes of collection of personal information under the Anti-Money Laundering and Counter-Terrorism Financing Bill.

The Consequential Bill also amends the Financial Management and Accountability Regulations. The step of using an Act to amend Regulations is being taken because otherwise these Regulations would have to be amended in the one day period between Royal Assent of the Anti-Money Laundering and Counter-Terrorism Financing Bill and the commencement of the relevant Part of the Anti-Money Laundering and Counter-Terrorism Financing Bill which will commence the day after Royal Assent.

I commend the Consequential Bill.

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TELECOMMUNICATIONS AMENDMENT (INTEGRATED PUBLIC NUMBER DATABASE) BILL 2006

The Telecommunications Amendment (Integrated Public Number Database) Bill 2006 amends the Telecommunications Act 1997 to provide for information contained in the integrated public number database (IPND) to be used for purposes specified in Part 13 of the Telecommunications Act.

The IPND is an industry-wide database of all residential and business phone numbers, both listed and unlisted and associated customer information, including name and address information. The IPND was established, and is maintained, by Telstra as a condition of its carrier licence. Carriage service providers are required to provide Telstra with customer information for inclusion in the IPND and do so on a daily basis.

In recent years the Government has become aware of reports of customer information contained in the IPND being used for inappropriate
purposes such as the compilation of marketing databases and debt collection. Concerns about the inappropriate use of the IPND were first raised in the former Australian Communications Authority discussion paper “Who’s Got Your Number: Regulating the Use of Telecommunications Customer Information.” This paper received over 50 submissions on issues relating to access to the IPND.

Use of IPND information for these purposes is currently not authorised by the Telecommunications Act and raises privacy concerns, as consumers of telecommunications services are unlikely to be aware of, or to have consented to, the use of their personal information for purposes beyond the existing public interest uses currently permitted by the Telecommunications Act such as emergency services and law enforcement.

At the same time, a number of research organisations have also expressed an interest in accessing information contained in the IPND to conduct research.

The bill is intended to strengthen the privacy protections for telephone subscribers in relation to use of their personal information in connection with the publication and maintenance of public number directories while permitting disclosure and use of IPND information for some limited public interest research purposes that have been specified by the Minister.

**Outline of the bill**

The bill defines the term ‘public number directory’. The definition exhaustively specifies what information a public number directory can contain and gives the Minister the ability, through a legislative instrument, to specify additional requirements to be met in order for a record to be a public number directory. For example, the Minister might specify additional requirements relating to the format in which public number directories are prepared.

Introducing a definition of public number directory into the Telecommunications Act is intended to prevent IPND information from being directly used for inappropriate purposes such as marketing, data cleansing and appending, debt collection and credit checking. The intention is to limit the use of IPND information to the production of genuine telephone directories similar to the White and Yellow Pages (whether these are in electronic (including online) or hardcopy form).

The definition would allow use of IPND information to produce residential and business directories while protecting the privacy of individuals by permitting only their name, public number and, optionally, address to be included in a directory.

Such additional contact information as specified by the Minister in a legislative instrument could be included in a public number directory if it is in relation to persons or bodies carrying on a business, government organisations, charities, religious or educational institutions and any other category of persons or bodies specified by the Minister. Such additional information could include website addresses, email addresses, maps and advertisements.

The bill also permits access to IPND information for the first time to assist with the conduct of some specified research purposes that the Minister considers to be in the public interest. These research purposes will be specified by the Minister in a legislative instrument.

The legislative instrument will list specific types of research that the Minister considers to be in the public interest, for example, health and medical research.

By permitting access to IPND information for some limited research purposes, the bill recognises the value of the IPND as an accurate and up-to-date source of information that may assist researchers in producing quality research that will be of benefit to the public.

As is currently the case, public number directory producers and the new research users will not be permitted to use unlisted customer information, including silent number information, to produce their public number directories or conduct their research.

Also, use of IPND information for commercial purposes will continue to be limited. At present only carriage service providers and public number directory producers have access to the IPND to provide commercial products and services, and then only in limited circumstances. This will continue to be the case.
The bill gives ACMA a ‘gatekeeper’ role in deciding applications for access to IPND information by public number directory producers and researchers. Under the existing arrangements Telstra, as the IPND Manager, is responsible for deciding applications for access to the IPND for all users. Giving the key authorisation role to ACMA will enable greater scrutiny of persons seeking access to the IPND for these purposes and the way in which IPND information is used. Scrutiny by ACMA is intended as an additional safeguard for preventing misuse of IPND information by both public number directory producers and the new research users.

Giving ACMA the key role in authorising access to the IPND is also intended to remove the existing potential conflict of interest whereby Telstra is responsible for authorising access to the IPND for persons seeking to produce public number directories that compete with its White Pages and Yellow Pages directories.

The bill will require ACMA, by legislative instrument, to establish a scheme for the granting of authorisations permitting persons to use and disclose IPND information. The bill requires that ACMA consult with the Privacy Commissioner and Secretary of the Attorney-General’s Department on development of the scheme. ACMA will be limited in its discretion by the framework for the scheme as set out in the bill. ACMA will also be required to have regard to criteria specified by the Minister when considering an application for access.

Persons seeking access to IPND information to produce public number directories or to conduct specified research will be required to apply to ACMA for an authorisation. Telstra will not be able to disclose IPND information for such purposes unless the user holds the appropriate authorisation from ACMA.

ACMA will be able to grant authorisations subject to conditions. The Minister will also be able, by legislative instrument, to specify conditions of authorisation. I intend to specify a condition restricting the transfer of IPND information outside of Australia and a condition requiring the destruction or secure disposal of IPND information once an authorisation ceases. The Privacy Commissioner and Attorney-General will be consulted during the development of the legislative instrument regarding other privacy-related conditions that may be appropriate.

When making authorisation decisions ACMA may consult with persons it considers appropriate including relevant experts in the area of the research for which an authorisation is being sought and the Office of the Privacy Commissioner.

Key ACMA decisions will be reviewable by the Administrative Appeals Tribunal. These decisions include decisions to refuse or grant an authorisation, impose conditions on the grant of an authorisation, and vary or revoke an authorisation. The Minister will be able to specify in a legislative instrument additional reviewable decisions.

ACMA will be required to report annually to the Minister on compliance with authorisations and on any other matter related to the operation of the scheme that ACMA considers appropriate. This report will be tabled in Parliament.

The bill empowers ACMA to undertake administrative decision-making in relation to the scheme and enables it to vary or revoke authorisations in the event of a user breaching an authorisation requirement. The bill also provides ACMA with a range of options to enforce compliance with conditions applying to authorisations, including the ability to issue remedial directions or formal warnings where ACMA is satisfied that a person has contravened or is contravening a condition of an authorisation.

The bill also includes new criminal offences and penalties where a person breaches a condition of an authorisation or discloses or uses IPND information other than for the authorised purpose, whether that be for the production of a public number directory or the conduct of specified research, and for disclosing and using data if an authorisation is no longer in force. Persons who currently have access to IPND information to produce public number directories will need to apply to ACMA for an authorisation to receive IPND information. The authorisation could only be granted where the use for which IPND information is proposed would meet the new definition of public number directory. To the extent that existing users’ products meet the new definition, they will be permitted to continue us-
ing the IPND to produce these products. Assessment of products against the definition will be on a case-by-case basis.

The bill contains transitional arrangements to assist current users to manage the process of achieving compliance with the new definition and applying to ACMA for an authorisation to access the IPND. The transitional arrangements require persons currently using IPND information to make arrangements to apply for an authorisation within 28 days of the commencement of the transitional provision. Existing users will be deemed to hold an authorisation during the 28 day period and, provided that an application is made to ACMA within that period, until such time as ACMA decides their application for authorisation.

Conclusion

The bill sets out a comprehensive approach to balancing the privacy needs of Australian telecommunications subscribers in relation to the use of their personal information to produce commercial directory products, with the needs of the research community to conduct social research of benefit to the public.

I commend the bill to the Senate.

CUSTOMS LEGISLATION AMENDMENT (NEW ZEALAND RULES OF ORIGIN) BILL 2006


In accordance with one of the current rules, manufactured goods imported from New Zealand are originating, and therefore eligible for a preferential rate of duty, if the last process of manufacture occurs in New Zealand and the goods satisfy a regional value content requirement.

This bill implements amendments to the ANZCERTA that would also allow the ‘change in tariff classification’ method to be used, along with a regional value content requirement, to determine whether goods from New Zealand are New Zealand-originating goods. The new rules would only apply to goods imported on or after 1 January 2007.

As announced by the Minister for Trade and his New Zealand counterpart in February 2006, the last process of manufacture method will continue to be available alongside the new ‘change in tariff classification’ method until 31 December 2011, to allow importers, exporters and manufacturers time to adapt to the changes.

This bill also contains minor consequential amendments to Customs related legislation and the Legislative Instruments Act.

This bill is designed to simplify the process of determining whether a good from New Zealand is a New Zealand originating good and therefore eligible for a preferential rate of duty.

Debate (on motion by Senator Colbeck) adjourned.

Ordered that the Telecommunications Amendment (Integrated Public Number Database) Bill 2006 and the Customs Legislation Amendment (New Zealand Rules of Origin) Bill 2006 be listed on the Notice Paper as separate orders of the day.

CRIMES AMENDMENT (BAIL AND SENTENCING) BILL 2006

Consideration of House of Representatives Message

Message received from the House of Representatives returning the Crimes Amendment (Bail and Sentencing) Bill 2006, informing the Senate that the House has agreed to the bill with amendments and requesting the concurrence of the Senate in the amendments made by the House.

Ordered that consideration of the message in Committee of the Whole be made an order of the day for the next day of sitting.
COPYRIGHT AMENDMENT BILL 2006
Second Reading

Debate resumed.

Senator LUNDY (Australian Capital Territory) (4.26 pm)—I rise to speak to the Copyright Amendment Bill 2006. The bill is comprised of a number of schedules—12 in fact—and yet only one of them is required to be passed before 1 January 2007 in order for Australia to fulfil its obligations under the Australia-US free trade agreement. I will speak in some detail to the flaws in schedule 12, which is the schedule relating to these obligations, but first I would like to turn to a range of other changes that, if not amended, will see the rights of consumers take a turn for the worse and, in some cases, allow the innocent activities of kids to become criminal offences, potentially resulting in thousands of dollars of on-the-spot fines.

The government has stated that the purpose of this bill was to protect consumers by making a range of real exceptions to copyright protection that reflect current practice in the home and normal private use. This it was claimed would update our laws and provide impunity to consumers using content, be it music, movies or software that they had purchased for their own private use in a way that did not breach copyright. But that is not what has emerged. With the government choosing not to adopt a general fair use exception for private use, an option open to them under the provisions of the free trade agreement, they have preferred to persist with a string of exceptions that have added complexity by virtue of their specificity about what can and cannot be done with respect to copyright. And they did not get this right. The exceptions were poorly drafted and did not reflect the basic normal practices of established technologies such as digital music players. They do not address saving podcasts and playing them later and other downloadable content. The Australian Consumers Association says in a letter that it forwarded to, I think, all parliamentarians, certainly to all senators:

Behaviour which many if not most Australians think is acceptable will be a criminal offence. Worse, it makes those offences ‘strict liability’—this means a person can be found guilty even if they did not know they were breaching copyright.

And that it allows police to issue ‘on the spot fines’ for each offence, and potentially turns possession of ordinary consumer items such as an iPod or a computer into an offence with a $65,000 fine.

This is because it would include multiple offences to use it. The bill does not reflect sensible time shifting and format shifting of content in this way. In other words, the bill has failed in the minister’s primary claim. The Senate committee inquiry into this matter heard a lot of evidence about these problems and received submissions articulating frightening scenario after frightening scenario of the misapplication of the exceptions that were drafted, and exposed the obvious gaps of reasonable places for exceptions that were ignored by the government.

Schedule 1 of the bill relates to a new regime of strict liability fines for consumers who breach copyright. In other words, if a specific activity of a consumer were not protected by an exception, these massive fines would be imposed—regardless of the intent of the consumer. Such a strict liability regime is unprecedented in the world and, I think, represents a massive win for the large corporations that have been lobbying the Howard government to legislate to protect their interests.

The strict liability regime means that, where a consumer is believed by the authorities to be in breach of copyright, the authorities may issue an on-the-spot fine of $6,600 and record a criminal offence. The strict liability scheme means that even kids who are
doing things they thought were legal will be hit with massive fines. The bizarre thing is that those organisations which have successfully influenced the Howard government to impose such a punitive regime say that it is all about stopping piracy of CDs and DVDs. Where I think their case falls apart is that this strict liability penalty system is clearly aimed at humble consumers. It is not aimed at pirates who profit commercially from the mass production of illegal material. No-one supports piracy; Labor certainly does not, and we certainly want to see laws that are strong enough to stop those who profit from it.

Unfortunately, the agenda here was to put the fear of a jail term or massive fines in the minds of consumers using new technologies. One can only assume that this was to progress their agenda of protecting future business models of downloading digital content and to try to insert a culture of fear and concern around the use of new technologies rather than one of exploration and exciting new inventions.

Evidence to back this assertion came following some discussion in the Senate inquiry about whether or not the strict liability regime was aimed at people seeking to make a commercial gain from breaching copyright. Even a suggestion put forward by academic Kim Weatherall, an expert in the intellectual property area, to codify the strict liability towards just commercial activities was rejected. I also note that the government has foreshadowed some amendments in this area, and we will be pleased to see if any remediation can be made of this strict liability scheme. Labor is concerned about the government’s choice to proceed down the exceptions path instead of a general fair use regime for consumers. Labor is also concerned about the unprecedented nature of the strict liability regime. But what we are particularly alarmed about, and we will be moving amendments to try to resolve this, is the intersection of these two problems.

I want to turn to a reasonably clear example of how vulnerable children will be to this strict liability regime if they are not protected properly by an exception. I was flipping through a Dolly magazine belonging to one of my daughters and I came across an article titled, ‘How to be a virtual celebrity’. It said:

Websites like YouTube and MySpace have started the virtual star revolution, which means all it takes for you to become an instant cyber celebrity is a little webcam and a big idea.

The article goes on to say that readers can check out a range of ideas, including ‘lip-syncing your favourite song’. It all seems pretty innocent. I should add that Dolly also published some stern warnings about internet safety, which was good to see.

Under this bill, such innocent advice from a teenage girls magazine, such as Dolly, to do the ‘virtual lip-synching instant celebrity’ stunt may get them into a whole lot of trouble if this bill passes in its current form. As was stated in an article in Tuesday’s Financial Review, Professor Brian Fitzgerald from the Queensland University of Technology submitted to the Senate inquiry on this bill that such lip-synching online was a technical breach of copyright of the song. The Australian Consumers Association noted that this could represent an on-the-spot fine of $6,600. I do not know too many teenage or pre-teen kids who can afford that kind of fine—and I am sure their parents would not be at all happy.

The bottom line is that it is outrageous to even suggest that this kind of innocent behaviour—promoted in the mainstream media, no less—should be considered illegal; yet it is, under the current wording of this bill, and the Howard government have drafted this bill so as to nail children for it. That said, the government have circulated
amendments that appear to modify some of these strict liability penalties for consumers. I will be very interested to see the detail of these amendments. I think that if they do address this specific problem it is real progress. But, with the specificity of exceptions, the challenge is almost to determine every scenario that could be considered to be innocent and normal use and put that in the bill to provide that protection; hence Labor’s view that the combination of using a model that has specific exceptions and strict liability fines is too complex and confusing and leaves consumers vulnerable. The bill fails to achieve the stated objective of the minister that the bill will protect consumers from prosecution under copyright law for normal private use.

I acknowledge that there is progress, because there are many activities which technically are illegal as they stand now. This whole bill is about progressing in such a way that some of those activities are codified and protected for legitimate use, but the model makes it very difficult to catch everything and to protect consumers in a wholehearted way. From Labor’s perspective, a general fair use exception is a plausible alternative that the government ought to have considered—and I think they probably did consider it and made a policy decision to proceed along the exception path. I also want to note that it is permissible under the Australia-US Free Trade Agreement to adopt a general use private exception model, but that is an option that the Howard government have not chosen to take up.

There is no place for strict liability without genuine protections for fair use under copyright by consumers and for fair dealing by libraries and educational institutions. The bottom line is that it would be much more difficult to have a general fair use regime coexist with a strict liability penalty scheme anyway, particularly one that relates to consumers. It is only the specificity of the exceptions approach that would enable the strict liability scheme to be implemented. So it is a double whammy against consumers in this regard. That is why in the committee stage Labor will be moving amendments to delete those strict liability offences. We are concerned that the government has chosen to go down this path of convoluted exceptions for consumers.

