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SITTING DAYS—2006

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

Governor-General

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

Senate Officeholders

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

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

Senate Party Leaders and Whips

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

Liberal Party of Australia Whips—Senators Jeannie Margaret Ferris and Stephen Parry

National Whips—Senator Nigel Gregory Scullion

Opposition Whips—Senators George Campbell, Linda Jean Kirk and Ruth Stephanie Webber

Australian Democrats Whip—Senator Andrew John Julian Bartlett

Australian Greens Whip—Senator Rachel Siewert

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

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

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

Prime Minister
Minister for Transport and Regional Services and Deputy Prime Minister
Treasurer
Minister for Trade
Minister for Defence
Minister for Foreign Affairs
Minister for Health and Ageing and Leader of the House
Attorney-General
Minister for Finance and Administration, Leader of the Government in the Senate and Vice-President of the Executive Council
Minister for Agriculture, Fisheries and Forestry and Deputy Leader of the House
Minister for Immigration and Multicultural Affairs
Minister for Education, Science and Training and Minister Assisting the Prime Minister for Women’s Issues
Minister for Families, Community Services and Indigenous Affairs
Minister Assisting the Prime Minister for Indigenous Affairs
Minister for Industry, Tourism and Resources
Minister for Employment and Workplace Relations and Minister Assisting the Prime Minister for the Public Service
Minister for Communications, Information Technology and the Arts and Deputy Leader of the Government in the Senate
Minister for the Environment and Heritage

The Hon. John Winston Howard MP
The Hon. Mark Anthony James Vaile MP
The Hon. Peter Howard Costello MP
The Hon. Warren Errol Truss MP
The Hon. Dr Brendan John Nelson MP
The Hon. Alexander John Gosse Downer MP
The Hon. Anthony John Abbott MP
The Hon. Philip Maxwell Ruddock MP
Senator the Hon. Nicholas Hugh Minchin
The Hon. Peter John McGauran MP
Senator the Hon. Amanda Eloise Vanstone
The Hon. Julie Isabel Bishop MP
The Hon. Malcolm Thomas Brough MP

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

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

(The above are shadow cabinet ministers)
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<tr>
<td>Shadow Minister for Consumer Affairs and Shadow Minister for Population Health and Health Regulation</td>
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<td>Shadow Minister for Agriculture and Fisheries</td>
<td>Gavan Michael O’Connor MP</td>
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<td>Shadow Assistant Treasurer, Shadow Minister for Revenue and Shadow Minister for Small Business and Competition</td>
<td>Joel Andrew Fitzgibbon MP</td>
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<td>Shadow Minister for Transport</td>
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<td>Senator Kate Alexandra Lundy</td>
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<td>The Hon. Archibald Ronald Bevis MP</td>
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<td>Shadow Minister for Veterans’ Affairs and Shadow Special Minister of State</td>
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<td>Senator Jan Elizabeth McLucas</td>
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<td>Shadow Minister for Justice and Customs and Manager of Opposition Business in the Senate</td>
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The PRESIDENT (Senator the Hon. Paul Calvert) took the chair at 9.30 am and read prayers.

ABSENCE OF THE PRESIDENT

The PRESIDENT—I inform the Senate that I will be absent from the Senate tomorrow as I am attending a special sitting of the Parliament of Tasmania to mark 150 years since the bicameral parliament was established in 1856. I suggest that the Deputy President, Senator Hogg, be empowered to act as President during my absence, pursuant to standing order 13.

Senator ELLISON (Western Australia—Manager of Government Business in the Senate) (9.31 am)—by leave—I move:

(1) That, during the absence of the President, the Deputy President shall take the chair of the Senate and may perform the duties and exercise the authority of the President in relation to all proceedings of the Senate and proceedings of committees to which the President is appointed.

(2) That the President be granted leave of absence on 1 December 2006.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (9.32 am)—This motion draws out the fact that there is a special sitting of the Tasmanian parliament to mark 150 years of self-government in Tasmania. The state assumed its name and it assumed a bicameral form of government in this month in 1856.

Senator Ian Macdonald—Thanks for telling us that.

Senator BOB BROWN—I am sure you are interested. What the motion also points out is that, when late in the year the government brings on extra sittings of parliament—because it has failed to sit adequately earlier in the year—to debate pieces of legislation which have been in the pipeline for months, without any proper reference to the other parties, who have no say in it, it creates a dilemma. There are two Greens senators, for example, who want to be at that sitting tomorrow but who effectively cannot go, while the President swans off to it by this process of seeking leave.

Senator Ian Macdonald—Why don’t you go? You won’t be missed here.

Senator BOB BROWN—I will tell you. We will not be there because there are critical pieces of legislation, like the greatest attack on environmental legislation I have seen in my 10 years in this place, which are now before the Senate. The President does not care about that. It is not of interest to the President that major pieces of legislation are being put—

The PRESIDENT—Senator Brown, you are getting very close to reflecting on the chair. If you continue to do so, I will ask you to remove yourself.

Senator BOB BROWN—You can do that if you wish to.

The PRESIDENT—Senator Brown, you are reflecting on the chair.

Senator BOB BROWN—If the President wishes to remove me because I am speaking about his absence tomorrow, in an unfair circumstance, which he should have thought through and which is inappropriate, then he may do so. Let him do it if he wishes to. That would be a political use of the chair by a member of the government. If he wants to do that, let him do it. I am not going to be intimidated by the President or anybody else in this place, let me tell you. The fact is that the President is going to swan off to this meeting—

Senator Ellis—I rise on a point of order, Mr President. I think this is one of the most outrageous exhibitions we have ever
seen from Senator Brown. To intimate that you have intimidated him—

Senator BOB BROWN—What is the point of order?

Senator Ellison—The point of order is that you have not only reflected on the President; you have misrepresented what the President has said. He has not intimidated you. You are saying he has intimidated you. This is a democratic institution, where we do not intimidate each other. Senator Brown’s comments are outrageous and he should withdraw them. The second part of the point of order is that it is unparliamentary for Senator Brown to imply that the President has intimidated him. He says that you are attempting to intimidate him, Mr President. That is totally untrue. It is a slur. It is an imputation. He should withdraw it right now.

The PRESIDENT—On the point of order, can I just say this: I have been invited as the President of the Senate, as has the Speaker of the other place, as have the Speaker and President of every other parliament in Australia, to be present at the special sitting of the Tasmanian parliament. As a Tasmanian senator, I am very pleased to go but, more importantly, I will be representing the Senate, and I intend to do so. I will not accept from you, Senator Brown, reflections on my motives for going.

Senator BOB BROWN—You may debate that, Mr President—

The PRESIDENT—I am not debating it. I am just making it quite clear why I am going.

Senator BOB BROWN—You were just debating it.

Senator Ferris—Be respectful, Bob.

Senator BOB BROWN—I expect respect in return, Senator, and your interjections are disorderly. The President is going to be absent from the Senate for this sitting of parliament. There are two former members of the Tasmanian parliament in the Greens who also want to be at that sitting. But we are effectively prevented because we are taking our duty to this nation and our duty to defend the interests of this nation seriously. The choice has been removed by this government using its numbers. Central to those numbers is the vote of the President—

Senator Ferris—Mr President, I rise on a point of order. I make the point that Senator Brown has not approached me to be paired for tomorrow so that, as a former member of the Tasmanian parliament, he is able to take part in the celebrations. If he wishes to be paired and he makes an application for a pair, we will certainly look at it seriously.

Senator BOB BROWN—As you know, Mr President, that is no point of order. That is part of the debate and I would expect you to rule accordingly—

Senator Ian Macdonald—If he did that on all points of order, you wouldn’t be here.

Senator BOB BROWN—Mr President, if you are going to allow government members to continue to flout the standing orders, that is for you. The fact is that there are extraordinarily important pieces of legislation before the Senate, and the Greens will accept our responsibility to be here and defend against the government the national interest on that legislation. It wants to change industrial relations legislation against the interests of working families of this country and change the environmental laws to allow loggers and miners greater rein over a whole range of issues, which we will be debating later this morning and which will extend into tomorrow—that is, of course, unless the government, including the President, uses its numbers to gag and guillotine that debate later in the day. That is something I would not put beyond this government at all. It is something I would not put beyond the Presi-
dent or any other member of the government. I have seen the precedent. I know how it works.

So we have the President deciding that he will go to this anniversary sitting in Tasmania while the Greens stay here to defend the public interest in this parliament. The government has brought on an extra sitting tomorrow because it simply does not want to have another week’s sitting later. We should be sitting the week after next to discuss the legislation being pushed through the parliament at this late stage of the year. We are at the end of a year in which the Senate has sat fewer times than in most other years in recent decades. It is a process of abuse of the Senate by the government because it has a majority. That is one of the things that the public can sort out this time next year. In the meantime, let me assure the voters of Tasmania that it is a difficult decision. Senator Milne and I regret being, in effect, put in the position of having to stay here in the Senate while the ceremony takes place in Tasmania. The President has made a different decision. That is up to him.

Senator CHRIS EVANS (Western Australia—Leader of the Opposition in the Senate) (9.41 am)—On the same matter, I indicate on behalf of the Labor opposition that we will be supporting the President’s leave.

Quite frankly, Senator Brown, I have not heard such a complete amount of nonsense in many a year. There is no question that the President is entitled to seek leave like any other senator. It seems to me that this is a reasonable reason for him to be going. I do not think anyone can accuse the current President of not attending to his duties. I have disagreements with him on occasions, but it is certainly not the case that he does not make every endeavour to be in the Senate while the Senate sits—unlike some of the ministers, who are increasingly absent, but that is a debate for another motion. I think some of the ministers have not taken their responsibilities to the Senate seriously enough in terms of attendance and performance. But, in terms of Senator Calvert seeking leave, I think it is a perfectly reasonable thing.

I point out that the reason we are sitting on Friday is by agreement, not by use of the numbers. It is by agreement following a leaders and whips meeting to transact—

Senator Bob Brown—You’ve agreed.

Senator CHRIS EVANS—Senator Brown, I seem to recall you did not turn up, but that is up to you. I think Senator Siewert represented the Greens at the meeting at which we all agreed—there was no dissent—that we would sit on the Friday to facilitate the remaining legislation. I admit that we did that in the knowledge that the government can do it anyway, but, as the alternative government party in the Senate, we have always attempted to deal reasonably with government legislation and arrange the sitting hours to suit senators and to facilitate proper passage. One of the things we have done as part of that is to try and move away from what we used to do when I was first here, which was to sit until three o’clock or four o’clock in the morning. We all agreed that that was a practice which did not assist good legislation or the health of senators and staff.