In the absence of the fair use approach, Labor believes it is essential to remove that strict liability regime, and that is the only way to really protect consumers from uncertainty and the potential for the unfair application of fines, to the tune of $660,000 for individual offences, which could obviously bank up through various innocent activities. These are not the sorts of provisions that target law-breaking copyright pirates; they are laws to hound kids. I urge the Howard government to heed the advice of their own backbench, who have urged further consideration of the strict liability regime in their own recommendations in the Senate committee report. We know from the evidence given to the Senate committee that the police, who will be responsible for the fines and the infringement notices, have not even considered the administration of the scheme in any great detail.

I now turn to schedule 12, which I mentioned at the start of my speech. This must pass in some form by 1 January 2007 in order to meet our outstanding obligations under the Australia-United States Free Trade Agreement. It relates to technological protection measures. Under the terms of the free trade agreement, the federal government has to determine and legislate a regime that renders actual circumvention of technological protection measures, or TPMs, illegal, given that previously it was the manufacture and distribution of devices used to circumvent TPMs that was illegal. Schedule 12 ad-
addresses the definition of TPMs and what additional exceptions, if any, ought to apply to permit circumvention of a TPM and in what circumstances. It is quite a technical area of the bill, but one I feel is worthwhile extrapolating to explain the serious point it sits within.

The FTA has already determined some of those exceptions, and since then part of the responsibility of the Howard government has been to determine if there were to be any more. Since that time, there has been a House of Representatives Standing Committee on Legal and Constitutional Affairs inquiry report entitled Review of technological protection measures exceptions. The committee recommended a number of additional exceptions, some of which have been picked up in this bill and some of which have not. The committee also made an important recommendation in respect of the definition of a technological protection measure.

We are dealing in schedule 12 with an expansion of the technological protection regime, both in the form of exceptions and in some changes to the definition. We have new criminal offences relating to the use of circumvention devices. We also have exemptions that give a picture of some balance to the changes in protection for consumers relating to a couple of issues which I will come to shortly. On the surface, it appears that the government has addressed a major area of concern for consumers. It has outlawed TPMs that enable regional coding and prevents third-party spare parts and exploitation of those markets. This is welcome and it addresses two of the best-known anticompetitive abuses of the use of TPMs.

However, there is far more going on in the detail and definitions used in schedule 12 that gives me great cause for concern. There are three main areas of concern that I have. The first concern is the complaint that the specific exceptions as they are currently worded are confusing and misleading. I note that the government is making some effort through its amendments. I will be following up and checking this to try and resolve some of that confusion. The second concern is that there ought to be additional exceptions, particularly in relation to the needs of software and data interoperability. Again, I think some of this has been addressed and some of it has not. Labor will try and fill those gaps with amendments.

The third and very serious concern is the actual definition of technological protection measures in the bill itself. I will discuss that briefly and will be able to expand further during the committee stage of this bill. We all agree with the principle that copyright owners have a right to protect their work for a period that permits them to be rewarded for their creative efforts and ensures adequate economic incentive exists to encourage innovation and creation of new content, works of art and so on. It is general premise. As new distribution methods and technologies develop and threaten the holders of copyright’s ability to receive their rewards and provide incentive to invest, new ways have been developed to protect these rights.

TPMs are one way that can be used to protect copyright in the technological digital environment—not just on the internet but also for a whole range of devices. For example, a TPM of high-level encryption on software code or content is designed to prevent it from being copied without the permission of the copyright owner. This permission might be made available under specific circumstances through a password, which is like a key to unlock that content or code. Nonetheless, there have always been people who have created new tools and ways to unlock these technological locks and, in the language used in the bill, circumvent the TPMs.
There are right reasons for this circumvention and there are wrong reasons for it.

This bill has the responsibility and role of determining what the right reasons and the wrong reasons are. This bill creates a series of exceptions for the right reasons. What are the right reasons to permit circumvention? Once they are identified, exceptions are created to allow it to happen in those circumstances. There are wrong reasons as well. Those wrong reasons include pirating—people profiting from ripping off other people’s content or using it in a way that breaches copyright. The bill creates new criminal offences that go beyond the existing illegality of manufacturers and distributors of tools and devices used to circumvent and extends them to people actually using these tools and devices. The purpose of this law is to prevent this circumvention where it results in a deliberate copyright infringement. We all agree that circumvention for a deliberate breach of copyright is for the wrong reason and ought to be illegal.

New criminal offences applying to the use of circumvention for those wrong reasons also satisfy Australia’s obligations under the free trade agreement. But equally it is important to determine the right and wrong reasons for a TPM to be used in the first place and to be eligible for protection from circumvention. Contained in the definition of a TPM are the right and wrong reasons for which they can be used in the first place. This is where I have a problem.

Predictably, business has found other uses for TPMs. We know that because there are already a couple of important exceptions, about regional coding and third-party spare parts markets et cetera. These wrong purposes, if you like, are market segmentation, price gouging consumers by locking up markets, prevention of reverse engineering for the purposes of creating interoperable products, perpetuation of unfair monopolies and so forth. In other words, TPMs are used to protect old and new business models and markets.

All of these purposes are anticompetitive practice and anti innovation in nature. They do not deserve the sanction of the law. Already the ACCC has seen fit to specifically criticise the use of TPMs in relation to market segmentation, and, in the Stevens v Sony High Court decision, the necessity of the link between TPM use and the protection of infringement of copyright was reinforced.

While the bill purports to close off the more obvious example of abuse of a TPM that is not designed to prevent infringement of copyright by creating a new exception to prevent market segmentation and third-party spare parts markets, in a typically sneaky way—and I think it is quite unforgivable—the Howard government is determined to remove from the definition the link between TPMs and the protection of infringement to copyright—(Time expired)

Senator CROSSIN (Northern Territory) (4.46 pm)—As a member of the Senate Standing Committee on Legal and Constitutional Affairs, I was involved in the committee’s inquiry into the Copyright Amendment Bill 2006. This bill introduces major reforms to Australia’s Copyright Act. Many of the proposed changes reflect the government’s numerous copyright law reviews of recent years, including the digital agenda review and the fair use review. Most of the provisions have been released as exposure drafts, but only the exposure draft on the technological protection measures was the subject of widespread consultation. As a result, the TPMs are generally considered satisfactory to most of the parties—consumer groups, copyright owners and collectors—although the Senate committee that I was involved in, in the inquiry we had, uncovered further
concerns from academics and consumers. However, other provisions in the bill, such as some of the fair use changes, are the subject of widespread concern. Interested groups have highlighted significant drafting problems in addition to what they consider a number of unworkable policy positions. These groups all submitted to the Senate inquiry, and I understand they are continuing to liaise with the Attorney-General’s Department about proposed amendments.

The Senate Standing Committee on Legal and Constitutional Affairs conducted a short review of the legislation and made a number of unanimous recommendations, with additional comments from Labor senators, which I will go to in a few minutes. At the outset, I want to impress on people that there are major concerns regarding the adequacy of the inquiry, given the technical nature of the bill and the short time frame allocated. In fact, in the supplementary comments that the Labor senators provided to the Senate report, we made note of that:

… Labor Senators are of the view that the majority report does not place adequate emphasis on a number of significant matters.

The first and foremost of those was the short time frame set by the government for this inquiry. All the lobby groups and organisations that came to see me in a private capacity during the course of this inquiry—as they probably saw a number of senators, either from the opposition or the government side—absolutely stressed that there was not enough time for them to consider the detail of this legislation and its implications. They also made comments that they had seen an exposure draft but that the draft of this bill did not in any way replicate or transfer any of the clauses that were in the exposure draft. Many people made a comment to me that they felt they were starting from scratch.

In the Labor senators’ supplementary comments to the Senate committee report, we also said:

The Bill proposes major amendments to copyright law in Australia and raises many complex issues. Further, and predictably, the committee received a large volume of detailed and lengthy submissions. Labor Senators consider that the complex nature of the issues, coupled with the extremely short timeframe set by the Government for the inquiry, has seriously hampered the committee in its efforts to comprehensively consider, and report on, all the evidence before it.

It really does public policy in this country no benefit, with such a complex matter, for the Senate committee to have a very short time frame in which to conduct an inquiry and to be forced to pick and choose which groups would appear before us. We were so pressed for time that a number of groups had to appear together—three or four groups at a time in a one-hour time slot. It provided them with very little opportunity to present their case and it provided us with even less opportunity to quiz these people and get maximum benefit out of them in order to translate this legislation into something that is workable and achievable.

There are, of course, provisions in this bill that relate to the implementation of the Australia-United States Free Trade Agreement, and some would suggest that they are considered urgent. I think the time line for that introduction is around January. Ideally, consideration of several aspects of the bill should have been deferred until proper analysis and deliberation had taken place by all interested parties and by this parliament. At the outset, my view was that, if there are urgent provisions of this bill that need to be put through to comply with the Australia-US Free Trade Agreement, let us go ahead and do that, but we really should put the brakes on the rest of the consideration of this bill so that people have adequate time to look at it.
The bill attempts to keep pace with the needs of Australian copyright creators and copyright consumers and to address the new challenges and opportunities arising from digital and other new technologies. The government have presented this bill as a package of balanced and practical reforms, they would say, to address copyright piracy while also ensuring that ordinary consumers are not infringing the law through everyday use of copyright products that they have legitimately purchased.

The explanatory memorandum suggests that reforms in the bill have been guided by the following principle: the need for copyright to keep pace with developments in technology and rapidly changing consumer behaviour. Any of us who have teenagers will know that that is the case. Just as an aside, in a Senate committee I gave an example about using a vinyl record. When I got home, one of my kids said to me, ‘Mum, what on earth were you talking about?’ We talk about iPods and MP3 players now; we do not talk about records. We do not even talk about cassettes, to be honest. It will not be very long before we will not be talking about CDs.

The reforms also recognise reasonable consumer use of technology to enjoy copyright material. Australian consumers should not be in a significantly worse position than consumers in similar countries. The reforms should not unreasonably harm or discourage the development of new digital markets by copyright owners. Australia has a unique regime that should be maintained. Copyright laws should not be brought into disrepute with technical and out-of-date provisions. Copyright piracy is certainly becoming easier. We know that just through the invention of creations like eBay. The law needs to be constantly updated to tackle piracy. Copyright industries are important, but they need to be supported.

It is already questionable whether the bill has actually lived up to these aims. The Senate inquiry has made clear that in some parts it does not live up to the claims made in the explanatory memorandum, especially in keeping pace with technology, keeping Australia’s unique regime and ensuring that copyright is not brought into disrepute by technical and out-of-date provisions. The bill introduces several new exceptions to copyright in response to the digital agenda review and the government’s fair use and other copyright exemptions review that were announced in May 2005. I will not go through all the fair use exemptions and changes introduced by the bill. I just want to highlight some of the major issues to date to do with that.

Popular attention on one aspect of format shifting for iPod users has overlooked the real question of whether the format-shifting provisions generally work adequately for consumers. For example, you can have one copy on an MP3 player but not one to store on the computer. There are odd inconsistencies that allow copying from one format—say, VHS to DVD—but not between others, such as DVD and DVD, that do not seem to have any logic and indicate a lack of understanding of current and emerging technology. Nevertheless, copyright owners are very nervous about the extent of flexibility given to an individual consumer and how multiple copies may be abused.

There is confusion over the way the rules will apply for schools, and the difficulty for users in interpreting the new test is also still being discussed. I had a terrific meeting in my office with the people who are part of the copyright section of MCEETYA. They put to me quite succinctly the three or four main areas in which they have concerns in relation to this. There is a particularly strong argument here about the fair-dealing exception proposed for research and study. The new
section 40(5) will be more restrictive than the current arrangements and does not seem necessary. There is permission now for only 10 per cent or one chapter to be copied, irrespective of other issues, such as availability. This will now become much more restricted and probably, in some cases, unusable under this new legislation.

The new insubstantial copying rules in schedule 8 may also hit schools very hard. Further clarification is still being sought that the communication right to ensure proxy caching and child protection caching by schools would not be an infringing use, but this appears to have been adequately dealt with. Perhaps we might see further changes. The new three-step test is also undergoing serious scrutiny to assess whether it is necessary and workable, as is the new parody and satire exception. It seems to add another unnecessary level of complications for little consumer benefit.

The Senate committee report is there for people to see and read. In the short time that we had to look at the legislation, the committee tried to put down some recommendations that will make some improvements. The committee proposed, for example, that section 111(1) be redrafted to make absolutely clear that individual consumers are not restricted to watching and listening to broadcast recordings in their own homes. The committee recommended that schedule 6 of the bill be amended with respect to format shifting to specifically recognise and render legitimate the ordinary use by consumers of digital music players such as iPods and MP3 players and other similar devices.

The committee recommended that the proposed amendments to the fair dealing exception for research and study in schedule 6 of the bill be clarified to make it clear that only reproductions deemed to be fair dealings will be restricted and that the scope of the provision allowing any other amounts of reproduction will not be affected if they are considered to be fair. The committee also recommended that schedule 6 of the bill be clarified to make it absolutely clear that libraries, archives and cultural institutions, for example, are able to make sufficient copies for the purposes of preservation. The committee recommended that the scope of the exception for key cultural institutions in schedule 6 of the bill be clarified to specifically include the ABC, SBS, the Australian Film Commission, universities, research institutions and other like institutions which hold significant historical and cultural material.

There was also a suggestion that schedule 8 of the bill be clarified to ensure that caching for efficiency purposes—proxy caching—does not infringe copyright and to ensure that there is no doubt that a reproduction must be removed after the end of the particular educational course for which it was made.

What I am trying to highlight is that the Senate committee went through this bill in the short time frame that it had available, with limited ability to question those who I thought were very expert people in this field, and has already come up with some major changes about redrafting. It really begs the question: if the Senate committee had much longer to actually inquire into and report on this bill, would we have come out with a piece of legislation that could be better redrafted and rewritten to provide better clarity for both consumers and users in this area?

I want to make some comments about the Labor senators’ additional report. Our comments were a little bit stronger. We recommend that the time-shifting and format-shifting provisions of schedule 6 to the bill be amended to recognise all current and legitimate uses of technology, including format shifting from podcasts and webcasts. We
recommend that the time-shifting and format-shifting provisions of schedule 6 be amended to enable copying for personal and domestic use to occur in places other than domestic premises, including legitimate places of business. Also in relation to section 6, we recommend clarification that the time-shifting and format-shifting exceptions permit sufficient copies to be made and stored for reasonable use of legitimate products and that this section be amended to remove proposed changes to the exception relating to fair dealing for research and study so that the existing section 40 of the Copyright Act 1968 is retained in its entirety. Finally, we suggest that the bill be amended to remove the commercial availability test from the exception relating to official copying of library and archived material.

In the remaining time that I have I want to talk about a number of additional issues that go to the Copyright Tribunal. I am picking up on this because I am not sure that some of my other colleagues have done so. The bill implements the government’s response to the Copyright Law Review Committee’s report Jurisdiction and procedures of the Copyright Tribunal to enhance the jurisdiction and procedures of the Copyright Tribunal. During consultations we were alerted to the likely adverse impact of proposed provisions that would permit the Copyright Tribunal to impose an expensive burden on educational institutions in relation to their so-called record notices. The bill contains a repeal of the provisions which give effect to a prescribed record keeping system. The Australian Vice-Chancellors Committee have submitted that, if that were implemented, an institution issuing a records notice would be required to reach agreement with the collecting society regarding the form of record keeping system or, failing that, apply to the Copyright Tribunal for determination. We actually agree with the Australian Vice-Chancellors Committee assertion that this will have enormous cost consequences for the education sector and that there appears to be no reason to impose this burden when there is no evidence that the current records option is not working. Consequently, we have recommended that schedule 11 of the bill be amended to remove the paragraphs in relation to records notices.

The Senate committee made additional recommendations that the federal government conduct a public awareness campaign and undertake a public review of the impact of the changes made to the Copyright Act after a period of two years of operation of the provisions. In fact, the committee recommended that the federal government develop a plain-English consumer guide on the meaning and effect of the amendments contained in the bill in order to assist people to understand their copyright rights and obligations under the Copyright Act. As I said, we also recommended that the federal government undertake a public review of the impact of the changes of this bill after a period of two years. With regard to the proposed review of the impact of the changes, Labor senators noted in the report that this represents a second-best and belated approach to counteract the inherent inadequacy of this package of reforms.