The point is that the extra sitting day on Friday was agreed to. It was also agreed that we would do whatever we could to assist senators in terms of pairs et cetera for those who had other engagements. And, to be fair to Senator Minchin, on this occasion he gave us plenty of warning. The government has been guilty in the past of not giving plenty of warning, but Senator Minchin did give notice during the last sitting fortnight that the government wanted to sit on Friday. So on this occasion I cannot support Senator Brown’s arguments. There has been a lot of abuse of
the Senate, but this is not one of those occasions. I think it would be unwise to try and make the case when the case does not exist. There are plenty of examples of the government’s abuse of its power and of it showing contempt for the Senate and its processes. But this occasion is not one of them. I do not think your contribution was warranted, Senator Brown, and I do not think it is unreasonable for the President of the Senate to seek leave to be in Tasmania tomorrow. I also indicate that the Labor Party will cooperate in pairing with any senator who wants to attend that ceremony, and we will certainly extend the cooperation if there are Greens senators who want to be paired so as to attend tomorrow.

Senator Bob Brown interjecting—

Senator CHRIS EVANS—Senator, if you want to be here that is good. I will be here. Senator, I listened to the confected outrage and, quite frankly, you should find another tone. You cannot do it every time. You lose credibility if everything is outrageous.

Senator Bob Brown—That’s your opinion.

Senator CHRIS EVANS—It is my opinion and that is why I am making this point, Senator Brown. You are right out of order. You spoke complete nonsense. It is confected outrage. When the Senate is abused by the government, which it is on many occasions, it is important we raise those issues. But to raise them spuriously only undermines your and my concerns about what the government is doing. So quite clearly, in my view, there is no case today. The President of the Senate ought to be granted leave. Any other senator who wants to attend ought to be given consideration by the Senate in relation to pairing and we will seek to effect that.

I point out that the decision on Friday was agreed by all parties at a leaders and whips meeting, and Senator Minchin showed more respect for our needs than Senator Hill used to and at least gave us some more warning than we used to get. I just do not think there is a case, Senator Brown. Sometimes I do not agree with the President’s rulings at question time. He seems particularly harsh on the Leader of the Opposition in the Senate, in my view. He should have ruled Senator Ferris’s point of order as no point of order very early, I would have thought, but, nevertheless, there is no reason to oppose or to criticise the President for seeking leave.
would appreciate that when we have 40 pages of IR amendments landed on us just two or three days before it is to be debated, it does create pressure. But that is the nature of this place. I do not think in these debates we should confuse the President’s conduct in his official capacity with the nature, timing and manner in which government business is dealt with. Mr President, I wish you well and I hope you will conduct yourself there on my behalf in your normal way.

Senator IAN MACDONALD (Queensland) (9:48 am)—Mr President, I also want to congratulate you on being invited to represent the Senate at this very significant occasion in Tasmania. I take it from Senator Brown’s comments that he does not want you to go and that he does not want the Senate to be represented at this very significant occasion in Tasmanian history. Senator Brown obviously has become overwhelmed with the election result from all his campaigning in Victoria. One might think he was a Victorian senator from the amount of time he spent on the campaign in the recent state election, but we are glad he did because the Green vote went down again, as it did in the last federal election. I encourage Senator Brown to slip back to Victoria and do a bit more campaigning. In fact, why don’t you come to Queensland? We might have done a bit better up there if you had done some campaigning in Queensland, Senator Brown.

Mr President, the motion is to grant you leave and to appoint Senator Hogg in your stead. I must say with some respect that Senator Hogg will fill the post almost as well as you do and certainly as well as anyone else would do in your absence. I want to say in passing that, except for the last bits of his speech, the Leader of the Opposition in the Senate gave one of his finer speeches just a moment ago and one that I think all senators support. The way Senator Brown carried on in a personal way towards you, Mr President, when you are doing your duty, looking after this Senate and actually representing this chamber in the very important event in Tasmania, was just appalling.

One wonders what Senator Brown’s purpose for all of this is. We know that he is not very interested in the environment. In fact, he rarely speaks on environment bills and rarely asks a question on the environment. His feigned outrage at not being here to address the environment amendments is exactly that. I have to say of Senator Siewert—I do not like to be too praiseworthy—that there is a Greens senator who is interested in environmental matters. Senator Brown never attends environment estimates hearings, and this has been the pattern of his actions here over many, many years. So this feigned outrage about not being around to speak about the environment bill really demonstrates Senator Brown’s situation here. He is interested in all the loony Left issues, grandstanding at the World Summit, all those loony left-wing things, and not at all interested in the environment. To use that as a pretence for his outrage is appalling.

Mr President, congratulations on the work you do for all of us. I think it is important that you represent us. You will go, I am sure, with the support of the entire chamber, with one exception.

Question agreed to.

PETITIONS

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

Native Title

I, the undersigned, Petition the Senate and Parliament to take immediate action in restoring to the original custodians of this country the right to self-govern a section of Australia, from the 22" down to the 30" parallel and across from the Warburton Mission in Western Australia to the Ernabella Mission in South Australia. That this area be proclaimed as The State of Central Australia and
that Uluru becomes our National Seat of Justice, to be administered by chosen representatives from all States of Australia

by Senator Allison (from one citizen).

Asylum Seekers

Petition to the Honourable the President and Members of the Federal Senate in Canberra. The Petition of the Citizens of Australia states that:

(1) The rich Christian heritage of political freedom that we enjoy in Australia has benefited all Australians; and was confirmed when we became a Federated Commonwealth in 1901 with the adoption of the Australian Constitution, the Preamble of which states, 'Humbly relying on the blessing of Almighty God'.

(2) Many Christians around the world suffer persecution for their faith in countries where Christian principles are not enjoyed and seek refuge in our nation of Australia.

(3) The need of these Christians is an urgent need and their Christian beliefs and practices are compatible with the principles on which our Nation was established.

Your petitioners therefore humbly pray that immigration policies be framed to expedite the entry of Christian refugees into Australia.

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

by Senator Stephens (from 17 citizens).

Stem Cell Research

To the President and Senators of the Senate of the Australian Parliament Assembled: The humble petitioners and citizens of New South Wales call upon the Australian Federal Government:

To reject any possible private members bill or party bill regarding therapeutic cloning for the production of embryonic stem cells.

To reject bills permitting creation of hybrid or chimeric embryos involving human tissue. To reject any bills allowing use of embryos for research or harvest of cells for human use or body parts

Your petitioners, as in duty bound, will ever pray.

by Senator Stephens (from 14 citizens).

Student Income Support

To the Honourable President and members of the Senate assembled in Parliament. This petition of certain citizens of Australia draws the attention of the House and Senate:

Student income support rules and legislation in Australia is insufficient and leaves many students in poverty, and many more at threat of slipping into poverty.

It is urgent that real steps are taken to address student poverty immediately. As part of Anti-Poverty Week activities run by University of Sydney student representative associations, SUPRA and the SRC, your petitioners therefore ask the House and the Senate to make the following immediate policy changes:

(1) provide rent assistance to students receiving Austudy;

(2) raise the Youth Allowance, Austudy and Abstudy rates to above the poverty line and guarantee indexation in the future;

(3) not count any scholarships as income;

(4) increase the Health Care Card low-income threshold; and

(5) provide Austudy and Youth Allowance to postgraduate students in Masters programs.

(6) reinstate the Educational Textbook Subsidy Scheme

by Senator Stott Despoja (from 112 citizens).

Petitions received.

NOTICES

Presentation

Senator WATSON (Tasmania) (9.51 am)—On behalf of the Standing Committee on Regulations and Ordinances, I give notice that 15 sitting days after today I shall move that nine legislative instruments, a list of which I shall hand to the Clerk, be disallowed.

The list read as follows—

(1) A New Tax System (Commonwealth-State Financial Arrangements) Amendment Regulations 2006 (No. 1), as contained in Select


(3) Approved Form for Application of Initial Approval as a Rehabilitation Program Provider made under paragraph 34C(1)(a) and subsection 34S(1) of the Safety, Rehabilitation and Compensation Act 1988. [F2006L03292]

(4) Approved Form for Application for Renewal of Approval as a Rehabilitation Program Provider made under paragraph 34K(1)(a) and subsection 34S(1) of the Safety, Rehabilitation and Compensation Act 1988. [F2006L03294]

(5) Determination No. HIB 29/2006 made under paragraph (bj) of Schedule 1 to the National Health Act 1953. [F2006L03266]

(6) Direction Relating to Foreign Currency Transactions and to North Korea made under regulation 5 of the Banking (Foreign Exchange) Regulations 1959. [F2006L03114]

(7) Prescribed Courses for Applicants for Registration as a Migration Agent made under paragraph 5(1)(a) of the Migration Agents Regulations 1998. [F2006L03194]


(9) Variation of Criteria for Approval or Renewal of Approval of Rehabilitation Program Providers made under section 34D of the Safety, Rehabilitation and Compensation Act 1988. [F2006L03288]

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

Leave granted.
Each of these instruments requires an applicant to provide information about certain types of legal actions against the applicant, its principals or employees. In each case, the relevant clauses specify that civil actions (eg for negligence) older than six years from the date of application, or bankruptcy declarations older than seven years, need not be declared. By comparison, professional misconduct or criminal proceedings, and breaches of antidiscrimination or privacy legislation do not have any time limit specified.

The Explanatory Statements that accompany these instruments make no reference to consultation in accordance with the definition of ‘explanatory statement’ in section 4 of the Legislative Instruments Act 2003.

The Committee as written to the minister seeking advice on these matters.

———

Determination No. HIB 29/2006

This instrument amends the principal Determination which was made on 19 September 2006 and which was registered and commenced operation on 20 September 2006 to specify that the default benefit that is payable per night for nursing home type patients in a private hospital is $73.80. In the principal Determination, the benefit was stated to be $74.80. This amending instrument was registered on 28 September 2006, but has retrospective effect, commencing on 20 September 2006.

The retrospective effect reduces the amount of benefit that is payable for patients and thus apparently works to the disadvantage of persons to whom that benefit is payable. Subsection 12(2) of the Legislative Instruments Act 2003 states that a legislative instrument has no effect if it takes effect before the date it is registered and as a result the rights of a person other than the Commonwealth would be affected so as to disadvantage that person.

The present instrument appears to contravene section 46 of the Legislative Instruments Act 2003. That section provides that where a legislative instrument (in this case, the principal Determination) has been registered, then no legislative instrument the same in substance as that original instrument is to be made in the period commencing on the registration date of the original instrument (in this case, 20 September 2006) and ending 7 days after the date on which the original instrument is tabled. The original instrument was tabled on 9 October 2006 and so no similar instrument can be made until 16 October 2006. This present instrument was made in contravention of this section and thus appears to contravene section 46 with the result that, again, it has no effect.

The Committee has written to the minister seeking advice on these matters.

———

Direction Relating to Foreign Currency Transactions and to North Korea

This instrument prohibits foreign currency transactions involving certain entities and one individual associated with the Democratic People’s Republic of Korea.

The prohibition applies, amongst other things, to any transaction that relates to property, securities or funds owned or controlled indirectly by those entities or that individual, and to any transaction that relates to payments indirectly to or for the benefit of those listed persons. It is possible that a person might engage in such a transaction without knowing of the indirect relationship with one of the listed persons. The Committee has written to the Treasurer seeking advice as to whether this Direction is intended to apply in such a circumstance.

———

Prescribed Courses for Applicants for Registration as a Migration Agent

This instrument, commencing on 1 October 2006, provides that a prescribed course of study is either a Graduate Certificate course at certain higher education institutions or a formal course of study or self-directed study completed before 15 July 2006.

According to the Explanatory Statement the effect of the instrument is that persons who have not completed a formal course of study or self-directed study before 15 July 2006 must complete the Graduate Certificate course in order to become registered migration agents. This appears to operate to the disadvantage of persons who have completed a formal course of study or self-directed study between 15 July and 30 September.
2006, by compelling them to complete the Graduate Certificate course. The Committee has written to the Minister seeking advice as to whether this is the intention of the instrument.

Social Security (Public Interest Certificate Guidelines) (DEWR) Determination 2006

This Determination specifies guidelines for the exercise by the Secretary of the Department of Employment and Workplace Relations of the power to issue certificates that permit the disclosure of protected information about individuals. The Explanatory Statement notes that, with one exception, the Determination is similar to a previous Determination that is repealed by this present Determination. The exception is the inclusion of a new section 11 which permits the disclosure of information in the context of a Ministerial briefing. The Committee has written to the minister seeking advice on the operation of this provision and whether the Privacy Commissioner had been consulted concerning this Determination.

Senator Bob Brown to move on Tuesday, 5 December 2006:

That the Senate supports the World Heritage Convention, including its requirement that sites of potential World Heritage value should be protected until a full evaluation has been made.

Senator Bob Brown to move on the next day of sitting:

That the Senate—

(a) noting the Cole Commission of Inquiry’s whitewash of the Government’s failure to exercise care and diligence over the Australian Wheat Board;

(b) deploring the damage done to Australia’s international reputation by the Australian Wheat Board scandal; and

(c) expressing deep concern for wheat growers who suffer loss as a result,

calls on the Government, the Prime Minister (Mr Howard) and ministers personally to once again assume responsibility and accountability for the actions of the federal public service and all of its departments.

BUSINESS

Rearrangement

Senator ELLISON (Western Australia—Manager of Government Business in the Senate) (9.53 am)—I move:

That—

(a) the following government business orders of the day be considered from 1.30 pm till not later than 2 pm today:

  Datacasting Transmitter Licence Fees Bill 2006

  Broadcasting Services Amendment (Collection of Datacasting Transmitter Licence Fees) Bill 2006.

  No. 3 Telecommunications Amendment (Integrated Public Number Database) Bill 2006; and

(b) government business order of the day no. 4 (Copyright Amendment Bill 2006) be considered from 7.30 pm today.

Question agreed to.

Rearrangement

Senator ELLISON (Western Australia—Manager of Government Business in the Senate) (9.53 am)—I move:

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

(1) general business order of the day no. 76 ‘Avoiding Dangerous Climate Change (Kyoto Protocol Ratification) Bill 2006 [No. 2]’, and

(2) consideration of government documents.

Question agreed to.

ENVIRONMENT

Senator ALLISON (Victoria—Leader of the Australian Democrats) (9.54 am)—I move:

That the Senate—

(a) notes that recent research of Drs Raupach and Fraser from the Commonwealth Scientific and Industrial Research Organisation’s Marine and Atmospheric Research group found that:
(i) 7.9 billion tonnes of carbon were emitted into the atmosphere as carbon dioxide in 2005 and the rate of increase is accelerating,

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

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

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

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

(i) ratify the Kyoto Protocol, and

(ii) introduce a carbon price signal.

Question put.

The Senate divided. [9.58 am]

(The President—Senator the Hon. Paul Calvert)

Ayes.............. 8
Noes.............. 50
Majority........... 42

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

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

* denotes teller

Question negatived.

WHEAT EXPORTS

Senator MURRAY (Western Australia) (10.02 am)—I, and also on behalf of Senator Siewert, move:

That the Senate—

(a) notes that:

(i) the Government will need time to consider possible legislative changes to the wheat export regime, following the report of the Cole Commission of Inquiry, but

(ii) from a cash flow and revenue perspective, Western Australian wheat growers need urgent resolution in 2006 to present export impediments; 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.

Question put.

The Senate divided. [10.04 am]

(The President—Senator the Hon. Paul Calvert)

Ayes.............. 8
Noes.............. 48
Majority........... 40

AYES
Thursday, 30 November 2006  SENATE  11

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

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

* denotes teller

Question negatived.

POLITICAL DONATIONS

Senator MURRAY (Western Australia) (10.07 am)—I move:

That, in view of:

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

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

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

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

Question put.

The Senate divided.  [10.08 am]

(The President—Senator the Hon. Paul Calvert)

Ayes............  8
Noes............  51
Majority........  43

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

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

* denotes teller

Question negatived.
CLIMATE CHANGE

Senator NETTLE (New South Wales) (10.12 am)—I move:

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.

Question put.

The Senate divided. [10.13 am]

(The President—Senator the Hon. Paul Calvert)

Ayes............ 8
Noes............. 50
Majority........ 42

AYES

Bernardi, C. 
Brandis, G.H. 
Calvert, P.H. 
Colbeck, R. 
Eggleston, A. 
Evans, C.V. 
Ferris, J.M. 
Fierravanti-Wells, C. 
Forshaw, M.G. 
Hogg, J.J. 
Hurley, A. 
Johnston, D. 
Kirk, L. 
Macdonald, I. 
McEwen, A. 
Moore, C. 
O’Brien, K.W.K. 
Patterson, K.C. 
Polley, H. 
Ronaldson, M. 
Sherry, N.J. 
Sterle, G. 
Trood, R.B. 
Webber, R. 

Bishop, T.M. 
Brown, C.L. 
Chapman, H.G.P. 
Crossin, P.M. 
Ellison, C.M. 
Ferguson, A.B. 
Fielding, S. 
Fifield, M.P. 
Heffernan, W. 
Humphries, G. 
Hutchins, S.P. 
Joyce, B. 
Lightfoot, P.R. 
Marshall, G. 
McGauran, J.J.J. 
Nash, F. 
Parry, S. * 
Payne, M.A. 
Ray, R.F. 
Scullion, N.G. 
Stephens, U. 
Troeth, J.M. 
Watson, J.O.W. 
Wortley, D. 

* denotes teller

Question negatived.

INTERNATIONAL DAY OF PEOPLE WITH DISABILITY

Senator WEBBER (Western Australia) (10.17 am)—At the request of Senator McLucas and Senator Bartlett, I move:

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 disability 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 dis-
ability 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.

Question agreed to.

VIETNAM

Senator FERRIS (South Australia) (10.17 am)—At the request of Senator Humphries, I move:

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) calls on the Vietnamese Government to observe its international obligations on human rights, including the provision of free and fair elections.

Question agreed to.

COMMITTEES

Economics Committee

Extension of Time

Senator FERRIS (South Australia) (10.18 am)—At the request of Senator Brandis, I move:

That the time for the presentation of the report of the Economics Committee on petrol pricing in Australia be extended to 7 December 2006.

Question agreed to.

Economics Committee Meeting

Senator FERRIS (South Australia) (10.18 am)—At the request of Senator Brandis, I move:

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.

Question agreed to.

MIGRATION LEGISLATION AMENDMENT (RESTORATION OF FAIR PROCESS) BILL 2006

First Reading

Senator BARTLETT (Queensland) (10.19 am)—I move:
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.

Question agreed to.

Senator BARTLETT (Queensland) (10.19 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 BARTLETT (Queensland) (10.19 am)—I move:

That this bill be now read a second time.

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

Leave granted.

The speech read as follows—

This Private Senator’s Bill is one of a number of Migration Act Amendment Bills which I am tabling in the course of this year. This bill seeks to remove the unfair provisions which were imposed by the Migration Legislation Amendment (Judicial Review) Act 2001 (The Act). It introduced a privative clause mechanism which restricted access to federal and High Court judicial review of administrative decisions made under the Migration Act 1958.

In practice these provisions sought to limit the availability of judicial review to a very limited class of errors of law. It applies not just to refugee determinations but to all decisions made under the Migration Act 1958.

The Australian Democrats rejected this legislation when it was first introduced because we believed it to be unjust, unfair and unnecessary. The legislation was widely criticised by a range of community groups who were opposed to the provisions which in effect limit accountability of decision makers amongst other things.

It was also initially rejected by the Labor Party, who unfortunately changed their position and allowed its passage through the Senate in the fear-driven frenzy leading up to the 2001 federal election, following the incident where the MV Tampa rescued hundreds of refugees at sea and brought them to Australian territory.

The legislation unfairly stigmatises people who are simply aiming to pursue their basic legal rights. Furthermore, the whole premise on which the act was based clearly implied that anyone who pursued their basic legal rights was doing so with the explicit intention of somehow rorting or frustrating the migration system.

The importance of protecting a basic safeguard such as the right to judicial scrutiny of a denial of procedural fairness is particularly acute when the decision is one affecting refugees.

In such cases, where the consequences of a wrongful decision can be extremely grave—namely, being sent back to a situation of persecution—it is vital that sufficient safeguards are preserved. The Democrats believe that the failure to preserve the safeguard of adequate judicial review runs the very real risk and alarming consequence that a person may be sent back to a place of persecution, in contravention of Australia’s international obligations.

The Democrats are always willing to support fair measures which reduce misuse of the immigration and refugee determination systems or reduce unnecessary legal delays and costs. The introduction of a privative clause does not achieve either of these aims. More importantly, it is a fundamentally unjust law which should be repealed.

I commend this bill to the Senate.

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

Leave granted; debate adjourned.

WORLD AIDS DAY

Senator STOTT DESPOJA (South Australia) (10.20 am)—I, and on behalf of Senator Payne, move:

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.

Question agreed to.

CLIMATE CHANGE ACTION BILL 2006

First Reading

Senator MILNE (Tasmania) (10.20 am)—I move:

That the following bill be introduced: A Bill for an Act to implement the United Nations Framework Convention on climate change, and for related purposes.

Question agreed to.