Just for the record, I reiterate some of the aspects that were contained in the second reading amendment that was moved by Senator Ludwig. As I said, there are probably about four or five areas that I have not had a chance to touch on. My colleague Senator Lundy has gone to some of them, particularly the fair use and strict liability provisions. Of course, time is inadequate to be able to critically analyse in depth what this is going to mean out there in the world of use or misuse of copyright.

As I said, we want to make note of the rushed and inadequate processes for the
drafting of this bill. The numerous amendments that are now before us allow little time for detailed analysis of provisions by industry experts and, of course, consumers. We note the government’s decision to not adopt a general fair use provision, thereby focusing debate on the detailed exceptions and necessitating a stifling policy decision which limits format shifting to current but not emerging technologies. For me, that is quite a pity really, given how fast technology moves, not only in the world but also in this country. I think we will be left behind. I am not sure that two years is adequate time in which to review this bill. Perhaps it should be sooner. The initial far-reaching, strict liability provisions that my colleagues have talked about, and which the government has itself recognised, I think need to be dropped. That flags concerns that other unintended consequences may unfairly penalise consumers. I do not believe that these have been adequately considered or thought through by the government. We note the concerns of the internet industry about unintended consequences of this bill; the need for a strong public education campaign about copyright laws—I have made some comments about that; and the government’s failure to include the recommended two-year review in the legislation. I really think that needs to be reconsidered, given emerging and new technologies. You just have to look at the new Telstra Next G network to actually see how quickly those technologies emerge in this country. We express grave reservations, despite a number of positive aspects of the bill, that the overall package is cumbersome, complex and confusing. In closing, if there is a need to push through some of this before 1 January to comply with the Australian-US Free Trade Agreement, let us do it, but let us put the others off for another time. (Time expired)

Senator ELLISON (Western Australia—Minister for Justice and Customs) (5.07 pm)—At the outset I thank senators from all sides of the chamber who have participated in the debate—Senators Ludwig, Bartlett, Crossin and Lundy. As well, I also thank the Senate Standing Committee on Legal and Constitutional Affairs for its valuable report on the bill and the recommendations which were made on a number of key issues.

As Senator Bartlett recognised, the bill is the result of substantial consultation over a number of years. It delivers on outcomes from a number of recent important copyright reviews. I think that flies in the face of one aspect of the second reading amendment which claims that there has not been sufficient consultation. Certainly, I agree with Senator Bartlett that there has been extensive consultation in this process. The reforms that we are dealing with here seek to maintain the balance of copyright law by providing new and innovative exceptions for the use of copyright material while providing greater security for copyright owners to distribute their copyright material in this digital age.

The government has closely examined the Senate committee’s report on the bill. The government has accepted eight of the 12 specific amendments to the bill recommended by the committee. It is responding to the key issues raised during the Senate committee process by proposing a number of government amendments to ensure that the bill achieves the government’s stated policy objectives and to clarify drafting in some areas. The government will also move amendments in response to some of the recommendations by the Labor senators of the Senate committee. I think that, in view of the second reading amendment, it should be borne in mind that not only have we had this extensive consultation period but also, what is more, the government has closely examined the Senate committee’s report and taken on board many
of the suggestions. It has been considered very carefully.

Copyright reform is an important issue for this government and this bill demonstrates the Howard government’s commitment to ensuring that our copyright laws are effective and that they respond to continuing changes in the technical landscape. The government’s commitment to copyright law reform has been clear and consistent to make the law fairer for consumers and tougher on the real pirates.

Senator Ludwig talked about divergent views. He said there were lots of them in the Senate committee submissions. Of course, he is quite right. That is, after all, what you get when you are dealing with issues relating to copyright. There have been five discussion papers, various exposure drafts, consultations and meetings with stakeholders. Stakeholders have, understandably, formed their views based on what is in their best interests. More consultations will not change these views. There is no compromise that will make all stakeholders happy. This is an element of copyright policy process and that is the very point I just made in reference to Senator Ludwig’s observation as to the number of submissions. But the thing is this: at least this government is willing to make the hard decisions and not leave them in the too-hard basket as others would.

Senator Ludwig has questioned why the bill does not include a broad fair use exception. We had a review and there was limited support for a broad fair use right. People like Australia’s fair dealing regime. They like certainty of exceptions. They do not want a fine-line exception that tells them they can only do what a court tells them they can do. As Senator Ludwig reminds us, for consumers there should be clarity.

The bill introduces several new exceptions to copyright in response to the government’s fair use review. First, the reforms recognise that common consumer practices of time shifting of broadcasts and format shifting of some copyright material should be permissible. This bill will ensure that people can legally tape television or radio programs in order to play them at a more convenient time. It will also be legal to reproduce music, newspapers and books in different formats for private use. Importantly, people can transfer music from CDs they own onto their iPods and other music players. As a result of these changes, consumers will no longer be breaching the law when they record their favourite TV program or copy CDs they own onto another device.

The government is also ensuring that Australia’s fine tradition of poking fun at itself and others will not be unnecessarily restricted by providing an exception for fair dealing for the purpose of satire and parody. In response to the views of the Senate committee, the government is moving amendments to the bill to ensure that time-shifting and format-shifting provisions achieve the government’s policy intent and recognise the reasonable use of technology.

A new flexible exception will also allow copyright material to be used for certain socially useful purposes where this does not significantly harm the interests of copyright owners. Cultural and educational institutions and certain individuals will be able to make use of copyright where those uses do not undermine the copyright owner’s normal market. Importantly, people with a disability that affects their capacity to access copyright material will now be able to make use of that material in order to better access it. This amendment has been welcomed by people with disabilities.

The bill provides for more effective technological protection measures. This, of course, provides for TPM protection to en-
courage distribution of copyright material online and increase the availability of music, film and games in digital form. This in turn will foster development of new business models and provide enhanced choice for consumers. The liability scheme established by the bill will target people who circumvent these technological protection measures in addition to those who manufacture or supply devices or services used for circumvention. The liability scheme also provides for specific exceptions in the bill and copyright regulations in accordance with the recommendations of the House of Representative Standing Committee on Legal and Constitutional Affairs.

In addition, the bill will create an exception for region coding devices and will allow Australian consumers to use multizone DVD players. This part of the bill is the product of an extensive consultation process. The government believes that it is a robust and fair scheme in line with our obligations under the Australia-United States Free Trade Agreement. The government will not be adopting the recommendations of the Senate committee in relation to TPMs for these reasons. The government, however, proposes to move minor technical amendments to the TPM provisions of the bill.

In the digital environment, the reality is that it has become increasingly easy to infringe copyright. The bill therefore introduces reforms aimed at tackling copyright piracy online and at our markets and borders. The bill will create indictable, summary and strict liability offences, with a range of penalty options. The strict liability offences will be underpinned by an infringement notice scheme in the copyright regulations and guidelines, to be developed in consultation with users and owners. This will give law enforcement officers a wider range of options depending on the seriousness of the relevant conduct, ranging from infringement notices for more minor offences to initiating criminal proceedings to strip copyright pirates of their profits in more serious cases. They are not aimed at ordinary people but at copyright pirates who profit at the expense of creators. In response to submissions and to the recommendations of the Senate committee, the government will move amendments to the bill to address any perceptions of possible overreach of the offences. The summary and indictable offences will remain intact for those activities to ensure that the law remains appropriately tough on pirates.

Other key enforcement measures include new offences to tackle unauthorised access and use of pay TV services. The government will move amendments regarding the definition of ‘broadcaster’ in the schedule of the bill to ensure that this scheme fully achieves its objectives. The bill enhances the jurisdiction and procedures of the Copyright Tribunal. Many amendments implement the government’s response to the Copyright Law Review Committee’s report Jurisdiction and procedures of the Copyright Tribunal.

The government has responded to the recommendations of the Senate committee and to the need to ensure that cultural institutions are able to fulfil their cultural mandate in preserving their collections. In response to several other Senate committee recommendations, the government will also be moving amendments to ensure that the needs of our educational institutions are appropriately catered for by moving amendments to ensure that new provisions in the bill relating to educational communications and to the location of educational material for efficiency purposes more clearly meet the government’s policy objectives.

In relation to educational institutions, the government also looked carefully at the Senate committee’s recommendation 11, which proposed that ‘insubstantial’ copying of
works in electronic form need not be ‘continuous’. On balance, the government has decided to retain the bill in its current form, which preserves the technology neutrality of the act in this area between hard copies and electronic copies.

Senator Bartlett asked why the removal of the one per cent cap on licence fees involving the broadcast of sound recordings is not contained in the bill. The government agrees that this is an important issue and it has consulted and come to a decision on it, as Senator Bartlett indicated. A number of submissions from affected stakeholders in recent months have meant that further work is required. This could not be completed in time for the introduction of this bill. The government has therefore not made a decision about the timing of this reform.

I also advise the Senate that the government has noted some of the media and other commentary on the bill, much of which, disappointingly, referred to extreme and inaccurate scenarios rather than assessing the practical effect of these reforms. I think some commentators are throwing the baby out with the bathwater, and this undermines public confidence in copyright.

I take this opportunity to address some concerns raised by the Internet Industry Association that internet service providers may be criminally liable for the actions of third parties who use the ISP network to communicate infringing copies. The government has reviewed the relevant distribution offences and is satisfied that the amendments do not alter the current position for ISPs under the Copyright Act and that no further clarifying amendments are necessary. None of the relevant distribution offences in the Copyright Act capture authorisation of criminal infringement. To commit an offence, a person or entity must directly commit all the elements of the offence themselves. Further, under the Copyright Act, a communication other than a broadcast is taken to have been made by the person responsible for determining the content of the communication. In the vast majority of cases, a person other than the ISP would have generated the online content.

The government amendments that will be moved to the bill demonstrate that the government has listened to and addressed the concerns raised during the course of the Senate inquiry and in the Senate committee’s recommendations. It is inevitable, in making any amendments to the Copyright Act, which is a complex law, that there will be areas of disagreement between stakeholders. This was particularly evident from the divergent views expressed to the Senate committee. Clearly, not all amendments will be well received by copyright owners, and not all amendments will be well received by copyright users. Copyright law is an exercise in the balancing of rights in the public interest. The government believes, however, that the final bill, together with its amendments, which are the result of significant consultation and scrutiny by a parliamentary committee, has got the balance right. We believe in getting on with business and making the necessary changes.

Before I conclude, I turn to a couple of matters raised by Senator Ludwig. Senator Ludwig raised the issue—and I think Senator Crossin did too—of whether the government would conduct a public review of all the changes made by the bill after two years, as recommended by the Senate committee. In response, I would note that the government has already indicated that it will review the scope of the format shifting exception in two years to possibly include film in digital form. Given the range of reforms across a number of aspects of the act, a review in two years may be both premature and unnecessary. It is not clear why a review of the amendments
relating to the jurisdiction of the Copyright Tribunal or encoded broadcasts would be necessary. Clearly, however, if the need to review a particular reform arises, the government will act at the relevant time to address the issue, as we have always done in this area.

Another area that Senator Ludwig raised relates to the number of preservation copies that libraries and archives may make and why this is not four, rather than three. In response, I note that the government amendments to the bill ensure that copying for preservation purposes will be improved by making it three copies rather than the single copy as contained in the provisions of the bill. Some institutions may complain that making three copies for preservation purposes is insufficient. Additional copies, however, may also be made in some circumstances under section 51 of the act and under new section 200AB inserted by the bill.

An officer of a key cultural institution is not required by new sections 51B, 110BA and 112AA to wait for the material to deteriorate or to have been lost or stolen before making a preservation copy or copies. An authorised officer of the institution may make an assessment of the need for a preservation copy at any time. These reforms will clearly enable institutions to meet the UNESCO guidelines for best practice preservation. That is an important issue.

There are a range of other amendments the government will be moving in the committee stage. They will be extensive, and I understand that others have amendments as well. In conclusion, this bill introduces significant reforms to the Copyright Act 1968 demonstrating this government’s ongoing commitment to an effective world-class and up-to-date copyright regime. The government amendments to the bill will ensure that the legislation addresses the key concerns raised in the Senate committee process. Once again, I thank that committee for its work and I commend the bill to the Senate.

The ACTING DEPUTY PRESIDENT (Senator Moore)—The question is that the second reading amendment moved by Senator Ludwig be agreed to.

Question negatived.

Original question agreed to.

Bill read a second time.

Ordered that consideration of the bill in Committee of the Whole be made an order of the day for the next day of sitting.

ENVIRONMENT AND HERITAGE LEGISLATION AMENDMENT BILL (No. 1) 2006

Second Reading

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

That this bill be now read a second time.

Senator CARR (Victoria) (5.24 pm)—The Environment and Heritage Legislation Amendment Bill (No. 1) 2006 is a bill that ought be rejected by this chamber. The opposition will be voting against this bill. I move the second reading amendment which has been circulated in my name to give effect to this opposition:

At the end of the motion, add:

“but the Senate:

(a) expresses its serious concern that:

(i) the bill is being rushed through the Parliament without proper consideration or consultation,

(ii) the Howard Government has failed to halt the decline in Australia’s natural environment and best agricultural land,

(iii) the bill contains no measures to cut Australia’s spiralling greenhouse pollution or protect Australia from dangerous climate change,
(iv) the bill will increase the Howard Government’s politicisation of environment and heritage protection, and

(v) many of the proposed changes in the bill will reduce ministerial accountability and opportunities for genuine public consultation;

(b) Therefore calls on the Howard Government to:

(i) ensure climate change is properly factored into environmental decision-making under the Environment Protection and Biodiversity Conservation Act 1999,

(ii) establish a climate change trigger in the Act to ensure large scale greenhouse polluting projects are assessed by the Federal Government, and

(iii) allow greater time for public consultation and debate on the bill”.

The amendment points out—

The ACTING DEPUTY PRESIDENT (Senator Moore)—Excuse me, Senator Carr, we have not got a copy of that.

Senator CARR—I understand that the said amendment has been distributed through the Clerk’s office.

The ACTING DEPUTY PRESIDENT—We will follow that up.

Senator CARR—Thank you. The opposition is very concerned about this bill, and the second reading amendment highlights the fact that this bill is being rushed through the parliament without proper consideration or consultation. This 409-page bill was introduced to the House of Representatives on a Thursday. It was debated the following Wednesday. It was done without a Bills Digest and before submissions had even been received by the Senate inquiry. The government sought to establish the inquiry to give legitimacy to its undue haste and to try to cover the fact that it has moved a piece of legislation which fundamentally weakens ministerial accountability and opportunities for public consultation. This is in the context of a government which has failed to halt the decline in Australia’s natural environment and the undermining of our best agricultural land.

This bill contains no measures to cut Australia’s spiralling greenhouse pollution or to protect Australia from dangerous climate change—in fact, in this 409-page bill, the term ‘climate change’ does not appear. This bill seeks to legitimise the manner in which Mr Howard and this government have politicised environment and heritage protection. I am not saying that there aren’t some positive features within this legislation, but the overriding effect of it is negative. That is why the opposition has called upon the Howard government to ensure that climate change is properly factored into environmental decision making under the Environmental Protection and Biodiversity Conservation Act 1999. That is why we were seeking to establish a climate change trigger in the act to ensure that large-scale greenhouse polluting projects are assessed properly and thoroughly by the Commonwealth government. That is why we are saying there needs to be adequate time for public consultation and debate on legislation as controversial as this bill is.

However, we will be opposing the bill because it is fundamentally bad legislation. This legislation is deeply regressive. It is surrendering many of Australia’s achievements in environmental and heritage management which have been hard won over the last 35 years. It marks a deliberate watering down of environmental and heritage management in Australia. If passed, this bill will weaken the levels of protection for Australia’s biodiversity and heritage.

This bill represents a further lost opportunity to address the challenges of climate change. This should have been done by rec-
ognising that climate change is a matter of national environmental significance—it is, frankly, a matter of international environmental significance—but the government has turned its back on the opportunity to do that in this legislation. You would have thought that such a logical step would have been included in this legislation. There should have been attention to detail on climate change and there is not even an oblique reference in the legislation that is before us. It seems our unique flora and fauna are not worth protecting from the ravages of this government and the ravages of climate change.