Senator MILNE (Tasmania) (10.20 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 MILNE (Tasmania) (10.20 am)—I 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—

Climate change is the greatest threat facing the world at the beginning of the 21st century. The degree and rate of onset of global warming will determine the rate of extinction around the world and the rate of human deaths. Scientists have been warning about the impacts of human induced global warming for decades. Rising sea levels, melting glaciers and sea ice, retreating ice shelves and snow lines, extreme droughts, floods and fires, thawing of the tundra all are proceeding faster than predicted. The Intergovernmental Panel on Climate Change representing the world’s leading scientists paints a grim picture of the accelerating impacts of global warming. We are approaching the tipping point of catastrophic climate change. It is already too late for the world’s coral reefs, which have passed the threshold of dangerous climate change. The acidification of the oceans and the rising temperatures mean that the corals are weakened and will not recover if bleaching episodes occur more frequently than every five years and that is now the pattern. One hundred million people around the world depend for their livelihoods on coral reefs. Unless we act before 2020 to drastically reduce greenhouse gas emissions and stabilize carbon dioxide in the atmosphere at under 550 parts per million, we cannot avoid run away, dangerous climate change. It will be too late.

In spite of the urgency of this situation, developed nations continue to believe that they can insulate themselves from the impacts of global warming through engineering solutions such as sea walls and water diversions but they seem unable to grasp the consequences of sea level rises if the Greenland ice shelf or the West Antarctic ice shelf break up or if the thermohaline conveyor stops and plunges Europe into an ice age within a decade. In Australia extreme weather events such as floods, bushfires and droughts will be more intense because of changed rainfall patterns, increased temperatures and evaporation rates yet Australian government politicians continue to
argue that drought intensity and climate change are unrelated.

For the world’s poor there is no escape. The majority of the world’s poor live in developing countries and they will be the ones most severely impacted first even though they have contributed least to the problem. Our Pacific neighbours will be forced to leave their island homes as climate refugees. Yet Australia refuses to recognise them as such.

Climate change is a moral and ethical question. It goes to the heart of questions of justice, equity and survival of human kind and the ecosystems on which all life depends. These are the values that need to be brought to the question and they are the values not evident in the Australian government’s position. Where are Australian values now?

The Australian government has refused to take action to address global warming because fundamentally it knows it is happening but has decided that corporate profits from the coal, oil and gas sectors feeding into budget surpluses and tax cuts are more important than the long term interests of the Australian community, the lives of the world’s poor or the ultimate survival of the species.

George Monbiot has said, “Climate change is not just a moral question: it is the moral question of the 21st century.” There is one position even more morally culpable than denial. That is to accept that it’s happening and that its results will be catastrophic; but to fail to take the measures needed to prevent it. The Howard government stands condemned.

The Greens will not allow this situation to continue. This legislation seeks to implement a wide range of actions that will accelerate Australia’s transition to a low carbon economy.

This bill seeks to initiate the action the government should be taking to accept its global responsibilities under the United Nations Framework Convention on Climate Change (UNFCCC) and the Kyoto protocol. It establishes mechanisms to reduce demand for electricity through energy efficiency; it proposes measures to reduce greenhouse gas emissions from electricity generation and deforestation and it puts in place initiatives to promote the take up of renewable energy.

It is a first step and will be followed by other legislative initiatives to address greenhouse gas reductions in the transport sector in particular.

This bill includes provisions to ratify the Kyoto protocol.

Climate change is a global problem requiring a global plan of action with agreed emission reduction targets and rules which are enforceable.

The Kyoto protocol provides such a framework setting out mechanisms to facilitate measurement, compliance and enforcement and supporting future climate negotiations.

The government has argued that it will not ratify the Kyoto protocol until the developing countries are included. This is a self serving argument which fails to recognise that underpinning the Kyoto protocol was the understanding that developing countries would consider targets at a future time when developed countries had shown a demonstrable commitment to reducing their greenhouse gas emissions. This was agreed in recognition of the fact that developed countries have caused the problem and should not deny developing countries their right to development.

The Kyoto protocol includes three market-based mechanisms – the Clean Development Mechanism, Joint Implementation and Emissions Trading to assist developing nations avoid developing emission intensive economies and developed countries to reduce their own energy intensity.

It is fundamentally unfair for the Australian government to expect developing nations to curtail their emissions without leadership from the rich nations – including the US and Australia.

The government often says Australia contributes about one per cent of global emissions—this is true but misleading. We are in fact about the 11th highest emitter, and about the highest per capita emitter. Our coal exports contribute huge volumes to global carbon dioxide emissions.

The government must immediately establish a Ministry for Climate Change and Energy.

Climate change is an overarching problem and requires a whole of government approach. There is a clear need to create a central agency to coordinate the government response and especially to counter the strong vested interests of some de-
partments. Just as a world war is not a defence issue so too climate change is not an environmental issue. It is a global emergency with economic, ecological and social ramifications that requires a national strategic response.

This bill sets emission targets for 2020, 20 per cent below 1990, and for 2050, 80 per cent below 1990.

Scientists have made it clear that urgent action is required in the next 10-15 years and so the first target is set at 20 per cent below 1990 levels. It is a significant but achievable emissions reduction goal that will be achieved primarily through improvement in energy use efficiency, including in the transport sector, an area that will be the focus of subsequent bills and from halting loss of carbon from deforestation.

The target is achievable with strong government leadership. Individual action cannot make the deep cuts that are necessary. System wide change that only governments can drive is needed. The long-term target, 80 per cent by 2050 is achievable and is intended to provide guidance to investors about the scale of the challenge ahead. It is also a statement of intent with regard to Australia’s international emission reduction obligations.

Emissions reductions will have to come from all sectors. Changes to land use and forestry, transport systems and energy efficiency are where the fast, relatively easy reductions can be achieved. Achieving the 80 per cent reduction will require a fundamental change in the way we generate electricity and hence the provisions of the bill to drive the take up of renewable energy.

To achieve these targets cost effectively the Greens believe that the government should, as quickly as possible, introduce an emissions trading system and/or a levy to impose a price on greenhouse gas emissions. We need a price on carbon to shift investment away from emissions intensive electricity generation infrastructure and industrial plant.

It is important to note that design of emissions trading schemes are complex and require a significant process of consultation with stakeholders and the general public.

It is a disgrace that the good preparatory work that the Australian Greenhouse Office did on this in 1999 was consigned to the waste bin. By the time Australia has a mechanism in place, the Howard government will have truly wasted a decade, at great expense to the Australian economy. We will not be ready to engage in a global emissions trading system because of this decade of blinkered economic policy.

The bill provides for a greenhouse trigger to be inserted into the Environment Protection and Biodiversity Conservation Act 1999—the EPBC Act—to ensure that information about the greenhouse gas emission impact of major developments is adequately considered during approval processes. The trigger is set at 100,000 tonnes. This is a more stringent trigger than was proposed by Senator Hill in 1999 and is appropriate given the dramatic increase in urgency in reducing greenhouse gas emissions since then.

The bill introduces a national energy savings target designed to halt the rise in electricity consumption.

Just as we need an overall target for greenhouse gas emissions and renewable energy, we need energy efficiency targets.

The provision is about saving energy, about reducing the waste of energy. This is critical because saving energy is the fastest and cheapest way of reducing greenhouse gas emissions, yet we have failed in this country to achieve anywhere near the efficiency gains which are easily achievable. Voluntary action has not worked. Had it done so, there would be a solar hot water system on every roof, incandescent light bulb manufacturers would have closed and the halogen down light would never have become the ecological disaster that it is.

The bill amends the Energy Efficiency Opportunities legislation to require large energy users to undertake energy efficiency audits and to implement the energy efficiency opportunities identified.

The actions I am proposing have two elements. The first is modelled on an existing Victorian scheme and it requires that energy efficiency audits be implemented where the payback period is less than three years.
The second is that energy efficiency opportunities that have a payback period of ten years must be publicly reported so as to provide information to managers, company boards and shareholders.

On the energy supply side, to drive the up take of renewable energy the bill increases the Mandatory Renewable Energy Target (MRET) to ensure that renewable electricity contributes at least 15 per cent of national demand by 2012 and 25 per cent by 2020.

The aim of MRET when it was introduced was to increase the proportion of Australia’s energy generated from renewables from 10.5 per cent to 12.5 per cent by 2010 but the conversion of this proportion to a GWh target, based in inaccurate forecasts of energy use has meant that by 2010 renewables will make up only 10.5 per cent of power generated. By 2020 it will have dropped to a mere 8.5 per cent. This is why the target must be significantly increased.

The renewable energy sector has unanimously called for an increase in the target and extension of MRET beyond 2010 to facilitate ongoing growth and this bill facilitates that outcome.

Changing the MRET from a fixed GWh target to a percentage based target – namely 15 per cent of national demand by 2012 and 25 per cent by 2020 represents a substantial but achievable increase on the existing MRET. It will position Australia competitively with other advanced developed nations when it comes to renewable energy.

In addition to increasing the MRET, this bill establishes a system of renewable energy feed-in laws inspired by highly successful policies in several European nations, particularly Germany, where feed-in tariffs have driven a solar PV revolution. The fundamental purpose of feed-in laws is to support prospective new renewable energy technologies.

Feed-in tariffs provide a minimum guaranteed price per unit of produced renewable electricity, to be paid to generators for a set period—often about 20 years at a rate that declines each year. Their purpose is to give investors and lenders security of income for a substantial part of the project lifetime.

Deforestation is a major contributor to global warming and so this bill immediately ends the harvesting of old growth forests to maintain carbon stores.

Although the rate of greenhouse gas emissions from the loss of forests has fallen since 1990, as a result of reduced land clearing in Queensland in particular, deforestation still contributes around 10 per cent of Australia’s total emissions. Protecting the incredibly valuable old growth forests for the huge amounts of carbon that they store for biodiversity conservation, for water conservation, and for the preservation of our cultural heritage is essential.

Mature forests have already accumulated vast quantities of carbon over very long periods in the trunks and roots, and especially in the soil. When logged, this carbon is lost very quickly. Replacement tree plantations following conversion of primary forests recapture only a fraction of this lost carbon.

This legislation begins the process of addressing climate change in Australia. I welcome amendments to improve the bill and to strengthen its provisions. Full details of the measures in the bill are contained in the explanatory memorandum that has been circulated to honourable members.

There is no greater challenge we face as a nation than to mitigate against further increases in greenhouse gas emissions and to adapt to the impacts of global warming. History will judge us according to our efforts right now. We cannot fail because of a lack of courage or imagination.

I commend the bill to the Senate.

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

Leave granted; debate adjourned.

**Ramsar Wetlands in Australia**

Senator SIEWERT (Western Australia) (10.22 am)—by leave—I move the motion as amended:

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 Corong and other Ramsar Wetlands of International Importance; and
(b) calls on the Federal Government to establish a review of the health and management of Ramsar wetlands in Australia.

Question agreed to.

PARLIAMENTARY ZONE

Approval of Works

Senator IAN CAMPBELL (Western Australia—Minister for the Environment and Heritage) (10.22 am)—At the request of Senator Colbeck, I 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.

Question agreed to.

BUDGET

Consideration by Legislation Committees

Additional Information

Senator SCULLION (Northern Territory) (10.22 am)—I present additional information received by committees relating to estimates as follows:

Foreign Affairs, Defence and Trade Committee—2 volumes
Rural and Regional Affairs and Transport Committee—3 volumes

BUSINESS

Rearrangement

Senator SCULLION (Northern Territory) (10.23 am)—by leave—At the request of the chair of the Employment, Workplace Relations and Education Committee, Senator Troeth, I move:

That business of the Senate order of the day no. 2, relating to the presentation of the report of the Employment, Workplace Relations and Education Committee on the provisions of the Commonwealth Radioactive Waste Management Legislation Amendment Bill 2006, be postponed till a later hour.

Question agreed to.

AUSTRALIAN CITIZENSHIP BILL 2005

AUSTRALIAN CITIZENSHIP (TRANSITIONALS AND CONSEQUENTIALS) BILL 2005

First Reading

Bills received from the House of Representatives.

Senator IAN CAMPBELL (Western Australia—Minister for the Environment and Heritage) (10.24 am)—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 IAN CAMPBELL (Western Australia—Minister for the Environment and Heritage) (10.24 am)—I table two revised explanatory memoranda relating to the bills and 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—

AUSTRALIAN CITIZENSHIP BILL 2005

Today I have the honour to present the Australian Citizenship Bill 2005 which deals with the core of our national identity—Australian citizenship.

This bill, once passed by the Parliament will replace legislation which introduced the concept and reality of Australian citizenship on Australia Day 1949.

During debate in the House, many members reflected on citizenship ceremonies they had attended. They commented on the obvious pride and joy of former migrants and humanitarian
entrees to this country making the pledge, which is the final step in becoming an Australian citizen. Becoming an Australian citizen is a significant commitment. It involves undertaking to fulfil the responsibilities of Australian citizenship as well as being able to take advantage of the opportunities that come with citizenship. It requires the pledging of loyalty to Australia and its people, a shared belief in the democratic process, respect for the rights and liberties of others, and a willingness to uphold and obey the law.

Importantly, the bill retains the principle that Australian citizenship is a privilege and not a right. As noted by the Legal and Constitutional Legislation Committee, in its report on its inquiry into the bill, “... the fundamental worth of citizenship should not be in doubt”. The Committee made 17 recommendations and this bill along with the Australian Citizenship (Transitionals and Consequentials Bill) 2005, has been amended to give effect to eight of the recommendations which involve legislative change. These were recommendations 1, 2, 6, 10, 12, 14, 16 and 17.

The Government has also accepted the Committee’s recommendations 5 and 7, and partially accepted recommendation 11, noting that these recommendations do not require legislative change. As noted by the Committee, the redrafting and restructuring of the legislation for the purpose of delivering better structured, clearer and more accessible citizenship legislation, is a significant achievement. The Australian Citizenship Bill 2005 now also contains simplified outlines explaining the operation of the various parts of the bill, making the legislation even more accessible.

The bill also makes it clear that a person who is a citizen under the existing legislation—the Australian Citizenship Act 1948—is a citizen for the purposes of the new Act.

As recommended by the Committee, the Preamble has been amended to recognise that Australian citizenship represents “full and” formal membership of the community of the Commonwealth of Australia. It is indeed that – full membership of the Australian community, involving reciprocal rights and obligations.

The bill as originally introduced into the House required applicants to have at least three years permanent residence in Australia prior to application. The bill was amended and now generally requires applicants to have been lawfully resident in Australia for four years prior to application, including at least 12 months of permanent residence immediately prior to application. Absences from Australia of up to 12 months in total during the four years prior, and no more than three months in the 12 month period prior to application, are allowed.

The change recognises that there are increasing numbers of people who spend time in Australia as temporary residents prior to becoming permanent residents. The requirement for four years residence will ensure that people have spent sufficient time living in Australia to become familiar with our way of life, to get a sense of what it is to be Australian, and of the commitment they need to make to become an Australian citizen.

Consistent with the Committee’s recommendations, the new residence requirements will only apply to people who become permanent residents on or after commencement of the legislation with the proviso that they apply within three years of commencement.

Other important amendments to the original Bill are the changes to the personal identifiers framework. The provisions were amended in close consultation with the Office of the Privacy Commissioner to ensure that they are aligned with the provisions of the Privacy Act 1988. The provisions will support the verification of identity of people applying for Australian citizenship and assist in combating identity and document fraud in the citizenship programme. The bill explicitly states that a person cannot be approved for Australian citizenship unless the Minister is satisfied as to their identity.

Another significant measure aimed at safeguarding Australian citizenship is the provision for mandatory refusal of a person assessed as being a direct or indirect threat to the security of our nation. This provision applies to all applications—whether a person is applying to become a citizen by descent, by conferral or they are applying to resume their Australian citizenship.

The need to protect the status of Australian citizenship has also led to changes to the provisions
allowing for the revocation of Australian citizenship.

The bill provides for revocation where a person has obtained approval to become a citizen on the basis of third party fraud.

Applicants for citizenship by decent are required to have an Australian citizen parent at the time of their birth. Importantly, a new provision also provides that a person, born overseas, who commits fraud in relation to this requirement, will be taken never to have been an Australian citizen.

In addition, the new provisions allow for revocation for a conviction of a serious criminal offence committed at any time before the person becomes an Australian citizen.

During debate in the House, certain Members claimed that a particular amendment to the bill would necessitate the mandatory refusal of an applicant who had been sentenced to imprisonment for five years or more by a corrupt regime.

The particular provision in fact applies not to people who have migrated to Australia and seek to become citizens but to stateless people who were born in Australia. The Government undertook to consider a further amendment to provide for discretionary refusal in such cases. Consideration of this matter is nearing conclusion and I hope to be able to report on the outcome before we rise for the Christmas break.

I commend the bill to the Senate.

In addition, this bill will allow for the registration of people adopted by an Australian citizen in accordance with the Hague Convention, applies to people adopted before or after the commencement of the legislation. These changes were made in response to a recommendation of the House of Representatives Standing Committee on Family and Human Services and provides for the necessary integrity of the adoption process consistent with the Convention.

I commend the bill to the Senate.

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

COMMONWEALTH RADIOACTIVE WASTE MANAGEMENT LEGISLATION AMENDMENT BILL 2006

First Reading

Bill received from the House of Representatives.

Senator IAN CAMPBELL (Western Australia—Minister for the Environment and Heritage) (10.25 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 IAN CAMPBELL (Western Australia—Minister for the Environment and Heritage) (10.25 am)—I 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—

COMMONWEALTH RADIOACTIVE WASTE MANAGEMENT LEGISLATION AMENDMENT BILL 2006

The purpose of this bill is to amend the Commonwealth Radioactive Waste Management Act
2005 to provide for the return of a volunteer site to its traditional owners should such a site be selected for the Commonwealth radioactive waste management facility.

Existing provisions of the Act allow a land council to nominate Aboriginal land within the area of the land council as a potential site for the facility. Australian regulatory requirements require radioactive waste facilities not be sited where land ownership rights or control could compromise retention of long-term secure management of the facility. It is for this reason that the Act allows the Commonwealth to acquire all rights and interests in a volunteer site, should one be forthcoming and ultimately selected for the facility.

However, the Australian Government also recognises that Aboriginal people in the Northern Territory fought hard for the right to own their land. Honourable Senators will know that the original Northern Territory land rights legislation was passed in this Parliament under a Coalition government.

Through this bill, the Australian Government seeks to ensure, should a volunteer site be selected for the facility, that there is a mechanism for the land to be returned to its original owners or successors when the site is no longer required for the facility.

We will not be returning a dirty or polluted site. The bill provides that the return may not be effected unless the independent regulator, the Australian Radiation Protection and Nuclear Safety Agency, has released the facility from regulatory control. Further, the traditional owners must consent to return of the site.

However, in the extremely unlikely event that contamination occurs as the result of use of the land for the facility, the traditional owners will be indemnified by the Commonwealth against any resultant claims.

A related purpose of this bill is to amend both the Act and the Administrative Decisions (Judicial Review) Act 1977 to prevent politically motivated challenges to a land council nomination.

Honourable Senators may have seen speculation in the media that Aboriginal land in the Northern Territory may be nominated for the facility. It is no secret that the Northern Land Council has been supportive of provisions in the current Act that allow Aboriginal landholders to consider nominating their land.

I welcome the Northern Land Council’s positive and constructive assistance in providing factual information and facilitating discussions with Aboriginal groups about the Government’s plans for a Commonwealth Radioactive Waste Management Facility. It is an indication of the strength and relevance of the Council that, in the face of ideologically driven opposition, it is prepared to actively support communities in their wish to improve the opportunities for themselves and their children. The bill addresses issues that the Northern Land Council has indicated are of particular sensitivity for Aboriginal groups that may be considering putting forward their land for nomination.

After claiming that the Australian Government was imposing a radioactive waste facility on the Northern Territory against community wishes, I assumed that opponents of such a facility would welcome the construction of the facility on a site volunteered by the local land holders. Instead, opponents of the facility have indicated that they are prepared to oppose the facility on a volunteer site as well.

Current provisions of the Act set down a number of criteria that should be met if a land council decides to make a nomination. Importantly, these criteria include that 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.

I can assure the Senate that, should a nomination be made, I will only accept it if satisfied that these criteria have been met. What the Government will not accept is speculative legal challenges against the land council or me that are designed, not to ensure that Aboriginal people have given informed consent to a land nomination, but to frustrate and delay establishment of the facility.

Those Senators who are in favour of safe and responsible management of radioactive waste, and those Senators who are in favour of Aboriginal people being able to make their own decisions about infrastructure developments on their own
land, should support these amendments and on that basis I commend the bill to the Senate.

Debate (on motion by Senator Ian Campbell) adjourned.

DATACASTING TRANSMITTER LICENCE FEES BILL 2006
BROADCASTING SERVICES AMENDMENT (COLLECTION OF DATACASTING TRANSMITTER LICENCE FEES) BILL 2006

First Reading

Bills received from the House of Representatives.

Senator IAN CAMPBELL (Western Australia—Minister for the Environment and Heritage) (10.26 am)—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 IAN CAMPBELL (Western Australia—Minister for the Environment and Heritage) (10.26 am)—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—

DATACASTING TRANSMITTER LICENCE FEES BILL 2006

The Datacasting Transmitter Licence Fees Bill 2006 is part of the implementation of the Government’s media reform policies in relation to the allocation of datacasting transmitter licences covering the two unallocated television channels.

As part of the media reform legislation, provision will be made for the allocation of one set of licences (Channel A datacasting transmitter licences) for fixed, in-home, free-to-air digital services, and the other (Channel B datacasting transmitter licences) for a potentially wider range of digital services.

The Datacasting Transmitter Licence Fee Bill 2006 will implement the Government’s policy objective to require the licence-holder of the licences reserved for fixed, in-home, free-to-air services (the Channel A licences) to be subject to a revenue-based annual licence fee in addition to the up-front payment resulting from a price-based allocation system. The annual fee will be determined according to formulae based on the formulae used to calculate commercial television broadcasting licence fees.