This is fundamentally sloppy legislation. We will oppose this legislation because it has been presented to this parliament without proper discussion within the community. Its fundamental principles have undermined the proper decision-making processes and in effect corrupted the legislative process. We will be ensuring that this highly controversial legislation is debated in the public at large. I think it is quite clear, given the numbers that have been expressed in this chamber, that it is more than likely that this legislation will be passed, despite the fact that it dramatically downgrades the levels of environmental and heritage protection in this country.

You would have thought that Australia’s deserved reputation, developed throughout the 1970s and 1980s as a pacesetter in terms of environmental protection, would have warranted proper protection in this legislation. But the government has essentially turned its back on those matters. The truth of the matter is this government is deeply regressive and deeply reactionary. This Prime Minister has sought to revisit the debates of the 1970s and he wishes to re-engage in debates, which were lost in the 1970s, through legislation of this type. He seeks to re-establish the sorts of views left behind in the 1970s. With a minister such as Senator Ian Campbell, this is a government which is fundamentally floundering when it comes to the question of environment. This bill will seek to legitimise the sort of slapdash, shoddy, contemptuous attitude that this minister has displayed with his William the Conqueror’s approach to the parrot, for instance—the one-in-a-thousand-year parrot scandal that we have seen. He has sought to apply the principles of political science, not natural science, when it comes to the issue of environmental protection.

We have got a perfunctory examination of fundamental questions which are matters of deep concern in this community. This legislation seeks to legitimise the downgrading of those concerns. In the process it has denigrated the public attitudes which seek to emphasise the importance of these matters. In so doing it has also denigrated members of this parliament who, equally, are very concerned about protecting Australia’s environment and our international reputation as a community that understands the importance of these issues.

It is not just the opposition that has shared this concern; it has been of course members of the government’s own backbench. Senator Ray, in referring to the government’s response to the Alert Digest, No. 11 of 2006, made the following point about the 12 pages of detailed critique of this legislation, which had been unanimously carried by the Scrutiny of Bills Committee. He said today that those 12 pages of report raised issues which were of such importance that they were to prompt government and opposition senators to join me in expressing concern at the apparent lack of rigour in the drafting of this bill and particularly of the drafting of the explanatory memorandum which accompanies it’.

The government has sought to bring forward answers to those criticisms. Senator Ray has pointed out that, for the most part,
the committee—not just opposition senators—drew a number of these concerns to the attention of the Senate. He said that they ‘maintain their view that the government has failed to address those fundamental concerns’. When it goes to fundamental issues of civil liberties, one would have expected that in this day and age legislation of this type would have acknowledged those and would not have transgressed upon them.

Senator Johnston put it very clearly when he spoke of the explanatory memorandum in the following terms:

This explanatory memorandum is probably one of the most appalling I have ever seen in the short time I have been in the Senate. It discloses no motivation, no reasoning and no justification for some of the most draconian powers that this parliament can conceivably and possibly enact ... This legislation should go back to the drawing board.

You would have to agree with Senator Johnston, and I think reasonable people will take that view. I am not certain, however, that the government is made up of reasonable people, so it just may well be that the government has taken a position to pass this legislation. On this occasion, however, I must reiterate and agree with Senator Johnston. It is not often that I do, but I think on this particular matter he has hit the nail right on the head. The committee continues to maintain that there is a failure to find persuasive reasons to support the government’s explanations for its fundamental failure in regard to these matters.

They have the ludicrous notion that there should be a distinction between frisk searches and ordinary searches, but that it would be unnecessary in normal circumstances for such a distinction to be made because they would not appear in legislation of this type. The committee remains unpersuaded by the clever and smartypants attitude that the government has sought to adopt when it comes to finding ways of getting out of these very serious concerns that go to the issues of fundamental civil rights in this country.

Frankly, you have to ask yourself what type of legislation should allow for the insertion of a power to strip search. There are circumstances, I acknowledge, where such a power is warranted—as the committee has pointed out, in the existing Migration Act. But it has only ever been used once since January 2003, which is hardly a compelling case to legitimise it or demand that it continue under this legislation.

It surely fails to demonstrate the need for the introduction of such extraordinary powers, such exceptional powers, in environmental legislation of this type. I would have thought that the normal provisions where such extensive powers occur in parliaments across Australia would apply in this case. The normal provisions are that it is the responsibility of those parliaments, where they allow the police to exercise such powers, to ensure that they are monitored by appropriate parliamentary committees and that there is the clearest and the strongest accountability reporting mechanisms. All of those things are of course lacking from this legislation. It is bad legislation. There are so many problems, so many flaws, so many imprecise assumptions and so many unsupported leaps of faith.

There is the capacity under this bill for the minister to have greatly increased discretionary powers when it comes to the determination of environmental protections. Concerns
have been expressed by previous supporters of the government’s policy, such as the World Wildlife Fund. They have pointed out just how fatally flawed these amendments are. They argue that the proposed transfer of vastly expanded discretionary powers to the minister and the deliberate reduction in ministerial accountability are undemocratic.

We see that as well with regard to heritage protection. Organisations are deeply shocked by the implications of these measures. These include the National Trust, as I have indicated before—hardly a revolutionary organisation, the National Trust—and ICOMOS, which is hardly a militant organisation. They have indicated that they now repudiate—and, I get the sense, deeply regret—their earlier support for the government’s heritage policy, because under this legislation a minister can determine what can be considered for environmental protection or heritage listing without anyone else being able to make appropriate legal appeals, even in a case where the minister has got the law wrong.

We have a situation where the value and influence of independent, arms-length advice and scientific evaluation is being lost. As ICOMOS argued in their submission to the committee inquiry:

The Minister has the power to add to or remove any place from the Priority Assessment List … having ‘regard to any matters the Minister considers appropriate’ …

—like whether or not the seat that a particular site appears in will be on the Liberal Party marginal seat list. That may be the science here: what is the swing required for the seat to change hands? That is the sort of assessment, under this arrangement, that the minister can make—again, ‘any matters the minister considers appropriate’. ICOMOS indicated:

… the listing should be based solely on the assessment of the National Heritage values of a place.

But it is quite apparent from the way this government acts that these are now essentially politically based decisions.

The nomination of threatened species or heritage sites for listing, one of the most important aspects of environment and heritage legislation dating back to the 1970s, has been based on an objective assessment process, a scientific process—evidence based policy. They are the types of actions one expects from the Australian Public Service, the sorts of actions that have given us an international reputation as a country that produces some of the best public servants in the world. But under these provisions their actions will be subverted as a result of the government now having the capacity to undermine evidence based decisions and make decisions not on the basis of scientific assessment but on the basis of the political priorities of the minister of the day.

In this legislation there are no guarantees of the integrity of the decision-making process when it comes to environmental and heritage management and protection. In the place of objective assessment or scientific analysis, we will now have a situation where the current minister—as we have seen in the case of the orange-bellied parrot—can sweep aside any decision if it is politically advantageous to the Liberal Party to do so. Instead of a system of nominations based on objective principles, this legislation invents a new, cute little system of annual nominations for approved annual ‘themes’ under which the minister can determine what can and cannot be assessed for protection or listing. As the Australian Conservation Foundation indicated in their submission to the committee inquiry:

Themes may be administratively convenient or politically attractive, but alas species do not become threatened thematically.

So this legislation reduces accountability and transparency in two primary ways. Firstly, it
restricts the ability of individuals or community organisations to seek reviews of ministerial decisions. As the Law Council—again, hardly a radical organisation—has pointed out, this is high-handed action, and they argued that ministerial discretion should be subject to at least review by the Administrative Appeals Tribunal. Secondly, the current legislation prevents the High Court from requiring undertakings for damages as a condition for granting interim injunctions.

Public interest actions in defence of environment or heritage sites are now to be abolished. In other words, this legislation will effectively eradicate third-party enforcement because the threat of bankruptcy will ensure that organisations whose legal actions in the past have been instrumental in protecting heritage sites or our biodiversity will no longer be able to do so. The minister can ride roughshod over professional advice, he can ignore scientific or heritage assessment and he can use whatever spurious reasons come to hand without being answerable to anyone. Frankly, on that basis, this legislation should be rejected.

As I said, in the case of the orange-bellied parrot debacle, we have already seen what this government is capable of and it is quite apparent that this is a government that is really not interested in the protection of the environment. (Time expired)

Senator SIEWERT (Western Australia) (5.44 pm)—I have made a number of ‘outraged response’ speeches in this place this week and it is extremely difficult not to do the same on this occasion. The Environment and Heritage Legislation Amendment Bill (No. 1) 2006 is the most astounding piece of legislation that I have seen in a long time. The Greens will be opposing this legislation. It brings in extensive changes to an act that is already not adequate to protect our environment and which should be strengthened. I will attempt to address these extensive changes now, but I am aware that my colleagues will pick up other areas and cover those in more detail.

This is one of the most important pieces of legislation that we have seen in this place in recent times. It spells out with great clarity exactly how the government intends to treat the Australian environment in years to come. The Greens did not support the original form of the Environment Protection and Biodiversity Conversation Act when it was passed in 1999. It was extremely controversial legislation, and extremely controversial within the environment movement. I should know because I was there being involved in the debate. But it is significant to note that even those environment groups that supported the legislation in 1999 unanimously reject these amendments. The Greens indicated that outsourcing Commonwealth environmental responsibilities would undermine environmental protection. We predicted that hiding behind instruments such as the regional forest agreements would fatally compromise the values that this act was meant to protect. We strongly believed in 1999 that climate change was a matter of national environmental significance. Seven years later, the government has compounded its failure in 1999 to produce the kinds of measures required and to take climate change into account. It has not learnt. Seven years of water scarcity, climate change, land clearing and biodiversity loss later, we are confronted with 400 pages of amendments that cripple a body of law that was weak to begin with.

The bill appeared from nowhere. There was no exposure draft, there was no discussion paper and there was no consultation with the community or with the environment and heritage groups and other organisations that work most closely with this act. The government is in too much of a hurry to wait and wants to rush this through before they
see the outcomes of the Australian National Audit Office review, before they see the review of the triggers and before they see the 2006 *State of the environment* report—or, more accurately, before the community sees these reports and is further outraged by the degradation to our environment. These reports, I believe, will clearly show that this act has not been functioning adequately.

No government review has been conducted into whether the act is working to protect our environment. The only independent review of the operations of this act was conducted by the Australia Institute in 2005. In its summary, it confirmed the misgivings we expressed at the outset:

After almost six years, it has become patently clear that the Environmental Assessment and Approval (EM) process has not lived up to the sometimes grand expectations held for it. Most importantly, the EM regime has failed to prevent the continuing degradation of Australia’s natural and cultural heritage ... it is hard to avoid the conclusion that the EM regime has wasted an enormous amount of public and private resources, without realising any significant environmental outcomes.

Our only real point of agreement with the government is that we agree that this act is in urgent need of amendment. The Senate Standing Committee on Environment, Communications, Information Technology and the Arts, which looked at this legislation and of which I was part, was given, as everybody knows, unrealistic deadlines within which to analyse and report on this bill. It was given completely inadequate time in which to conduct hearings. Interest groups were given 10 days to analyse 400 pages of amendments and prepare responses. It is quite obvious that the government is not interested in listening to the feedback and having any genuine consultation with the community and holds the environment and heritage sector in contempt.

There must be some important reasons why the government is in such a rush to bypass all the normal processes and inputs which you would normally expect if it were genuinely wishing to improve this legislation. We know what the rush is about, and it is spelled out in the explanatory memorandum. This bill:

- Reduces processing time and costs for development interests ...

The government has introduced this bill not to protect the environment but to further relax such protections that do exist. The Minister for the Environment and Heritage is becoming a junior minister for development.

Every five years, the minister for the environment is meant to prepare a section 28 report on whether additional matters of national environmental significance should be considered under this act. There is no sign of this report. According to this bill, there are also no new matters of national environmental significance that we need to be concerned with. I find it completely breathtaking that at the end of 2006 this government still does not consider that climate change is a matter of national environmental significance. The premier piece of environmental legislation in Australia is silent on the most important and significant environmental issue of our age. My colleague Senator Milne will introduce a climate change trigger to this bill, and the government will most likely not support it. We will also be introducing triggers for unsustainable water use, large-scale land clearing and large dams.

For more than a decade, the government has shown enormous reluctance to properly engage with the debates on climate change, biodiversity loss, water and land-clearing issues. These are real crises which are crippling agriculture and are now bearing down on our coast areas, our rivers, our wetlands, our cities and our species. We have in front
of us the first opportunity to set down a national response to these issues in legislation. Instead, we are presented with a 400-page piece of legislation which amounts to a get out of jail free card for big business and their strongest advocates, the federal government.

In addition to avoiding the central environmental threats faced by this country, in essence this bill does four things. First, it avoids Commonwealth responsibility. It divests responsibility for national environmental issues away from the Commonwealth, fundamentally undermining the objectives of the act. Four assessment bilateralts have already been signed allowing the states to do the Commonwealth’s job in assessing development proposals. The whole point of this legislation should have been to introduce consistent Commonwealth regulation of issues of national environmental significance. Instead, responsibility is being hived off to states and corporations for them to regulate themselves. Just as troubling is the notion of approvals bilateralts. We have just learnt that one is apparently under negotiation with the government of Western Australia over the Burrup Peninsula. This is presumably to let the federal minister for heritage off the hook in terms of having to make a decision on development over the Burrup. If ever there was an example of a state government failing in its environment and heritage obligations, this is it. But the Commonwealth is currently negotiating away its responsibilities and this bill will further entrench this trend.

The trend extends to the system of exemptions that makes it impossible to apply a nationally consistent framework to protect threatened areas. Proponents will be able to hide behind bioregional plans, strategic assessments and conservation agreements, in addition to regional forest agreements, and avoid community scrutiny of their activities. A proponent with a large and controversial development will be able to lobby for a particular area to be covered under a strategic assessment or bioregional plan. Once that administrative arrangement is in place, projects said to be consistent with the overall plan can be built with minimal government or public oversight. This is a loophole big enough to drive a nuclear waste dump or uranium mine through. This has, of course, increased the willingness of the government to override the act altogether when it is convenient. The Commonwealth’s radioactive waste dump proposal in the Northern Territory is the most infamous example of this. There seems to be little point to having national environmental laws if the government’s most controversial projects are going to be exempt from them.

The second issue is the reduction of democratic participation. This bill reduces opportunities for democratic participation and review. Major barriers in the way of public participation have been put in the bill and it has also taken away the capacity of the public to appeal decisions. Since the act came into force, 11 third-party enforcement actions have been brought to the courts. Perhaps the most famous is the so-called flying fox case of Booth v Bosworth in 2000. Carol Booth brought a successful injunction against a Queensland lychee farmer whose overhead electrical grid was killing 18,000 speckled flying foxes a year. Under the current act, she was protected from having to give an undertaking as to damages. In the words of the original report of the Senate Standing Committee on Environment, Communications, Information Technology and the Arts on this bill:

The committee considers that requiring undertakings as to damages would be an unnecessary hurdle to persons or organisations seeking to enforce provisions of the bill in the public interest.

That protection is being repealed. From now on, in the event that the government is failing to enforce the act and a citizen or group de-
cides to take action, they will be asked to post a bond and be exposed to the costs in the event that they lose the case. So there will be no more flying fox cases, no more protection and no longer an ability for the public to protect our species where the government is unwilling to do so, as it was in that case.

The government will spend $13.8 million in 2006-07 on assessing and monitoring activities that could impact matters of national environmental significance. By comparison, it will spend $170 million on subsidising the consumption of draught beer. We spend $63 million per year on enforcing national competition laws but less than a quarter of this amount on enforcing national environment laws. As a further slap in the face, Minister Ian Campbell announced a $60 million gift to Chevron Texaco to subsidise their activities on Barrow Island. That represents 30 hours worth of Chevron’s profits in 2005. The government clearly intends to continue starving the Department of Environment and Heritage of resources. A further $1.6 million is being stripped for the 2007-08 budget. You would think the government would want to reduce barriers to citizen and non-government enforcement actions given its lack of funding to enforce its own laws; instead, the opposite is happening. The Minister for the Environment and Heritage is also removing the right of appeal of ministerial decisions by the Administrative Appeals Tribunal. This has implications across the board, including for trading in live animals such as the CITES listed species. This is one further avenue of democratic review sealed off by this government. What possible rationale can there be for these actions except to avoid the scrutiny of the public?