BROADCASTING SERVICES AMENDMENT (COLLECTION OF DATACASTING TRANSMITTER LICENCE FEES) BILL 2006

The Broadcasting Services Amendment (Collection of Datacasting Transmitter Licence Fees) Bill 2006 amends the Broadcasting Services Act 1992 to provide payment machinery and record keeping obligations to support the administration of the Datacasting Transmitter Licence Fees Bill 2006.

The Datacasting Transmitter Licence Fee Bill 2006 which is also being introduced today will provide for the imposition of annual licence fees on Channel A datacasting transmitter licence holders.

This bill (the Broadcasting Services Amendment (Collection of Datacasting Transmitter Licence Fees) Bill 2006) will amend the Broadcasting Services Act 1992 to ensure compliance by the Channel A licence holder with licence fee payment obligations and appropriate record keeping in relation to these licence fees. These obligations will be similar to those currently imposed on commercial television broadcasting licences under Part 14A of the Act.

Debate (on motion by Senator Ian Campbell) adjourned.

Ordered that the resumption of the debate be an order of the day for a later hour.
AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION AMENDMENT (AUDIT INSPECTION) BILL 2006

First Reading

Bill received from the House of Representatives.

Senator IAN CAMPBELL (Western Australia—Minister for the Environment and Heritage) (10.28 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 IAN CAMPBELL (Western Australia—Minister for the Environment and Heritage) (10.28 am)—I 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—

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION AMENDMENT (AUDIT INSPECTION) BILL 2006

International audit supervision and enhancement of ASIC’s audit inspection powers.

Today I introduce a bill which will amend the Australian Securities and Investments Commission Act 2001 (the ASIC Act) to provide a legislative framework to empower the Australian Securities and Investments Commission (ASIC) to enter into cooperative audit agreements or arrangements with foreign regulatory bodies.

The bill will also enhance ASIC’s current audit inspection powers.

At the outset, the Government would like to express its appreciation to key stakeholders for their constructive participation in the consultative process which has assisted the Government in shaping the measures contained in the bill. I am pleased to inform the House that as a result of this consultative process, all the key stakeholders, including the major audit firms and the professional accounting bodies, support the proposals contained in the bill.

The bill will facilitate ASIC entering into a cooperative arrangement with the US Public Company Accounting Oversight Board (PCAOB) which was established under the Sarbanes-Oxley Act of 2002 (SOX Act).

Australian auditors that audit Australian companies registered with the US Securities and Exchange Commission, or that are indirectly involved in the preparation of audits for US capital market participants, are required to register with the PCAOB and to comply with US audit requirements including PCAOB audit inspection processes.

In light of the global nature of capital markets, the PCAOB has adopted a policy of seeking to cooperate with non-US regulators, like ASIC, to facilitate the conduct of joint audit inspections with the local regulator.

In addition to the public interest in fostering the close cooperation between Australian and US regulators, the streamlining of the information-gathering process under the proposed joint inspection arrangement by ASIC and the PCAOB will result in significant cost savings for audit firms in that they would have to accommodate only one joint inspection rather than two separate inspections by ASIC and the PCAOB.

The bill will also enhance ASIC’s audit inspection powers to facilitate the proposed joint audit inspection arrangement between ASIC and the PCAOB. The enhancement of ASIC’s audit inspection powers are also designed to reduce compliance costs and clarify uncertainty about the scope of ASIC’s existing powers to review audit firms which the Financial Reporting Council identified in its 2004-05 Auditor Independence Report.

Important legislative and other safeguards will apply to the proposed arrangement between ASIC and the PCAOB, such as existing privileges protected by law and in relation to confidentiality of information.
The ultimate safeguard is that an agreement or arrangement between ASIC and a foreign regulator will be subject to Ministerial consent which the Minister could vary or revoke.

The Government has also decided that the operation of the proposed arrangement between ASIC and the PCAOB should be reviewed after the completion of the first round of triennial PCAOB inspections in Australia, to assess whether the expectations in relation to the objectives of the joint inspection process have been met.

This is a valuable initiative because, with the globalisation of capital markets and cross-border operations by many corporations, there is a trend towards greater consistency in global regulatory standards and a recognition of the need for closer international cooperation by regulators.

Auditing standards amendment

The bill also contains a technical amendment to a transitional provision relating to auditing standards in the Corporations Act 2001 (Corporations Act).

The purpose of the technical amendment is to ensure that the current immunity against criminal liability under subsection 1455(5) of the Corporations Act is extended to cover all financial reports for periods ending on or before 29 June 2007 that are audited using auditing standards made by the professional bodies.

This bill is another step towards the Government achieving a simpler regulatory system, and I once again commend all stakeholders for their valuable input into this process.

I commend the bill to the Senate.

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


Returned from the House of Representatives

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

ENVIRONMENT AND HERITAGE LEGISLATION AMENDMENT BILL (No. 1) 2006

Second Reading

Debate resumed from 29 November, on motion by Senator Santoro:

That this bill be now read a second time,

upon which Senator Carr had moved by way of an amendment:

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; and therefore

(b) calls on the Howard Government to:

(i) ensure climate change is properly factored into environmental decision-making under the Environment Protec-
tion 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”.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (10.29 am)—I will sum up my comments earlier by saying that, immediately on seeing the Environment and Heritage Legislation Amendment Bill (No. 1) 2006, Humane Society International and World Wildlife Fund Australia expressed their alarm because the proposed changes mean that the potential of the Minister for the Environment and Heritage to politicise what should be an objective scientific process in assessing the wellbeing of Australia’s threatened wildlife species and habitats will be increased.

When I travel around this nation I see a continent not just in serious trouble as far as the environment is concerned but facing a cataclysmic process of extinction of species and habitats and destruction of the very fabric of life which gave rise to the predominance of we homo sapiens over the planetary biosphere. One of the world’s great thinkers, Stephen Hawking, has mused that it may be that ours is potentially like other planets in the universe, getting to the stage where, by taking over through the growth of intelligence and the powers that there are in the natural living system, we will destroy the ability of life to continue on the planet.

Here we have before us a piece of legislation which seeks to remove responsibilities and powers from the federal minister and the federal government rather than to greatly enhance them. We have just seen the process in relation to workplace relations where, through the corporations powers, the government has used greater powers than ever before to ensure that businesses predominate over workers in the split-up of the nation’s income and the wellbeing of the people of Australia. But when it comes to the environment and the species of this great nation, the reverse is occurring. The bill before us seeks effectively to shed off to the states and the developers not just the powers but the responsibility that the government has for this nation’s cultural and environmental amenity. The greed factor in this age of materialism is marauding our environment and robbing our children and grandchildren—indeed, people around the planet—of their right to inherit a living planet which is sustainable and where people live with the planet rather than off it.

There is no coverage of this debate in today’s press. As I said earlier, we will be considering the legislation tomorrow but the government will gag the debate. It brings home forcefully the delinquency not just of the government but of responsible authorities across the board in not just failing to prevent this cataclysm for the environment in this rich, wealthy nation of ours but turning their back on it. Those who vote for this legislation know what they are doing. They will be turning their back on this nation’s need for much stronger government intervention to prevent that spiral dive into death for so many of the species, so many of the ecosystems and so much of the living face of this continent, let alone the planet. It is disgusting legislation and the government should be ashamed of it. No doubt it will use its numbers to put it through the chamber. History will record this as a dark day for the environment.

Senator ALLISON (Victoria—Leader of the Australian Democrats) (10.33 am)—I was chair of the environment committee and the Democrats spokesperson on the environment at the time the 1998-99 legislation was set up, in conjunction with the states
through the COAG process. The current system of federal powers over approval of major projects that posed a threat to environmental sites and species and ecosystems of national significance was established. I should say that this legislation arose partly from a Senate environment committee examination of federal environment laws back in 1997, I think, when it was first initiated by my former colleague Senator Meg Lees. I chaired that inquiry as well.

The ALP and the Greens opposed the legislation at the time and this placed the Democrats in a balance of power—our preferred position always—a responsibility that we took very seriously. The bill was put to one of the most extensive Senate inquiries over the last decade. We conducted hearings in most states. We received hundreds of submissions. It was a very thorough examination of the proposed legislation. It was contentious. Conservation groups were divided on its merits. The Humane Society, the Worldwide Fund for Nature and many of the conservation trusts were supportive. The ACF, the Wilderness Society and a couple of others were strongly opposed to it.

The process was, however, very useful in the development of hundreds of amendments to improve the bill. Whilst the government has shown only modest interest, if I can put it that way, in implementing its own environment laws, it is fair to say that the EPBC Act is now widely regarded as a powerful piece of legislation that has been used extensively by groups and individuals, including, I note, Senator Brown. The process for scrutinising the bill is in stark contrast, however, to what has happened with this enormous 409-page amendment bill. Many of the changes are technical and minor but others very significantly water down the legislation.

It is not surprising that the government would want to do this. In fact, I am astounded that it has taken as long as it has. The government has had the numbers in the Senate since July to pass whatever changes it wanted, to undo all of the amendments negotiated by the Democrats, if it chose to do that—and some here are certainly in that category. But to give people two weeks to make a submission to the all too commonly short inquiry is, frankly, outrageous. It is a slap in the face too to the hardworking conservation groups that have acted in good faith to make the laws work to protect the environment. That is one of the most disappointing parts of what we are dealing with today. Despite that, the submissions we have received have been very good and very useful.

But it is also a slap in the face to state governments, who were part of the process in the first instance. The Victorian state government say—quite politely, I thought—in their submission that there was no consultation at all with them. They say that they welcomed the so-called streamlining but pointed out that the new fast-track refusal mechanism appears to create new administrative complexity. They say the same about reconsideration of decisions at the referral stage, which they say creates a new degree of uncertainty as to the status of the minister’s decision at this early stage of the process. They point out that section 131AA adds a new process which seeks to oust the proponent’s usual rights to natural justice. They say that the bill would increase the EPBC Act in size and in administrative complexity. They say that they have great concerns about the potential for greater uncertainty, a greater administrative burden and increased duplication in process—so much for this legislation being all about streamlining.

I repeat that there has been no consultation and a ridiculously short time frame, and yet this is largely an administrative and technical bill and not urgent. It is a watering
down of hard won gains for the environment. I thought I would draw on the HSI, TCT, and WWF submissions for a quick overview of those changes, because it is important to get them on the record. They all make the point that it would have been more appropriate to have had a public process to fully analyse and consider the different models in terms of an overhaul of threatened species and heritage public nominations processes and invite community input—for example, with a discussion paper. I seem to recall that there was an extensive discussion paper that kicked off this legislation back in 1998. Instead, the community has been presented with a truncated process that seeks to bulldoze the bill through without proper scrutiny and analysis. Unfortunately, we have become accustomed to that kind of process in this place.

On the removal of the merits review, they say that greatly reducing the ministerial decisions that can be challenged by third parties is a backward step. On the removal of the matters of national environmental significance triggers, that five-year review that is in the law at the present time is useful and the government has advanced no reason for removing it. Regarding the constraints placed on the threatened species public nomination and listing process, these conservation groups say that it will potentially wipe 550 threatened ecological communities from the current waiting list for protection under the EPBC Act, amounting to millions of hectares of endangered habitat across the country.

The say that it will make it harder for the public to secure legal protection for threatened species and ecological communities with a new requirement for public nominations to comply with the themes set by the minister or risk having their nominations left off lists for consideration. It 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 his scientific committee repeated extensions to postpone consideration of politically controversial nominations, such as commercial marine fish and ecological communities occurring on private farmland. A new amendment will allow him to remove controversial nominations from the committee’s consideration altogether. It will allow the minister to refuse to assess a threatened species previously rejected for protection, even if its conservation status has worsened and it will also open the process to abuse for controversial species.

On conservation advice and recovery plans, the amendments remove the mandatory requirement to develop a recovery plan once a threatened species or ecological community is listed under the law as threatened. On critical habitat, the amendments remove the mandatory requirement to identify critical habitat for threatened species in any recovery plans that are developed. On heritage nominations and the listing process, they say that this is a major backward step that gives the minister unprecedented discretion over the listing process by constraining public nominations into themes rather than considering the heritage status of the place being nominated. The minister will also have the power to omit politically controversial places from the priority assessment list provided by the Australian Heritage Council prior to the list being available for public comment.

On third-party enforcement, the removal of the provision preventing the Federal Court from requiring undertakings for damages as a condition of granting an interim injunction creates a significant new barrier to third-party enforcement through the courts. Third parties, as they point out, have used the courts very judiciously so far and the government has provided no evidence whatsoever to substantiate the need to repeal section
478. On strategic assessments, they say that while cumulative impact assessment is desirable in principle, the ANEDO submission raises numerous issues that need to be addressed in the amendments to ensure proper consideration of matters of national environmental significance, particularly those that are poorly delineated, such as critical habited for threatened species. All submissions complain about the lack of a new matter of national environmental significance trigger and point out the amendments are a missed opportunity to introduce triggers for broadscale land clearing, greenhouse emissions, unsustainable water use and large dams.

What I thought was interesting in the submissions that were received was the number of complaints about the existing system. The ACF point out that very few resources have been made available for the implementation of this legislation. They say:

The inadequacy of resources available to implement the major provisions of the EPBC Act is evident on a review of the DEH’s Operation of the EPBC Act 2005-06. According to that report, there is a backlog of 640 threatened ecological communities requiring assessment. While the Department received 9 new nominations that year and was considering a total of 33, the Minister made only 5 decisions. The situation is not much more encouraging with respect to threatened species. The Explanatory Memorandum refers to some 250 threatened species recovery plans having been adopted under the Act, but many of these have not been reviewed and are years out of date. In 2004-05, there were scheduled reviews of some 20 threatened species recovery plans, not a single one of which was completed according to the statutory schedule. One reason cited for these delays was the ‘volume of recovery plans becoming due for review’, according to the review of the operation of the EPBC Act for that year. Five out of the six reviews of key threatening process abatement plans were also not completed.

To go on, in the ACF submission, they point out:

A dedicated EPBC enforcement unit within the Department of Environment and Heritage did not even come into operation until 2004, and resources remain modest.

The environmental assessment budget for 2006-07 is $13.8 million—a $1.3m decrease from the previous year, with a further $1.6m to be stripped from the budget for 2007-08. This amount has to cover not only the assessment of 300-500 project referrals every year, but also appears to include all monitoring and enforcement actions under Chapter 4 of the Act, as well as post-referral and post-approval monitoring of compliance with conditions.

The Australian government will thus spend less money in 2006-07 in assessing and monitoring activities that could impact matters of national environmental significance than it will on helping people take their cars across Bass Strait ($36 million), managing asylum seekers offshore ($68 million), or subsidising the consumption of draught beer ($170 million).

This is to point out how little this government really gives by way of priority to the environment.

Another submission on this bill that I think is worth quoting here is from Birds Australia. They say:

It appears that the listing process is becoming more subjective, controlled by decisions by the Commonwealth Minister rather than a clear, transparent, and scientifically based process.

They give an example of this:

... the proposed Section 194 provides for the Minister to create and consider conservation themes to guide the selection process for listing threatened species and ecological communities. There is no clear process for the rationale for these themes and public, or other government, participation in the establishment of these themes.

The status of current waiting lists for threatened ecological communities and species appear to potentially be in jeopardy. It is not clear whether they will be eliminated and a new listing process will start over. This is a serious matter as there are threatened ecological communities and species which are in urgent need of attention. The Minis-
ter should not be given the discretion to remove species or ecological communities from the annual assessment lists.

The Minister is given the power to refuse to assess a threatened species which had been rejected for protection in the past. The status of many species and ecological communities may change rapidly because of emergent or intensifying threatening processes. As long as there is a strong scientific basis for reassessment, the Minister should not be able to refuse such an assessment.

Birds Australia do say that there is a positive in this. They point to:

... provisions for industry to contribute funds to and/or actually carry out activities for research and establishment of conservation areas as part of recovery plans for species threatened by a project—

which they describe as an excellent move. However, they go on to say that what is of concern to them is:

... the apparent removal of mandatory requirements to develop recovery plans for newly listed threatened species and ecological communities and the mandatory requirement to identify critical habitats for threatened species in any Recovery Plans that are developed.

They go on to point out the importance of recovery plans for:

... the apparent removal of mandatory requirements to develop recovery plans for newly listed threatened species and ecological communities and the mandatory requirement to identify critical habitats for threatened species in any Recovery Plans that are developed.

They are very active, as we all know, in assisting the development of recovery plans. Their members are also very active in carrying out aspects of those recovery plans in the field.

That is just a snapshot of what was able to be prepared by conservation groups for this legislation. I do not see amongst the submissions that were made too much support at all for this government’s approach. It is supposed to be streamlining; it is supposed to be improving the bill. But, as I said, those streamlining measures—the administrative and technical measures that are in the bill—are not urgent, so there would have been time for us to properly consider this legislation. It is a very significant watering down of an agreement that was struck back in 1999 on this legislation. It is typical of the government not to approach the Democrats. The Democrats negotiated in good faith, I might say, Minister Campbell. It was a long negotiating process but it was a thorough one.

Senator Ian Campbell interjecting—

Senator ALLISON—We have not been afforded, Minister, any advice by you about these—

The ACTING DEPUTY PRESIDENT (Senator Murray)—Order! Senator Allison, please address your remarks through the chair.

Senator ALLISON—We were not afforded any opportunity prior to this bill coming forward to give the minister our views, our opinion or comment on how this affects the agreement that was struck with the government. I think that is a real disappointment. One of the problems is that the government does not seem to realise that, in the future, it may rely on other parties in the Senate to get its legislation through and it may find itself in another position of negotiation. I have to say that I would be far less inclined to enter into a negotiation of that sort knowing what I know now about how ready this government has been to dismiss those agreements previously struck, just because it has a majority in this place.

An example is a trigger in the EPBC Act for greenhouse. This was part of our discussions. An undertaking was given by Minister Hill at the time that a good faith negotiation process would be commenced with the states to talk about a trigger. We saw little evidence that that had happened. Even though there is heightened awareness of the need for us to
take serious steps on greenhouse emissions, there is still no admission by the government that this would be a good move. In fact, we have gone backwards in that sense, with the minister attacking the judgement made in Queensland earlier about a coal-fired power station, as I recall, and coming to the defence, again, of the coal industry in a way that is not helpful in dealing with the necessity for us to reduce emissions of greenhouse gases by 50 per cent by 2050. The minister should be working on ramping up those reductions, because two per cent a year needs to be sliced off our emissions if we are going to reach that target by 2050. A trigger in the EPBC Act, as we knew then and know now with greater urgency, would have helped us to achieve that. But that has not been the case, and it is a great disappointment that we now have a major review of this bill that does not do that but which in fact waters down what we currently have.

Senator WORTLEY (South Australia) (10.53 am)—I rise to speak in opposition to the Environment and Heritage Legislation Amendment Bill (No. 1) 2006. As with most of the controversial bills that have passed through this chamber since July 2005, there has been an issue with the time frame in relation to this bill. Again, we see the Howard government rushing legislation through this parliament without proper consideration or consultation. This parliament and the people of Australia should have been provided with a decent opportunity to scrutinise and discuss the implications of the bill, but this government has its own time frame, its own agenda and is determined to have the debate done and dusted in this sitting.

The Environment and Heritage Legislation Amendment Bill (No. 1) 2006 is just another example of the Howard government again missing an opportunity to improve on current legislation. It represents a lost opportunity to address the very real challenge we are facing in Australia and around the world: the challenge of climate change. We cannot get away from the fact that this bill is made up of 409 pages of proposed government amendments, and there is not one single mention of protecting Australia from dangerous climate change, nor is there any measure to cut Australia’s greenhouse pollution.

For all its importance, all its consequences and all the time and effort spent on bringing this legislation into this parliament it is disappointing that we have before us a bill that falls far short of the mark. Not only has this government failed to take up the opportunity to improve our legislation but, through the proposed changes, it will effectively weaken the existing legislation. If this bill is passed, it will weaken the protection that the Environment Protection and Biodiversity Conservation Act 1999, Australia’s major environment law, provides for Australia’s biodiversity and heritage.

The EPBC Act provides a framework for environment protection for any actions that are likely to have an impact on matters of national environmental significance in relation to World Heritage properties, Ramsar wetlands of international importance, nationally threatened species and ecological communities, migratory species, nuclear actions, the Commonwealth marine environment and places on the National Heritage List. It is our primary environment law. However, the greatest weakness of the EPBC Act is that it fails to address climate change. It is not considered a matter of national environmental significance by this government, and now, when the government has the opportunity to address this issue, it puts forward a bill that fails to do so. It represents a backward step in the protection of Australia’s natural, cultural and Indigenous heritage.

So what else is wrong with the Environment and Heritage Legislation Amendment
Bill (No 1) 2006? What are its other weaknesses? Firstly, it repeals the third-party appeal rights against ministerial decisions in relation to the exploitation and trade of wildlife, a right which has existed since 1982. This includes the import of species under the Convention on International Trade in Endangered Species, such as Asian elephants and the export of koalas to Thailand. Secondly, it effectively abolishes and archives the Register of the National Estate, which was established by the Whitlam Labor government and which now contains some 13,000 sites of natural, cultural and Indigenous heritage significance. The requirement for the minister to have regard to the register when making decisions will be phased out after five years. Thirdly, the significant implications it has for Australia’s natural and built heritage. The amendments will mean that the minister is to decide whether or not to include a place on the Heritage List. The minister will receive advice from the Australian Heritage Council in the form of an assessment of heritage values of the particular site. However, clause (5) says:

(b) the Minister may seek, and have regard, to information or advice from any source—in making a decision as to whether a site will or will not enter onto the Heritage List. Ultimately it appears that the minister can completely ignore the advice of the Heritage Council—the experts, one would assume—and take advice from anyone.