The third issue is threatened species and places. The already flawed system for listing and protection of threatened species, ecological communities and heritage assets is being further downgraded. The minister has turned the listing process for threatened species and ecological communities into a theme park. I remind the minister that species are not threatened according to themes. They are threatened right across the country and in our oceans by well-understood processes that range from land clearing, through to overfishing and climate change. The minister has shown no hesitation in using the current system for political ends, as the orange-bellied parrot fiasco illustrates. We now run the risk of this same minister deciding the threatened species flavour of the month on a political whim, sideling good science and conservation interests that are such an essential part of our system if it is to work properly. Currently, the minister can indefinitely postpone the consideration of politically sensitive listing proposals by tying them up in bureaucratic processes. That is the reason why, despite overwhelming scientific evidence, commercial fish species that are reaching the threshold of extinction have not been put on the threatened species list. That is why only one is listed for protection—and that one, only just.

However, since he is probably getting bored with tying everybody up in bureaucratic processes, the minister with this legislation is now given the right to arbitrarily remove a nominated species or ecological community from the consideration of the Threatened Species Scientific Committee. That is so much easier than making the hard decision about whether to offer a species the protection it deserves under the law or to tie it up in the bureaucratic process. I will never again underestimate the capacity of the government to make a bad situation worse, as is going to happen with our threatened species process.

The notion of critical habitat has received only scant treatment in the bill. Habitat destruction is the key factor in the fight for sur-
vival for many species, but the government has failed to address this issue with robust protections for critical habitat. There is a backlog of 500 threatened ecological communities currently nominated under this act. They are now at risk of being wiped from the lists during this transition process. What a wonderful way to clear a backlog—you just legislate it out of existence! No doubt we will hear that the states will be taking up the slack and adding these nominations to their lists. I tried to find a place in the bill that makes sure that this will occur but it is not there.

There is also no longer the requirement to develop recovery plans once a threatened species or threatened community is listed. Over the life of this act, recovery plans have been watered down to the point where they are of marginal use. Instead of legislating some teeth into them, they have been made entirely optional. Most troubling is that, if a species has been refused protection in a previous assessment, the minister will shortly be able to refuse to look at it again even if its conservation status has worsened. These amendments are a one-way ride to extinction for many species. Quite frankly, they could not have come at a worse time for Australia's unique and fragile environment.

Lastly, I am dismayed by the vesting of inordinate discretionary powers in the hands of the minister. He has effectively sidelined the expert bodies set up to advise him under the act. It is part of the pattern of centralisation of power and unaccountability that has so strongly characterised this term of the Howard government. Under the act, this minister has the Threatened Species Scientific Committee and the Australian Heritage Council—both highly regarded bodies which are eminently qualified to provide advice on ecological listings and heritage nominations—but he sidelines these expert bodies. The scientific committee has been muzzled and left on the sidelines. It can provide all the input it likes, but the minister has the power to dismiss it arbitrarily. The actual conservation status of a species is no longer listed as a relevant criterion for placing it on a priority action list. The scientific committee is also to be prevented from disclosing any information used to make its assessments, which appears to be an attempt to frustrate freedom of information applications.

The Australian Heritage Council has not done much better out of this bill. I am sure the minister had the contentious case of the Burrup Peninsula uppermost in mind when he oversaw the drafting of these provisions. The Heritage Council will be dragged into the minister’s arbitrary theme park approach. Any place the minister considers is too hot to handle can be deleted from the list by the minister or deferred indefinitely. Currently the minister has 60 working days to decide the fate of a nominated place such as the Burrup. With the clock running down, the minister has introduced amendments which allow him to delay a decision on such a place forever.

I can only stress that this government, and this environment minister in particular, will be harshly judged by the community for the measures introduced in this bill. An act which was functioning poorly will shortly be completely gutted. The Australian community has moved on and is demanding leadership and robust environmental protection in the face of habitat loss, water stress and climate change. The minister and the government are oblivious to these demands and are dancing to a short-term development tune that only they can hear.

The Greens will be opposing this bill. We oppose the amendments in this bill. The government has wasted the opportunity to strengthen environmental protection in this
country that is so urgently needed. The Greens will be moving amendments that will significantly strengthen this act and provide a trigger for climate change, a trigger to deal with our water crisis and a trigger to deal with land clearing, which is still the dominant reason for species loss in this country. Unfortunately, Australia has an unenviable record. It has the highest loss of the mammalian species in the world, and it has biodiversity hot spots in a number of places. The south-west of Western Australia, my home state, is one of the most highly diverse areas in the world. Unfortunately, our biodiversity is going backwards fast due to the impacts of salinity, the impacts of climate change, the impacts of habitat loss and the impacts of land clearing. Unless this government acts to strengthen our environmental protection act, our species in Australia have a very, very sorry outlook.

This government has abused the environmental protection act. It has not used the strength in the act, weak as it may be. It has failed to use it adequately. It has not put in the required resources, and now it wants to completely gut it and take out the community’s capacity for participation, adequate scrutiny and the ability to carry out its job. It has not been doing its job; now it is taking away the community’s capacity to do its job for it. These changes are not supported by the Greens and should be rejected by the Senate.

Senator BARTLETT (Queensland) (6.03 pm)—I am pleased to see that the Minister for the Environment and Heritage is present for this part of the debate, but I am not sure that he will listen closely to the contributions. On behalf of the Democrats I must say that I am disappointed with the Environment and Heritage Legislation Amendment Bill (No. 1) 2006 before us. It is widely known—at least, I assume it is widely known—that the Democrats supported the Liberal Party’s Environment Protection and Biodiversity Conservation Act when it was put forward in 1999. We supported it, I might say, only after ensuring that it was very heavily amended, but, in doing so, we were subjected to some extremely strong criticism, including from my friends in the Greens just to my right, from the Labor party and from some environment groups in Australia.

A number of environment groups—the WWF, in particular, the peak environment body in Tasmania and in my state of Queensland, and the Humane Society International—supported our position in passing very heavily amended new and extremely strengthened environment laws into being. Having taken that stance nearly 7½ years ago on the basis of our informed decision that this was a significant strengthening of the environment laws in place at a national level—much stronger than the laws they replaced—it is, I have to say, quite disappointing that there was so little engagement by the government with those who have shown a willingness to work with it. Our record has shown that we are willing to work constructively with the government. As we all know, the government does not need Democrat support to get legislation through the Senate now, but I would have liked to have thought that the government would have seen it as beneficial to have at least involved those environment groups who not only supported the Democrats and the government’s amended legislation at the time but also continued to work with the government and the act.

One of the things I was pleased to see come out of the Senate committee inquiry was that the evidence from those groups who have chosen to work with the act shows that it has been demonstrated that the act is a powerful piece of legislation. The act is capable of providing very significant environmental protection, and the act has operated to
provide significant environmental protection. It has not operated anywhere near as frequently as I would have liked, and that has been commented on across the board.

Clearly, I think the evidence that was provided in the very short committee inquiry vindicated the Democrats’ decision to pass the Environment Protection and Biodiversity Conservation Act 1999 as it demonstrated that, where there is political will or where there has been willingness and ability by people at the community level to ensure compliance with the act, it has delivered significant positive results. That is why it is particularly disappointing and particularly noteworthy that, as Senator Siewert pointed out, those groups who supported the adoption of the act and sought to work with it have been so strongly critical. I think it is a missed opportunity for the government and by the department and the minister not to seek to engage with those groups.

If you contrast the processes, you see that the final stages of the passage of the EPBC in 1999 were certainly controversial and, I am quite willing to acknowledge, less than ideal. But the process leading up to that was very extensive. Initial legislation was released. There was a comprehensive Senate committee inquiry straddling the life of two parliaments and then a further significant inquiry into the amended legislation after the 1998 election through to the first part of 1999, so there was literally well over a year’s worth of meaningful and genuine consultation that led to the legislation and the amendments that were derived from that process. Compare that to this time around, where there was no consultation. That is the evidence from environment groups, from people who actually work with the legislation. There was no meaningful consultation. The heritage groups that work with the legislation—again, to some degree, there was controversy—also supported changes relating to the heritage areas of the legislation a few years ago. Those were changes that even the Democrats were not totally happy with, but I will not go into the detail of that particular saga.

I think that background needs to be emphasised, because it is a missed opportunity to engage with groups that have shown their willingness to work constructively and to seek to work cooperatively. Therefore, perhaps it should be no surprise that there are significant concerns about major parts of this legislation. Certainly not every clause in it is bad. There are components of it that do strengthen and improve the law, but significant loopholes are introduced. To me, the most significant one is the removal of the right of merits review, the removal of the opportunity to appeal the minister’s decision on key areas to the Administrative Appeals Tribunal. That is one power that actually pre dates the EPBC, and that is why it is particularly disappointing that it is being removed.

The bill removes the right to appeal ministerial decisions with regard to threatened species, migratory species, marine species, whales and dolphins, and wildlife trade permits. As I understand it, the right to appeal wildlife trade permits predated the EPBC, going back to the 1980s, so it is a long-entrenched right. It is also a right that the evidence before the committee clearly demonstrated was not being abused or misused. Similarly, the requirement in this legislation to remove the immunity for appellants from potentially being open to putting in place financial commitments before getting injunctions put in place is another right that had not been abused or misused. There is no sign that a legal process had been used in any sort of flippant or non-genuine way, yet this right has been removed.

It was made quite clear to the Senate committee inquiry by the Environmental
Defenders Office, by those people who use the legislation—they do not use it maliciously; they use it to ensure that it is enforced—that this will mean that fewer court actions will be undertaken. The example that Senator Siewert gave was one I am very familiar with and very proud of: in my own state of Queensland, local conservationist Dr Carol Booth was able to undertake court action to require compliance with the legislation to protect the monumental slaughter of spectacled flying foxes by a few fruit growers in Far North Queensland. That action may never have been initiated if that initial risk had been there, if that initial financial risk had been put in place.

It is very unfortunate that sufficient resources are not provided to enable adequate enforcement of the act. That is another point that came out very clearly in the committee inquiry. That view was put not just by environmentalists but also by bodies such as the Minerals Council, for example. When you have all of those people across the spectrum saying that more resourcing needs to be put in place to ensure enforcement of the act, then that is a serious problem. It highlights what has been an ongoing concern for the Democrats in supporting legislation, as we did in 1999. Pointing to how strong it is, as I will continue to do, still does not in any way guarantee that you will get ideal outcomes, not least because you can have the best piece of legislation in the world—and the EPBC Act is not the best piece of legislation in the world but it is certainly the strongest national environment law we have ever had by a long way—but, unless there is political will and adequate administrative resourcing to enforce it, then you are not going to get the results on the ground that you should. It should be noted that a lot of the gains that have been made, a lot of the environmental wins that have come through the EPBC, have been as a result of actions by environmental groups working on the ground, particularly by some of the officers of the Environmental Defenders Office.

Again, I point to evidence in my own state of Queensland. The environmental wonders of Queensland are often not given adequate recognition. But, particularly when you get up into the far north of the state, you find the most extraordinary biodiversity—absolutely unique, literally, on a global scale; irreplaceable. Yet that area is under continuing threat from coastal development and other activities. The evidence provided by Ms Kirsty Ruddock, from the Australian Network of Environmental Defenders Offices, was quite clear: the EPBC Act has been of very significant assistance in areas of Far North Queensland. She pointed to the example of the False Cape development, where pursuing the avenues of the EPBC led to an outcome where mariners and boating developments in that area were banned. There have been conditions put on a lot of the mariner developments around the Whitsundays. We have had specific wins with regard to the slaughter of the spectacled flying fox, for example. None of these would have happened without the EPBC Act.

It is worth noting, given the very current and immediate controversy over the Queensland government’s plans to build two megadams in south-east Queensland, particularly the one on the Mary River—the so-called Traveston Dam—that, if the EPBC Act had not been brought into being by the Democrats, there would be no debate; there would be no prospect of federal intervention in that dam. Whether the minister will actually intervene in that issue is something that is still a long way off. Obviously, he has to go through the process with regard to that. But at least there is the opportunity there for the community to make the argument, for the evidence to be put and for some sort of process to be followed that is not just the total
sham that applies under Queensland environmental laws.

It cannot be said often enough that, were it not for the fact that the EPBC Act was brought into being by the Democrats, there would be no opportunity to try and ensure that there is protection of the threatened species in the Mary River, to protect against that dam being built. There would not be the opportunity to have the proper assessment of all of the downstream impacts—the impacts on the World Heritage areas, on the Ramsar Wetlands. If the EPBC Act were not there then the debate would not be there. I suppose in one sense Senator Campbell would welcome that because it would mean he would not have that difficult decision to make, but I am sure he will enjoy the intellectual exercise over the coming months. But, if the EPBC Act were not there then, under the previous law, there would be no power for the federal government to act. That in itself is a demonstration of the value of the legislation, because quite clearly there would be no protection provided by the Queensland government.

It has to be repeated that those groups that have used the act, that have been quite prepared to point to its positives, have in some respects actually been more critical than other environment groups. Unfortunately, I think one of the by-products of the ferocity of the disputes over the passage of the EPBC Act back in 1999 was that the vilification of the act led to some groups and some individuals adopting the view or the assumption that the act was as bad as had been pointed out and there was no point in even bothering to use it. That has led to it being underutilised, I think, by people at the community level, which is unfortunate. I am not saying that everybody had to agree with the decision that was made to pass it back in 1999, but the level of animosity that surrounded that I think coloured some people’s views about the merits of the act. But, as I said, the evidence shows that it is a quite meritorious piece of legislation. Indeed, even some of those who did strongly criticise it back at its passage in 1999 now have sought to use it to protect important parts of our natural environment.

The biggest concern that I have is the removal of the appeal right—the merits review under the Administrative Appeals Tribunal. I think that is a very serious reduction in the accountability mechanism of the act. The argument, such as the department has made, that, ‘Well, these are balanced decisions and you’ve got to weigh up a lot of things; therefore, it should be an elected official, a minister, rather than an unelected body like the Administrative Appeals Tribunal,’ is frankly, a very thin one. Indeed, I think it is a very dangerous precedent. All of our courts, whether they are tribunals, magistrates courts or the High Court, are unelected. Frankly, I am one of those who think they should definitely stay that way. To say that a decision made by an elected official is somehow automatically more meritorious than a review by an unelected official is a curious reading of the rule of law in Australia over many years.

The concerns the Democrats expressed about the strict liability provisions in the act are ones that I also want to repeat. I have spoken about these already in this chamber, in speaking to the Scrutiny of Bills Committee reports that have come down, so I will not go into them in detail again now. I followed personally the steps through when some of the seizure powers, search powers and strip-search powers were first put into the Migration Act, and they were opposed by the Democrats at that time—partly because we believed they were not meritorious in their own right but also because of the precedent that they set. This is a perfect example of why it is dangerous to let those
precedents be set. It was agreed to by the Senate, without the support of the Democrats, that these powers should be adopted for migration detainees in certain circumstances. Once they were adopted we then saw, in the middle of last year, moves by the government to also adopt them in the Fisheries Management Act for fisheries detainees. The reason was used that we need to have powers parallel with the Migration Act powers. Now we are seeing a further step where, under our environment laws, we are being told that we have to have consistency with the Fisheries Management Act and the Migration Act. We have this curious new term called 'environmental detainees'. I appreciate that we need enforcement out in the marine environment against people who are damaging the ecosystems, but I do not think these sorts of powers are appropriate in any of those circumstances. I can certainly say that the Democrats will be consistent in saying that they should not be applying in these circumstances. Indeed, the minister’s reply to the Scrutiny of Bills Committee said that he did not envisage them being used very frequently, if at all. If that is the case then let us not put them in there. I think that is a much safer move.

The other point I wanted to emphasise is in regard to the absence of the greenhouse trigger. I was very disappointed to hear Minister Campbell yesterday rule out categorically the greenhouse trigger and say it would be a bad thing. That goes completely against his predecessor, Senator Hill, who in 1999-2000 put a lot of effort into exploring the possibility of putting a greenhouse trigger into the EPBC Act. Indeed, it is not inaccurate to say that there was a clear commitment from the minister at the time that he would work towards putting that greenhouse trigger into the act. It is extraordinary that the Democrats provided an opportunity as long ago as 1999 to ensure that our environment laws enabled assessment of the climate change impacts of development. Seven years later we still have not seen it, and now we have had it categorically rejected. Even Senator Hill seven years ago said that introducing a greenhouse trigger would provide another measure for addressing our international responsibilities in relation to climate change. What has changed? The only thing that has changed is that we know the problem is even worse now than it was then.

I just do not understand why there is this intransigence. I think it really is a backward step and I ask the minister to reconsider his attitude in response to that. A greenhouse trigger would not stop developments happening automatically; all it would mean is that the impacts would be properly assessed so that we know what it is we are doing in regard to climate change. Surely, that is something we should be doing. I will be talking about other matters when we get to the committee stage of the debate. There will be a number of amendments circulated.

Senator STEPHENS (New South Wales) (6.24 pm)—I rise to make a brief contribution to this second reading debate on the Environment and Heritage Legislation Amendment Bill (No. 1) 2006. I start from the premise that I have always thought that you cannot make bad legislation less bad. Most of the 136 submissions to the inquiry expressed very deep and extensive concerns about this bill and what it was looking to achieve. For that reason Labor has taken the decision not to support the bill.

We really believe that, if passed, this bill will weaken the protections of the current EPBC Act that currently provide some support for Australia’s biodiversity and heritage. As Senator Bartlett said, the bill is a lost opportunity to deal with the issue of climate change. Everyone expected that there would be some climate change triggers or some
kind of signals in this bill. For them not to be there was a glaring omission that beggars belief.

It is very interesting that there are no government senators prepared to speak in this debate and defend this legislation. I think we got a good indication of why that is the case from the comments made by Senator Johnston about the explanatory memorandum and how pathetic and basically disrespectful the explanatory memorandum was in what was being asked of senators.

The bill is quite extraordinary. It is 400-odd pages long. It is incomprehensible. The additional amendments that have been provided make it almost impossible to understand. I certainly do not have any kind of legal training. I spent my time trying to work out what amendments to the proposals might actually mean and I gave up. That is why I do not intend to speak too long except to express my real concerns about what is going to be achieved here.

We know—the explanatory memorandum actually tells us—that this is about improving the circumstances for developers. They are going to be the major beneficiaries. The bill, as it stands, provides greatly enhanced discretionary power for the Minister for the Environment and Heritage. I am sure that he is going to tell us why he needs those powers.

The bill certainly curtails third-party appeal rights and we heard from Senator Bartlett and Senator Siewert just what the implications of that are for people who act in the public interest and have a right to represent the public interest and concerns about the environmental impacts of major developments.

The bill reduces transparency and accountability, and many examples of that have been provided to the committee through the submissions. Some of the submissions have taken extraordinary steps to explain what the implications are for the kinds of representations that they make on behalf of their constituency groups and how significantly they will be affected by the bill.

The bill certainly undermines the public consultation process. Surely a bill of this magnitude and this import requires that there be genuine and appropriate public consultation. Senator Siewert made the point so clearly about the issue of threatened species and heritage-listing processes. That was the part of the bill that I was flabbergasted by. I have found this whole process pretty instructive in the sense that it shows how a government that has control of both houses of the parliament can move so quickly and in such an extraordinary number of ways all at one time.

There were parts of the bill that really concerned most people who made submissions. As I read their submissions I started to understand just what was on their minds. They were concerned about this business about undertakings as to damage protections for those who seek to enforce the act by way of injunctions, and the fact that that has been removed from the bill. It is obviously targeted at active environmental groups, but there are a lot of community organisations and community activists who might be concerned about a major project being considered under the EPBC Act. They would not be able to have their voice heard under this legislation. I think that is truly a disservice to those communities and is grossly unfair.

We had quite significant and learned evidence from Dr Lee Godden and Ms Jacqueline Peel from the Faculty of Law at the University of Melbourne. In their submission they argued:

An important enforcement tool currently provided by the EPBC Act is the capacity for any ‘interested person’, including environmental civil soci-
ety groups, to seek an injunction to prevent breaches of the Act—
under section 475—
Such applications supplement the enforcement activity carried out by the Department of Environment and Heritage, and play an important role in ensuring the accountability of developers for the environmental consequences of their actions 

... They went on to say that the changes were ‘likely to affect, adversely, the enforcement strength of the legislation’ because ‘environmental groups and other community members rarely have the necessary resources to meet demands for an undertaking as to damages’. That point was taken up by several key representative organisations: the National Trust, the Humane Society International, the Tasmanian Conservation Trust and the World Wildlife Fund for Nature. All these people were arguing against the repeal of section 478. The submission from those peak organisations stated:

It is instructive to note that third parties have used the court system very judiciously, and given the Australian Government has such poor surveillance arrangements in place to ensure compliance, enabling individuals and organisations to ensure the objects of the Act are achieved should be encouraged not dissuaded.

Isn’t that what we want? We want an active democracy. We do not want to clamp down and we do not want to say that we are not prepared to listen to dissenting voices, but that will actually be the outcome of this legislation. Where do the public interest tests ever get to have their chance in the legislation as it is proposed?

Senator Bartlett referred to the changes to collecting evidence and the way in which evidence and dealing with offenders would actually be incorporated into the act. He talked about marrying the Migration Act and the Fisheries Management Act, and now this environment and heritage act. In a way, that is a pretty insidious process to bring in quite punitive action against individuals on the basis of aligning legislation. These offensive kinds of processes are all part of this insulting legislation.

The majority report from the committee made what I thought was the most offensive comment of all. It was this clause more than anything else that, I think, would have offended those people who are opposing the report. Paragraph 4.42 states:

The committee notes some concerns raised by the Scrutiny of Bills committee in its Alert Digest No. 12 of 2006 in regard to the provisions above, and hopes that the Minister’s responses to the questions raised by that committee will allay any fears regarding these reforms.

I do not intend to proceed any further because I think that the committee stage of the bill will be very informative. There will be extreme pressure on the minister to actually respond to the many questions that will be raised about the reforms that this bill purports to deliver.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (6.33 pm)—The Environment and Heritage Legislation Amendment Bill (No. 1) 2006 is a disaster for our nation’s environmental and cultural heritage. That such a bill could be brought before the parliament in the current atmosphere of growing public alarm about the environment, to emasculate the already weak legislation, the one piece of legislation that empowers the government to protect Australia’s environment—that is, the Environment Protection and Biodiversity Conservation Act 1999—is testimony not just to the Howard government’s dereliction and culpability in its handling of Australia’s environment but to the power of the vested interests—that is, the mining corporations, the logging corporations and the other lobbyists from the big end of town. The government does not have an environmental conscience
and does not give a tinker’s cuss about the Australian environment, and therefore it is abandoning its responsibility as the custodian of the Australia that the next generation and all future generations will inherit.

That such a horror piece of legislation as this could be before the parliament at this end of the year can only be matched with the cynicism of the minister for the environment, who just walked out of this chamber, having been here for a few minutes. This legislation has been brought before the parliament before the all-important *State of the environment report* has been brought in—he ought to have had that before the parliament by now—so that this country can get a glimpse, even from the inevitably politically loaded report that it must be, about how rapidly our nation’s environmental heritage is being destroyed.

One only has to look at the loss of species. Amongst all the wealthy nations on earth, we are the worst performer. Regarding the impending loss of species—our Australian wildlife and plant life heritage—amongst all the world’s wealthy nations, we have the biggest list of endangered species. Who would have thought that a Prime Minister, who almost never appears in public without being in front of the flag and uses the Australian idiom time and time again to profess his great fealty to this country, could be so totally derelict about what makes this nation a nation? Of course, above all things, that is our land, our seas, our waterways, our forests, our mountains, our plains and the diversity of vegetation and wildlife that makes up this country. Indigenous Australia has always known that and Australians all know that, but here we have a piece of legislation which is going to see the current unprecedented rate of destruction of the natural fabric of this planet accelerated.

The Humane Society International and World Wide Fund for Nature Australia have briefly put together a list of their concerns about this tooth-pulling legislation which comes at a time when our environment laws need to be strengthened. They point out that the bill before us will potentially wipe 500 threatened ecological communities from the current waiting list for protection. These are being taken off the list by a derelict government and a failed minister for two reasons. The first reason is self-evident—there is a failure to look at those 500 threatened species, properly assess them and bring into place management plans to protect them. The two national and international environmental organisations point out that these 500 threatened ecological communities involve millions of hectares of endangered habitat across the country. There, Acting Deputy President Moore—as a member of parliament you will know—is the problem. There is no way that this venal, small-minded, materially oriented government which is lacking in the values of heart, warmth and relationship to this planet which gives us life is going to protect millions of hectares of endangered habitat across this country.

The Stern report, which says that climate change threatens the planet but also will come with a $9 trillion a year bill if we do not act on it by mid-century, pointed out that, in protecting the environment, we are in fact protecting the future of the economy. But we have a Prime Minister still so bereft of Australian concerns—those deep-hearted ones that go beyond standing before business groups and talking about cutting tax—that he cannot get the idea that, as a responsible nation to coming generations, we should be protecting our environment, therefore protecting our economy, and also ensuring their life, their happiness and their excitement about diversity on this planet, on which we
are one of five million to 30 million species—just one species, dependent on the rest.

He does not get the idea that, if you do not look after the environment, you will not look after the economy. In fact, in his thinking he is so far back into the industrial age that he still believes that it is a case of the environment or the economy. There is no way that he can listen to a Sir Nicholas Stern, an economist, if it cuts across that war of ideas that there is in his 1950s head as he sells out this country through a weak, vacillating and procrastinating person—indefinitely, a person of conflicting ideas—such as we have in the Minister for the Environment and Heritage.

The second point that the Humane Society International and World Wide Fund for Nature Australia pointed out that this bill will do is remove the mandatory requirement to develop a recovery plan once a threatened species or ecological community is listed under the law as threatened. That is, if one of the Australian species is listed as rare, vulnerable or critically endangered, under the very moderate—in fact, weak—Environment Protection and Biodiversity Conservation Act, the minister is required to bring in a recovery plan—not just let it go, but do something about rescuing that species from oblivion. This legislation removes that requirement.

If you look at the Mary River that Senator Bartlett referred to, the Beattie Labor government is about to build a dam at Traveston—a travesty of a dam—which will flood the prime breeding places left in a very small range for the threatened Queensland lungfish, which scientists point out is a living link which tells us how vertebrate species like we human beings came ashore from the oceans millions of years ago. It actually tells us about our own history.

If you ask the world expert, Professor Joss from Macquarie University, about this dam, she will tell you that it is going to drive this marvellous Australian species rapidly into extinction. That is what happens when you destroy the breeding ground of a species. Premier Beattie can talk about ladders and lift wells and all sorts of other things, but the breeding ground in the gravel of the river is going to be suffocated under metres of water.

The minister for the environment’s advisers know that. The minister for the environment knows that. Premier Beattie and all of his Labor Party apparatchiks know that—one of them, at least, had the conscience, bless her, to resign from the party before the last election and stand against this dam. The Prime Minister knows that. The Prime Minister is fully aware of what that dam will do. But, under this legislation, one fears that the government will give the go-ahead for that destructive and unnecessary dam but the requirement for a recovery plan, of all things, to help that lungfish recover and have a more assured future for the future of this nation is being ripped out of the legislation and thrown into the gutter.

The third point that the key environment groups made was that the bill will remove the mandatory requirement to identify critical habitat for threatened species in any recovery plans that are developed. At the moment, if you are going to have a recovery plan—if the minister decides that there will be one—sensibly, the legislation says, ‘Find the critical habitat upon which that species depends and protect it.’ That is being torn out of this legislation. We will not do that anymore. With the Mary River, for example, we know where the critical habitat is. That is the key river for the survival of the Queensland lungfish, the Mary River turtle, the Mary River cod and other species.

But no longer will this weak and hopeless minister for this anti-environment government have to sensibly look for critical habitats for such species. Now the government
will be able to say, ‘What could we do? Build the dam.’ There is nothing in the law to stop it. There is nothing that the minister will have to consider anymore. The two members of the government opposite—so there are 36 missing—might ask their colleagues to consider, when they come to vote for a gag on this bill a little later this week, because the debate on this legislation will not be allowed in full in this parliament, whether they will be able to look their grandchildren in the eye when somebody brings along a copy of this legislation and says, ‘Why did you do it?’

The fourth point that the HSI and WWF list is that, sadly, this bill will make it harder for the public to secure legal protection for threatened species and ecological communities because there is a new requirement in it for public nominations to comply with themes set by the minister or risk having their nomination left off lists for consideration. So you do not look at a species to see whether it is threatened anymore; as Senator Siewert indicated, it has to fit in with a specific theme that the minister will be able to point to that was set for that particular time. If it does not fit in, too bad. We are going to hear: ‘Trust the minister.’ If the minister ever does come back into the chamber we are going to hear him say that. But the minister took up his papers and hightailed it out of here before I got up to speak.

The minister is not going to stand in here and hear what this legislation is about and look anybody on this side of the chamber in the eye, because he knows that he is a disgrace to that ministry. He knows that he is selling out the nation’s environment with this legislation. He knows that he is paving the way for the extinction of a whole host of threatened species which, under the current act, have some chance of surviving. Some greedy proposal will come along which this government will not get in the way of—certainly not to protect Australia’s environmental heritage.

The bill will give the minister arbitrary discretion to remove a publicly nominated species or ecological community from the annual list of species to be assessed for listing. Currently, the minister gives the scientific committee repeated extensions to postpone consideration et cetera. Now the minister will be able to just knock a species off the list. The bill allows the minister to refuse to have reassessed a threatened species that was previously rejected for protection, even if its conservation status has worsened. So the minister may have rejected a species for listing in the past and, if the species heads towards extinction and comes up for listing again, he can just knock it off because he can say, ‘The government looked at that at some previous time.’ I will finish off with a statement from the Humane Society International that I think is so inherently heartfelt and understated—

Debate interrupted.

DOCUMENTS

The ACTING DEPUTY PRESIDENT (Senator Chapman)—Order! It being 6.50 pm, the Senate will proceed to the consideration of government documents.

Commonwealth Ombudsman Reports:

Department of Immigration and Multicultural and Indigenous Affairs

Senator BARTLETT (Queensland) (6.51 pm)—I move:

That the Senate take note of the document.

This is a report, as you have just said, Mr Acting Deputy President Chapman, from the Immigration Ombudsman. It is one of a number of reports regarding 81 people who have been in long-term immigration detention in Australia. Senators would recall that these reports are a consequence of agreements reached and changes announced by
the Prime Minister around the middle of last year in the wake of the absolute disgrace of the Cornelia Rau and Vivian Alvarez Solon incidents. But there were also other incidents that came to light not only of people who were wrongfully detained but of people who had been ‘longfully’ detained—very long in these cases. These reports all relate to people who have been in long-term detention, and it is unfortunate to say that some of them remain there.

These reports only have numbers as personal identifiers. It is totally appropriate for privacy reasons not to detail people’s names, but we should not forget that these are not just numbers; these are people, these are human beings. Whatever the background of the circumstance and whatever they may have done leading up to their immigration detention, none of these people have been convicted of any crime or even been accused of any crime.

The first example, case number 74, is the third report by the Ombudsman on this woman. She has remained in immigration detention since the first and second reports were provided to the minister and tabled in this parliament back in March. She is still there. She has been in detention since January 2003—getting close to four years. As with all of these cases, there are complexities and difficulties, and I am always prepared to acknowledge that immigration law throws up some hard cases. But I also think it has to be acknowledged that, except in the most extreme circumstance—in fact, I seriously cannot think of a single circumstance—somebody who is not deemed to be a threat to the community, is not a security risk, is not a health risk and has not been charged, convicted or accused of any crime should not still be locked up after four years. There is simply no circumstance that I can think of where that is justified, yet that is what we are still doing.

People should not mistakenly assume that because of all the announcements about changes that were made last year—and there were positive changes; they did move things in the right direction—that nobody would be locked up for years at a time. It is still happening. It is not happening as often but it is still happening.

The Ombudsman has recommended in this case, for example, that the minister consider giving the person a pending bridging visa with work rights while the issues concerning her immigration status and removal from Australia are resolved, taking into account the length of time spent in detention and there being no immediate prospect of her removal from Australia. There was an apparent lack of action by the department of immigration between January 2003 and November to resolve her case, and she does not appear to pose a risk to the community.

The Ombudsman also says and assesses: This case does not seem to be any closer to a resolution nearly a year later.

Yet she remains in detention regardless of the recommendation that the Ombudsman made. There we have the flaws in this process. It is good that there is a scrutiny mechanism to make sure that people are not forgotten but, at the end of it all, there is still no legal power to prevent people being locked up indefinitely, despite them not having committed a crime or even been accused of one.

The Ombudsman recommended in the report at the start of this year that this person be put out of detention into the community on a bridging visa while the circumstances are resolved, because there was no immediate prospect of them being resolved. That was clearly correct because it is still not resolved nearly a year later, but the woman is still in detention and it is simply unsatisfactory.
There is no justification for this sort of continued long-term imprisonment. It runs against the whole foundation of our democracy and our rule of law, and it is a reminder of why we still need to amend the Migration Act to get rid of mandatory detention. The Democrats opposed it nearly 15 year ago, and we will continue to move to get it removed from the Migration Act. I seek leave to continue my remarks later.

Leave granted; debate adjourned.

Veterans Review Board

Senator BARTLETT (Queensland) (6.57 pm)—I move:

That the Senate take note of the document.

The treatment of our veterans is an area that I do not believe gets enough attention. It is talked about from time to time but, given how much public and political debate there is about defence matters and deployment of defence personnel, I think it is a serious problem and we do not give adequate attention to what many veterans go through once they come back to Australia, particularly once they have retired from the defence forces.

I am the first to acknowledge that many veterans are treated very well through the various entitlements that they receive but I believe there are still far too many who are not treated as well as they should be. That does not mean that every complaint that everybody has got is valid or every concern should be met. But this is an area where we simply must accept that we have an extra obligation to people. There is a unique aspect to joining the defence forces: being willing to fight for your country and participate in peacekeeping activities in our region. Even the training for these sorts of activities can be extremely dangerous. There needs to be a greater willingness to act promptly with regard to veterans’ concerns.

People would be aware, for example, of the longstanding controversy over the use of Agent Orange and the impacts of that in Vietnam, and the longstanding controversies over the impact on veterans’ children of service in Vietnam through Agent Orange and other things. There has been progress on that but it has been terribly slow and extraordinarily stressful for the veterans.

We have had the more recent example of the F111 desease-seal-seal circumstance—a reminder that it is not just veterans who serve offshore on what is known as active service and whose health can be compromised and damaged by being part of the services. That is an area where people have had to fight much harder than they should have just to get recognition. There seems to be too much of a continuing attitude of almost a reversal of the onus of proof. I am not saying that we should let anybody claim anything but, given what so many veterans have gone through, I am saying that we need to have an attitude that is far less suspicious and looking for opportunities to deny entitlements. That is an attitudinal problem that cannot just be addressed by changes to the act or the law.

This is particularly important because I think we still are not fully appreciating the mental health impacts of a lot of military service. That is much harder to measure than broken legs and other physical injuries. In part because of that it is much harder to directly link it to the service and that is always going to be the case. That should not be used as a reason, I believe, for not providing adequate assistance and recognition. For a whole bunch of reasons, not just political or financial but cultural reasons within the military itself, we have continued to under-acknowledge and under-recognise the psychological impacts of military service. We need to improve that, particularly when people are seeking to get assistance through the veterans’ department and veterans’ review
mechanisms. They are often traumatised and going through difficulties in adjusting and I do not believe our review process takes that sort of issue into account adequately enough. These are not just immediate social justice issues for people. We should all support them regardless of what our views are about particular individual military deployments. We do not want to have people in the armed forces as the political meat in the sandwich in those circumstances. Across the spectrum we should be prepared to support our service personnel, particularly when they have come back from active service, and I do not think that we do that well enough yet. There have been improvements, and that is welcome, but I think that we have room for improvement still. *(Time expired).*

Question agreed to.

**Human Rights and Equal Opportunity Commission**

Senator BARTLETT (Queensland) (7.03 pm)—I move:

That the Senate take note of the document.

I will not use up my time at this juncture on the report of the Human Rights and Equal Opportunity Commission but I simply want to emphasise the enormous importance of the work that the commission does and the enormous range of that work. That is detailed in a lot of depth in their annual report. I would recommend to people—not just the senators here but the general community—that perhaps occasionally they think of looking at some of these annual reports. There is a perception that annual reports are dry and tedious administrative documents. Some of them are. Obviously some of the financial statements are not everyone’s cup of tea, though they are certainly important for parliamentarians to keep an eye on.

Annual reports do actually provide a lot of detail and many of them these days are written in a much more accessible way and give a much better insight into the work of particular departments and commissions. An enormous number of them of course—hundreds—are tabled each year, but this one, for example, I would very much recommend to people to enable them to get an idea of the enormous value and breadth of the work that the commission does.

There is often a very dismissive attitude taken by some political commentators who say that it is all bleeding-heart stuff or that all the antidiscrimination stuff has no practical value in the real world. There is a lot more to human rights than legal enforcement and the broader educative, consultative and oversight role that the commission plays is very important. The commission contributes regularly to Senate committee inquiries and in doing that it benchmarks policies, legislation and issues against commitments given by our country either under our own legislation or under international human rights conventions and covenants. Those are important benchmarks. They are important reminders and if it were not for a group like the Human Rights and Equal Opportunity Commission then we often would not be reminded of those benchmarks. We all fall short from time to time and sometimes there are domestic reasons why it would not be appropriate legislation to mirror those conventions. I am not saying that they should override domestic law but I am saying that it is important to continue to measure our performance against the standards that we as a nation, as a government and as a parliament have signed up to. That is an important part of the role of the commission.

I also take the opportunity while I am on this topic to express my disappointment—disappointment was also expressed today by the social justice commissioner—that the international declaration on indigenous rights that was due to be adopted by the full council of the United Nations before the end of this
year appears to have been deferred for 12 months. I think that is a real missed opportunity. It would not have been a binding convention—it was a declaration—but it would have been the first collation and recognition in a global sense of the fundamental rights of indigenous peoples.

I am disappointed the Australian government did not support adopting that declaration, but they were not alone. I am also disappointed in New Zealand particularly, Canada, the US, and one or two others for not supporting the adoption of that declaration—but it has not gone away; it has simply been deferred. I think it is disappointing, but it also presents an opportunity to build greater public awareness of the value of a declaration like that and its importance to indigenous peoples both in Australia and in so many other countries around the world. I am sure the human rights commission will be part of that process over the coming 12 months. I seek leave to continue my remarks later.

Leave granted; debate adjourned.

Consideration

The following government documents were considered:


General business orders of the day Nos 147, 148, 150 to 155, 157 to 159 and 161 to 164 relating to government documents were called on but no motion was moved.

ADJOURNMENT

The ACTING DEPUTY PRESIDENT (Senator Marshall)—Order! It being 7.08 pm, I propose the question:

That the Senate do now adjourn.

Australian Defence Force: AACAP

Senator SANDY MACDONALD (New South Wales—Parliamentary Secretary to the Minister for Defence) (7.08 pm)—I rise tonight to acknowledge the decade of hard work and dedication that members of the Australian Defence Force have given to the Army Aboriginal Community Assistance Program or AACAP, as it is known. As Parliamentary Secretary for Defence, I have taken a particular interest in this program at the request of the minister, who also has been very interested in its success. For the past 10 years Army engineers, with the support of other elements of the Army, Air Force and Navy, have been quietly working on projects across remote and Northern Australia for the betterment of our Indigenous communities. This work has provided communities with improvements to basic infrastructure, including housing, medical facilities, airstrips, roads and sanitation services.

In 1996, shortly after we were elected, members of the Council for Aboriginal Reconciliation met with the Prime Minister to raise concerns about the poor primary health of Indigenous Australians. Subsequently, the ministers for Aboriginal and Torres Strait Islander Affairs, Defence, and Health and Family Services agreed that the Army would assist with infrastructure improvements in a number of communities identified by the then ATSIS for priority assistance. Ten years later, this whole-of-government program continues and more than $60 million dollars has been contributed by the federal government. That figure does not include millions of dollars more of in-kind support through
Defence Force wages, equipment and logistics support.

AACAP objectives are consistent with National Aboriginal Health Strategy programs and the Department of Health and Ageing’s health programs. It is very much about practical reconciliation. The projects and results have been quite remarkable. Across the decade, nearly 20 communities have benefited from the provision of new and renovated houses, the construction of new airstrips, improvements to sanitation and vital infrastructure, health assessments and training, and water supply upgrades. Just about every imaginable form of civil construction has occurred, and basic services that most Australians simply take for granted have been provided to these less privileged communities.

The Army benefits from AACAP through the practice of deployment, construction and redeployment, plus the provision of health and training activities. During the years of the program, our Army engineers have been deployed overseas on Operation Pakistan Assist; the post-tsunami relief effort in Banda Aceh; and to Iraq and Afghanistan currently, where the skills practised here in Australia have been used operationally. The Aboriginal communities selected for AACAP projects benefit through improved infrastructure as well as skills transfer training. The ADF has left long-lasting legacies by developing skills among the local populations. Indigenous people have been empowered through the training delivered by the ADF through AACAP.

On 17 November at the Army’s Enoggera barracks in Brisbane, I had the privilege to attend a symbolic welcome home parade marking 10 years of AACAP. Staging a welcome home parade for the soldiers and other members of the ADF who have participated in AACAP over the years was an important acknowledgement in front of their families and fellow service men and women of the important job they have done. Although ADF personnel working on AACAP tasks remain in Australia, they may as well be many more thousands of kilometres away. The projects that are undertaken are often in very remote communities and, just as with personnel who are deployed overseas, the families of AACAP personnel must remain at home, far from their loved ones, keeping the home fires burning.

The sappers and others who go away for months at a time on AACAP tasks could not do their job without knowing they have the support of loved ones who keep their families and communities going. The government acknowledges and thanks the families for everything that they do. The continued support provided to our engineers and health, logistics and training personnel, as well as Royal Australian Air Force tradesmen, by their families and friends is crucial to maintaining the stability of our forces both at home and abroad.

In August this year I was fortunate enough visit the AACAP works being undertaken in the Borroloola area of the Northern Territory by the 21st Construction Squadron under the direction of the 19th Chief Engineer Works. AACAP 2006 redressed the consequences of Cyclone Kathy, which caused extensive damage to the communities around Borroloola in March 1984. The replacement houses built at the time did not meet national Aboriginal housing standards. With the support of the Department of Families, Community Services and Indigenous Affairs and the Department of Health and Ageing, AACAP 2006 saw seven houses constructed, a health and training program completed, electricity supplies extended, water and sewerage connected to new housing blocks and other minor infrastructure improvements made.
The versatility and adaptability of our Army engineers and other Defence Force personnel is quite amazing. They worked from sun-up to sundown six days a week to get the job done before the end of the dry season. I was impressed to see firsthand the leadership shown by the NORFORCE soldiers who reside in the community of Borroloola. They were providing valuable assistance to the AACAP team through their local knowledge and also by acting as mentors to the local youth, who were gaining trade certificates in metal engineering and general construction with the expectation of being employed in the local mining industry, which is developing well. Army is only able to fulfil its AACAP responsibilities with the support provided by both Air Force and Navy. The RAAF provides strategic lift assets for the insertion and redeployment of the Army personnel and the Navy provides strategic lift assets for the movement of major equipment.

In recent years, AACAPs have included small international contingents, with military engineers from Papua New Guinea, Fiji and Tonga serving under the auspices of our Defence Cooperation Program. AACAP projects demonstrate just how adaptable our Defence Force is. AACAP provides valuable training and experience for ADF members which can be put to good use when they are deployed to theatres further away from home. It is a wonderful initiative of the Howard government. It does good things. It is very useful for training purposes. It provides very good outcomes for local Indigenous communities. It is a program that is highly regarded and commended by me. I wish to encourage it in every way that I can. I acknowledge that there is a great deal more to be done with our Aboriginal communities, but I am very proud of the support that AACAP has given and am proud to support AACAP as it enters its second decade of doing good things.

Workplace Relations

Senator CAROL BROWN (Tasmania) (7.16 pm)—I rise tonight to set the record straight on a number of ill-informed comments and misinterpretations made in this chamber on 11 October 2006 by Senator Barnett, from my home state of Tasmania. Most of Senator Barnett’s speech indulged in using the standard Liberal Party mantra—an illogical mantra that we have all heard before—but I particularly wish to comment on Senator Barnett’s remarks on 11 October in which he revealed a complete lack of understanding of a trial being conducted by the Tasmanian government to allow four union officials to enter workplaces and inspect workplace health and safety hazards. Senator Barnett accused the Tasmanian government of compromising Workplace Standards Tasmania, the government authority responsible for the maintenance of safety and health standards in the workplace.

Senator Barnett might be interested to know that in Tasmania for the 2004-05 financial year there were over 10,000 workers compensation claims lodged for injuries sustained by a person’s work. The figure for 2005-06 was 10,018. Although injury numbers have shown a slow, downward trend over recent years from a high of around 20,000 in the mid 1990s, there is clearly still a long way to go. The Mercury article of 23 October this year entitled ‘Work death rate soars: Tassie nine lost in year’ reported that on average 27 Tasmanians are injured at work each day. Since the 2000-01 financial year, there have been 51 workplace deaths in Tasmania. This calendar year, there have been four more deaths in Tasmanian workplaces, including the much publicised death of Larry Knight at Beaconsfield. That is an
absolute tragedy. It is also absolutely unacceptable.

I know that every person in this chamber agrees with me that every Australian worker deserves to be able to go to work without putting at risk their health or, even worse, their life. The Tasmanian government would be derelict in its duty if it did not constantly investigate ways to reduce this terrible toll. Yet Senator Barnett and his colleagues oppose a trial to allow four sets of extra eyes into workplaces, for no reason other than that these eyes belong to unionists and the Howard government wants unions out of workplaces. Regardless of whether there is a job to be done, regardless of whether these individuals have the training, the experience and the motivation to do this important job of inspecting workplace safety, according to Senator Barnett they should be disqualified because of their affiliation with unions.

Senator Barnett and his Liberal Party associates in the Tasmanian state Liberal opposition have made a number of allegations about this trial. Perhaps they might be interested to learn the facts. First, the purpose of the trial is to improve workplace safety and to help prevent injury through a mechanism whereby potential hazards can be identified before they actually cause problems, and employers can be given the time to undertake change without penalty. Second, the powers and functions conferred on persons authorised under Tasmania’s Workplace Health and Safety Act 1995 are extremely limited. They can only enter a workplace if they reasonably suspect that a contravention of the act has occurred, or is occurring, and they must confine their inspection to the part of the workplace concerned. They must tell the person in charge as soon as they enter and show their authorisation under the act. If they have any concerns they must notify employers in writing and allow reasonable opportunity for matters to be resolved. If this fails, they must notify Workplace Standards Tasmania of any breaches or suspected breaches. Enforcement or prosecution quite rightly remains the function of officers from Workplace Standards Tasmania. Also, they are prohibited from using this role to solicit union membership.

The trial commenced on 1 September 2006 and will conclude on 1 March 2007. At present, two members from each of the CFMEU and the AWU have been given authorisations, after satisfactory completion of induction training. Throughout the trial, they will meet regularly with inspectors from Workplace Standards Tasmania. Officials from the CFMEU are restricted to visiting workplaces involved in the building and construction industry; those from the AWU are restricted to workplaces involving mining. I cannot understand why Senator Barnett and the conservatives would be opposed to this preventive approach to improving Tasmania’s workplace safety record.

We have now seen the Australian Chamber of Commerce and Industry claim that the trial contravenes ILO convention 81, which essentially requires governments to ensure that their inspectors do not have conflicts of interest that would interfere with their impartiality. This would have to be a very long bow indeed. Union officials have always enjoyed a right of entry to workplaces where health and safety issues were at stake. Moreover, the work of respected experts such as Professor Michael Quinlan of the University of New South Wales indicates that union officials are amongst the most effective health and safety inspectors. In any case, the union officials involved in this trial have no powers of enforcement or prosecution, as I have said.

The ILO conference of 2006 reports arrangements similar to those now being trialled in Tasmania that are deemed consistent with article 6 of ILO convention No. 81. We
all share an interest in creating an environment in which the health, safety and welfare of employees in their workplaces are a priority and our goal is to see employees return safely home to their families. The aim of this trial is to make a contribution to that goal. Senator Barnett wrongly claimed that no such model of this trial exists in other states.

Entry to workplaces by authorised representatives—that is, union officials—is permitted in Victoria, New South Wales, Queensland, Western Australia and the ACT. In all these jurisdictions, entry is permitted under relevant workplace health and safety legislation or occupational health and safety legislation. In many instances, authorised representatives have greater powers than have been granted under the Tasmanian trial. For example, in New South Wales, Queensland, WA and the ACT, authorised representatives have the power to inspect and copy documents.

On this side of the chamber, we support initiatives to improve workplace health and safety. We support initiatives that could help reduce the toll of workplace injuries and deaths. We see the need for workplace law that protects employees whilst protecting the interests of responsible employers. It appears that ideology prevents those on the other side from taking a balanced approach to workplace issues. Senator Barnett opposes this trial. It seems that a blind hatred of unions and an unwillingness to recognise the rights of workers can get in the way of supporting a reasonable measure to improve the safety of workers. Senator Barnett should be congratulating the Tasmanian government and Minister Kons for this initiative. However, Senator Barnett has already demonstrated through his support for the Work Choices legislation that he shares the desire of the Prime Minister to give ever more power in the workplace to employers at the expense of workers and their families.

Several union organisations have brought to the attention of the ILO a number of concerns about the Work Choices legislation—in particular, conflicts with Australia’s obligations under ILO convention No. 87, freedom of association, and ILO convention No. 98, the right to organise and to collectively bargain. The ILO’s Committee of Experts on the Application of Conventions responded to these concerns. On my reading of the response, the committee found that the complaints were either clearly or potentially justified—but it seems that the government remains relaxed and comfortable in the face of criticism. It seems that it has little time for international labour obligations.

The history of workplace conditions in Australia and elsewhere would not lead anyone to the conclusion that all employers can be trusted to behave reasonably, responsibly and fairly. Just about anyone who has been an employee knows that. The purpose of international conventions and domestic law and regulation in the workplace is to ensure that responsible behaviour on the part of employers and employees alike is not purely voluntary. Mr Howard and his supporters here and elsewhere appear to be committed to dismantling protections for workers and removing constraints on employers. The result is that employers are free to behave responsibly, if they choose, and employees are free to fend for themselves, if they can.

Although some employers will be responsible, and some employees will have the confidence and market clout to fend for themselves, it would be disingenuous in the extreme to claim that all will be well for the majority of workers. For many it will be a case of 'take it or leave'. Surely no-one would claim that those who are in most need of protection will be afforded it in this brave new industrial world. This government has been found wanting. It is unable to work in the interests of the community as a whole.
and to operate on any basis other than of short-term expediency and blind ideology. To abandon worker protections is a disgraceful position to take and it is a sell-out of Australian workers and their families.

**Suicide Prevention Australia Conference**

**East Timor**

Senator STOTT DESPOJA (South Australia) (7.26 pm)—I begin tonight by congratulating the organisers of the annual Suicide Prevention Australia conference that was held in early November in Adelaide, my home city—particularly, Dr Michael Dudley, who is the Chairperson of Suicide Prevention Australia. This conference brought together researchers, academics, practitioners and those with personal experience from both Australia and overseas to discuss a holistic approach to suicide prevention. It was not just researchers and academics discussing statistics and trends with each other but a group actively seeking to share their research, experience as practitioners and successful programs and strategies, as well as of course to discuss the personal experiences of those impacted at an individual level by suicide. This year’s conference had an emphasis on participation and inclusion. The program boasted an impressive array of workshops, symposia, discussions, presentations, debates, poster displays, and there was a healing workshop on the evening before the final day.

From the 1970s to the 1990s in Australia, there was what has been termed a ‘youth suicide epidemic’, followed by a decline in the late 1990s and into this century. This decline coincided with the implementation of a well-funded national youth suicide prevention strategy between 1995 and 1999. That is a message that there are ways and strategies that can be put in place to bring about positive results and that we have to continue to listen and learn from experts in the field, hence the important role of that particular conference in Adelaide.

According to Suicide Prevention Australia, every day seven Australians take their own lives and suicide rates may be much higher than the published statistics. At the moment, we are hearing stories of the tragic effect of the drought on farming families in Australia. I understand that there is an important and delicate balance here. I think something that came out at the conference was the need to challenge the so-called invisibility of suicide and to juggle that need with how suicide is reported in the media and in popular culture such as movies.

Certain sectors of the population may continue to be at far greater risk. For example, recent research suggests a suicide rate in the Aboriginal and Torres Strait Islander communities of 40 per cent above that found in the general population. According to conference material, 25 per cent of suicides are people from the culturally and linguistic diverse communities. Another recent study examined socioeconomic status differentials in suicide and pointed to the fact that, despite overall declines, young male suicide rates in the most recent five-year period—that is from 1999 to 2003—in the low SES group have increased by eight per cent. This has obvious implications for us in terms of social and economic intervention—for example, access to employment income, education and training and housing affordability. All of those are included in the measurement of SES in Australia.

It is also important to look at divergent trends to acknowledge that gains in economic prosperity, reductions in unemployment and improved access to training and education opportunities may not have been distributed evenly across our community and, of course, there are many other risk factors which cut across all social groupings.
including depression and mental illness, gender issues, sexuality and age. It is a multifactorial issue and, as a community, we need to look at risk factors for both individuals and groups within the community. There is a need to acknowledge and support members of our community from a diverse range of socioeconomic, cultural and linguistic backgrounds.

The most confronting statistic that some people are dealing with, and one that came to my attention before speaking at this conference and hearing the pleas from people involved in this sector, was the finding from the annual report, *Deaths of children and young people*, by the Commission for Children and Young People and Child Guardian in Queensland. It reported across Australia, but in Queensland suicide is the leading cause of death for young people 10 to 14 years of age. Seventeen per cent of all deaths in that age group were the result of suicides, and these deaths are underreported at both a state and Commonwealth level.

There is a message here for legislators, apart from the obvious fact that young people are among one of the more vulnerable groups in our community to societal pressures and that we must continually be aware of the need to listen to and really acknowledge those needs and provide support—and also for friends and family who are impacted and for the broader community as well. The things I was being told at this conference were that as politicians we need to listen and to learn. We need to acknowledge and provide legislative and, importantly, funding frameworks which support and are guided by the outcomes of conferences such as this. The conference was keen for me to put on record some of these issues tonight and, accordingly, I do so. But I want to congratulate the organisers and acknowledge that there were international guests who came to Australia to learn from some of the good work that this nation has attempted to do, as indeed our government and governments of all persuasions have. But there is a lot more that we need to do.

I also take this time tonight to acknowledge a very important report entitled *Chega! The report of the Commission for Reception, Truth and Reconciliation in Timor-Leste*. I seek leave to table the report. I understand it has the support of the chamber.

Leave granted.

**Senator STOTT DESPOJA**—I thank honourable senators. It is the first time, as I understand it, that this report has been tabled in a parliament in Australia. It was presented to Timor-Leste’s President, Xanana Gusmao, on 31 October 2005. He presented it to the parliament of East Timor on 28 November 2005, and it was presented to the UN Secretary-General, Kofi Annan, on 20 January this year. It is in fact the most comprehensive record yet of human rights violations, including deaths, displacements, torture, ill treatment and threats in Timor-Leste between 1975 and 1999. It includes testimony from seven national public hearings. *Chega* makes 205 recommendations—it is a pretty big report of about 2,500 pages—based on its findings in relation to justice, reconciliation, human rights and the relationship between Timor-Leste and other countries, including Indonesia.

Australia is also mentioned in this report. A number of the recommendations relate specifically to Australia, including that Australia contributed significantly to denying the people of Timor-Leste their right to self-determination before and during the Indonesian occupation. Some of the recommendations relating to us include requests for an apology and reparations to the people of Timor-Leste; future military cooperation with Indonesia; the setting up of a joint initiative to establish the truth about the deaths
of six foreign journalists in Timor-Leste in 1975 in Balibo; and the return of documents and any other material relating to the events of 1999 and militia activity, which were allegedly removed to Australia for safekeeping after the arrival of the INTERFET in 1999. Another key recommendation in this report is the establishment of a war crimes tribunal, should other measures be deemed to have failed to deliver a sufficient measure of justice and Indonesia persists in the obstruction of justice.

As I understand it, a cross-party launch of this report took place in different cities around Australia, including Canberra, last night. All political parties were involved in that process. What we can hope for is that it will lead to renewed debate about and interest in Timor-Leste’s future, as well as perhaps acknowledging some of the human rights abuses in the past. I think there is a lot that Australia can do. I particularly want to acknowledge the people who were involved in the launch. Specifically in my home state we have the East Timor Friendship Association and Uniya Jesuit Social Justice Unit. A number of people were present at the launches who have been actively involved in the report. Indeed, in Adelaide we had Isabel Gutertas, who is one of the commissioners involved in the report. Pat Walsh and Francisco de Silva were guests at that particular event as well, as was Dr Mark Byrne from Uniya. I commend them on their ongoing work and urge the Australian government to look closely at the recommendations that pertain to Australia’s role both in a good and bad way in Timor-Leste. I commend the report to the Senate and thank senators for allowing me to table it tonight.

Australian Local Government Association Conference

Senator IAN MACDONALD (Queensland) (7.36 pm)—This week marks yet another gathering in Canberra of local governments from right around Australia for their local convocation at the Australian Local Government Association Conference. It is probably appropriate to consider the very good work that local government does in this country. You, Mr President, as I often proudly remind everyone, were a very distinguished warden of the Clarence Council in Tasmania, so you well understand my admiration for local government generally.

More and more people are looking around this country and trying to work out the best way to set Australia up for the most progressive and most effective form of government. More and more people, without any ideological reason, are reaching the conclusion that state governments are becoming less relevant and that, more and more, federal governments should be working with local governments to achieve what Australians want to achieve from their governments in this country.

The conference of the Australian Local Government Association highlights some of the fabulous work that councils do. I very proudly say that two Queensland councils with which I am familiar—the Carpentaria Shire Council, which covers that part of north-west Queensland going up to the Gulf of Carpentaria, Normanton and Karumba; and the Sarina Shire Council, a little south of where I live—were successful in being awarded national awards at the ALGA dinner on Monday night. My sincere congratulations go to those two Queensland councils on the good work they have done in particular fields, earning them these titles.

This week there are many councillors and mayors roaming around this building. ‘Roaming’ is probably not the right word—they are here with a vengeance and a purpose. I know they have all been using the opportunity of their time in Canberra for
their national conference to come and see ministers, to speak to parliamentarians from all sides, to push the case for the things that are important to their constituents in their local government areas. At a breakfast this morning jointly held by the Local Government Association of Queensland and the coalition members of parliament in this place—which has been happening for about 10 years—again the good relationship and the good partnerships between local governments and the federal government were highlighted. As Councillor Paul Bell, the President of the Australian Local Government Association and also the President of the Local Government Association of Queensland, said today, this has been a significant year for relationships between local government and the federal government. Councillor Bell mentioned this morning—and I want to repeat—three significant areas in which the Commonwealth government and local governments have worked closely this year.

The Roads to Recovery program is a magnificent program for Australia and one which all councillors and mayors of local governments understand has done real things for the roads that people travel on—the local infrastructure that so desperately needed funding. It was a program that Mr Kim Beazley described as a ‘boondoggle’. For those who do not know what that means—I suspect that is most Australians—that means that it was a fraud. That is how Mr Beazley described it initially. I suspect he has probably changed his tune now as he has come to understand and see how popular this program has been, not just for popularity’s sake but because it has achieved a lot for users of local roads.

The original Roads to Recovery program is well regarded by local government and, being the local government minister at the time that program was implemented, I take some pride in that. I do not take all the credit for its implementation: it was very much a prime ministerial initiative and Mr John Anderson, at that time the transport minister, was also very involved in it. It was a program that we worked on and got right at the time. As has been mentioned, the regular Roads to Recovery money goes to each council direct. Forget about going through the state governments, which cream off anything from 10 per cent to 25 per cent; this goes straight to local governments, and that has been happening for some years.

This year, because of the good management of the Howard government, we were able to use some of the surplus achieved through that good management to give local governments an additional $300 million to spend on their Roads to Recovery program over the next two years. That was a huge boost to local governments right around Australia and is well recognised by local government. I am proud to be in a government that has made that contribution.

Councillor Bell also mentioned today the cost-shifting inquiry as being a very significant initiative that has meant real things between the Commonwealth, the states and local government. That inquiry was conducted by the House of Representatives Standing Committee on Economics, Finance and Public Administration, chaired by Mr David Hawker. I am proud that that inquiry resulted from an initiative we took to the 2001 election when I was minister, because we wanted to look at the effect of cost shifting: how much the federal government and particularly state governments were abrogating their responsibilities to local government but not funding local government properly to carry them out. State governments have been almost criminal in the way they have done that, though I might add that the federal government has not been without blame. The Hawker report, as it is called, led to action this year at COAG when the Prime Minister,
all the premiers and local governments signed a memorandum of understanding about cost shifting indicating that shifting of responsibilities would not happen in the future without some provision of funds.

The third thing that happened this year with respect to local government was the motion of support passed in both houses of parliament recognising the role played by local government and more or less cementing the continued existence of local government in Australia. It is a forerunner to constitutional recognition. As I said in that debate, the state governments need to commit to that before it is worth having a referendum on it. If any one state government opposes it, it will not get through—we all know how referendums work. But that is a first step.

I do want to pay tribute to Councillor Paul Bell on the way he has led local government in Australia, and in my own state of Queensland, over recent years. I was delighted to record this morning—and I do so again now—that, whilst he has not yet been re-elected for the next two years, there has only been one nomination for that position so I assume he will be President of the Australian Local Government Association for another two years. He does a fabulous job. He is well supported by a secretariat here in Canberra. In Queensland he gets very good support from a very capable person, Greg Hallum, who just understands local government—he knows how to get the best out of local government; he knows how to get the best out of state and federal governments for local governments as well.

There are many fine people involved in local government right around Australia. Recently in Queensland I floated an idea that Queensland should reinstall an upper house in the Queensland parliament and that it should be comprised of the mayors of every shire in Queensland. That is something that I intend to continue to pursue. There are so many committed, able people involved in local government—Kevin Byrne, the Mayor of Cairns; Campbell Newman, the Mayor of Brisbane. I have been meeting during the day with mayors from all the south-east Queensland councils. There are a range of excellent mayors—from all political persuasions, I might say—who really are committed people and who make a great contribution to Australia. (Time expired)

Senate adjourned at 7.46 pm

DOCUMENTS

Tabling
The following government documents were tabled:

- Migration Act 1958—Section 486O—Assessment of appropriateness of detention arrangements—Personal identifiers 074/06 to 081/06—Commonwealth Ombudsman’s reports.
- Commonwealth Ombudsman’s reports—Government response.

Tabling
The following documents were tabled by the Clerk:

- Australian Research Council Act—Approvals of expenditure on research programs—Determinations Nos—
  32—Linkage International Awards Round 1 commencing in 2006.
  33—Linkage Learned Academies Special Projects funding commencing in 2006.
QUESTIONS ON NOTICE

The following answers to questions were circulated:

Colombia

(Question No. 2594)

Senator Bob Brown asked the Minister representing the Minister for Foreign Affairs, upon notice, on 30 October 2006:

With reference to reports that the President of Columbia (Mr Uribe) has dropped negotiations for a humanitarian prisoner exchange with the Revolutionary Armed Forces of Colombia (FARC):

(1) What information does the Government have on the well-being of FARC prisoners, former Senator Ingrid Betancourt and her companion Clara Rojas.

(2) What is the Government’s understanding of the Colombian President’s action referred to in an article on page 3 of the Weekend Financial Times of 21/22 October 2006.

(3) What action is the Government taking to help secure the safety of innocent prisoners held by the FARC, including Ingrid Betancourt and other members of the Parliament of Colombia.

Senator Coonan—the following answer has been provided by the Minister for Foreign Affairs to the honourable senator’s question:

(1) The answer to this question was provided in the answer to Senate Question on Notice Number 2544.

(2) It is the Government’s understanding that on 20 October 2006, the Colombian Government announced that it was suspending its negotiations with the FARC in relation to kidnap victims held by them. This announcement was made following a car bombing in Bogota on 19 October 2006 attributed to the FARC. News media reports also quoted the Colombian President as saying that the only option left with respect to the hostages held by the FARC was a military rescue.

(3) The Government, through Australia’s non-resident Ambassador to Colombia and other channels, maintains a dialogue with Colombia on human rights in which it makes clear Australia’s interest in seeing international human rights norms adhered to in Colombia, a human rights culture fostered, cases of abuse investigated, perpetrators brought to justice and appropriate redress provided to victims. The Government urges the Colombian Government to give priority and resources to these ends, while recognising both the difficult circumstances involved and the efforts it is making. On a visit to Bogota from 30 July to 7 August this year the Ambassador met Colombian authorities, international bodies (including the Office of the UN High Commissioner for Human Rights) and NGOs and discussed a range of issues including the need to address the situation of the kidnap victims held by the FARC.