The weaknesses in this bill continue with the undermining of public consultation processes and the politicising of decision-making processes. The government will no longer be required to review the matters of national environment significance, the triggers under the act every five years. And the scientific committee will no longer be required to assess state and territory lists of threatened ecological communities.

Concerns have also been raised that the bill may fast-track environmental assessments and approvals of major projects. It also abolishes the right to appeal some ministerial decisions relating to the protection of whales and dolphins, threatened species and other wildlife—all of this at a time when Australia is facing a plant and animal extinction crisis. Twenty per cent of our species are threatened with extinction by the end of the 21st century. Australia now leads the world in mammalian extinctions. So we trail the world in setting the example on climate change and, to our shame, lead the world in mammalian extinction.

Even the unanimous report of the Senate Standing Committee for the Scrutiny of Bills criticises the bill and the explanatory memorandum, raising serious concerns about the absence of reasons or explanations for some serious new offences and penalties and the decision to limit appeals on ministerial decisions. This bill—409 pages of amendments—should have addressed environmental issues and included measures to cut greenhouse gases and to ensure appropriate assessment of large-scale greenhouse polluting projects, measures to encourage energy efficiency and use of renewable energy and measures to address climate change. But it fails to do so.

On 5 September 2005, the member for Grayndler, Labor’s shadow minister for the environment and heritage, Anthony Albanese, introduced a private member’s bill to establish a climate change trigger under the Environment Protection and Biodiversity Conservation Act. The climate change trigger would enable major new projects to be assessed for their climate change impact as part of any environmental assessment process and would ensure that new developments represent best practice. We understand that a proposal for a climate change trigger has been with the federal environment minister since
With the introduction of this bill we are debating today and the absence of a climate change trigger within it, are we now to take it that a climate change trigger has been formally rejected by the Howard government?

This government cannot be trusted with the environment. This week’s release by the Australian Bureau of Statistics of its Water Account, Australia, 2004-05 reveals that Australia’s well is running dry. Dam levels across Australia are down to 48 per cent capacity and are as low as 33 per cent across New South Wales and 39 per cent across Victoria. Climate change is clearly having an impact on water supplies, cutting dam levels in cities and water flow into the Murray-Darling Basin. The Murray is at its lowest level in 100 years.

John Howard has wasted a decade denying the existence of climate change. Australia is now facing the consequences of 10 years of denial and inaction from the Howard government over climate change and water. The Murray River is in dire straits. Since November 2003, the Howard government has promised buckets of money to recover water for the Murray but has not delivered one drop. The Murray-Darling Basin Commission website states that, as of 6 November 2006, zero water has been recovered under the Living Murray Initiative.

Climate change and water are two sides of the same coin, and Australia desperately needs a strategy for both. Without a plan to cut Australia’s greenhouse emissions and address climate change, John Howard does not have a water plan.

The ACTING DEPUTY PRESIDENT (Senator Murray)—Order! Senator Wortley, please refer to the Prime Minister with the correct designation.

Senator WORTLEY—The Prime Minister does not have a water plan. Climate change is a serious threat, and the Howard government posturing about expensive and toxic nuclear energy is a distraction Australia cannot afford. The EPBC Act has failed to address environmental challenges, and now the Howard government has again failed to deliver to the Australian people on the environment—to our children and to future generations. In concluding, I quote from an article in the Herald Sun this week:

Our spring rains are 80 per cent below average, our dams are drying up, our farmland is parched and cracking, our farmers are killing themselves in despair and still the Australian Government equivocates about climate change.

We oppose the Environment and Heritage Legislation Amendment Bill (No. 1) 2006.

Senator STERLE (Western Australia) (11.04 am)—I note, from conversation with my colleague Senator Stephens, that not one government senator is going to speak in support of this bill. That must say a heck of a lot. I rise to make a few brief comments about the Environment and Heritage Legislation Amendment Bill (No. 1) 2006. I find much of the explanatory information provided by the government in respect of this bill quite intriguing. The bill’s explanatory memorandum does nothing more than reinforce this government’s track record of spin and misinformation when it comes to the way it governs this country.

The Howard government’s self-serving rhetoric has no bounds. It has become the hallmark of this increasingly lazy, arrogant and corrupt government. In evidence of this statement, I cite the minister responsible for the carriage of this bill. Unfortunately, this snide and arrogant minister has shown no compunction in trashing the environmental health interests of the public when it suits him to do so. The proposed amendments to the Environment Protection and Biodiversity Conservation Act 1999, as contained in this amending bill, are clearly designed to pave
the way for this government to further legitimize its standover tactics where the environmental concerns of local communities are concerned.

If any proof is needed of the minister’s total disregard for local communities who have sought the minister’s help to ensure that they and their children are not exposed to toxic industry outputs, one has only to look at the minister’s role in supporting the location of a new high-volume brickworks on Commonwealth land at Perth Airport adjacent to residential areas. A real measure of the minister’s arrogance and disregard for community concerns was demonstrated at a recent Senate estimates committee meeting where he claimed, without any prompting and with obvious glee, that the government’s decision to approve the BGC Brickworks at Perth Airport was a non-controversial decision. And I suppose he had to, because on Monday, in question time, in answer to a question by Senator Carr on nuclear power, Minister for the Environment and Heritage Ian Campbell talked about:

… Senator Carr’s comrades, who want to ensure that you roll over local communities and put wind farms where they do not want them.

The only way that Minister Campbell could possibly not think himself shameless would be if, in spite of the 5,000 signatures on the petition opposing the brickworks and the nine times—count them—the local Liberal member for Hasluck, Mr Stuart Henry, got to his feet in the other place to oppose them, he were to believe that the decision to approve the brickworks was actually non-controversial.

Senator Ian Campbell—It was said with sarcasm, you humourless little git!

Senator STERLE—How is that for a kick in the guts! According to Senator Campbell, it would terrible if the Victorian state Labor government built the wind farm—

Senator Ian Campbell interjecting—

The ACTING DEPUTY PRESIDENT (Senator Murray)—Order! Minister, you know that that sort of interjection is unparliamentary, and you will have the opportunity to close the debate.

Senator STERLE—And quite hurtful. Thank you very much, Mr Acting Deputy President. I must say that sarcasm should be your middle name, Minister.

Senator Ian Campbell interjecting—

The ACTING DEPUTY PRESIDENT—Order! Please, Minister, do not test the chair.

Senator STERLE—As I was saying before I was rudely interrupted, according to Minister Campbell, it would terrible if the Victorian state Labor government built a wind farm that reduced pollution if local people were opposed to it. But it is wonderful for BGC to build a brickworks that increases pollution, because all of those local people who oppose it, including the local Liberal member of parliament, do not matter. Minister Campbell does not give a fat rat’s what they think, because he has decided that the issue is non-controversial. The fact is that nobody, except for the Minister for the Environment and Heritage, the Minister for Transport and Regional Services and their buddy Mr Len Buckeridge, thinks it is right to build a brickworks less than 400 metres away from a residential area when there are plenty of alternative sites available.

You only have to read the environmental assessment report on the BGC Brickworks proposal by the Minister for the Environment and Heritage’s own department to gain the clear understanding that the Department of the Environment and Heritage did not like the proposal one bit. On page 10, under the

CHAMBER
heading ‘Departmental view’, the report states:

The proposal to build a brickworks within 155m of the ‘boundaries’ of the proposed brickworks site and the residential areas is inconsistent with the EPA Guidance Statement for Separation Distances between Industrial and Sensitive Land Uses.

The report goes on to state:

The Department also notes that the Western Australian Department of the Environment developed the Brickworks Licensing Policy 2003 to address the adverse environmental impacts of existing and future brickworks, and the Western Australian Government claims that the proposal is inconsistent with its planning policies. Given those factors and the public concern about the proposal, the technical studies provided to date are not considered adequate to address potential impacts.

Of course, such prudent expert advice from the minister’s own department did not deter the minister one bit from throwing his full support behind the BGC brickworks proposal. That brings me to my biggest concern with this bill. There are a number of amending provisions in this bill which remove the right of appeal to have ministerial decisions reviewed by the Administrative Appeals Tribunal. We have a minister who has a track record of bizarre and incomprehensible decisions, who was humiliated in court over the shoddy way he went about the orange-bellied parrot wind farm fiasco and whose response is to stamp his feet like a petulant brat and say: ‘Well, stuff you. I’ll just make it illegal to appeal my decisions.’

The ACTING DEPUTY PRESIDENT—Senator Sterle, please be careful in the way you express yourself about the minister and his motives. Your language is verging on being quite inflammatory.

Senator STERLE—I am sorry, Mr Acting Deputy President. I am quite passionate, especially when 5,000 people have signed a petition saying that they do not want these brickworks. I do apologise for that, but I must say that it does amaze me. I must also add that, the way this bill is going, we may as well change the minister’s title to ‘King Campbell the Unquestionable’.

It is evident that this minister is intent on constructing a Commonwealth environmental protection regime where commercial interest can far outweigh the environmental health interests of local communities. I draw senators’ attention to page 1 of the bill’s explanatory memorandum, which puts the highest priority in respect of the proposed amendments on reducing environmental assessment, approval processing time and costs for development interests. In other words, the minister is saying that development interests should outweigh environment and community health interests in final environmental assessment decision making. At least the minister is consistent.

With the BGC Brickworks fiasco we have seen a demonstration of just how far this government is prepared to manipulate federal environmental law in order to circumvent state environment and planning laws to support commercial interests. In the BGC Brickworks case, the financial interests of Mr Buckeridge and the owners of Perth Airport have won the day over legitimate community concern. The BGC Brickworks case has shown that if you live in a residential suburb adjacent to Perth Airport you can expect the Commonwealth government to sanction the building of toxic and dangerous industry up against your back door. You can also expect to have to send your children to local schools where there is the constant risk of a toxic pollution event emanating from industrial activities on nearby Commonwealth land.

I remind senators that I am not talking about a government decision taken 20 years ago. I am not talking about a decision that
was taken 10 years ago. I am not even talking about a decision that was taken five years ago. No, I am talking about a decision that was taken by the federal government this year and which was supported to the hilt by Minister Campbell, as chief protector of the environment of Australia. The explanatory memorandum to the bill includes the statement:

The Act—

that is, the Environment Protection and Biodiversity Conservation Act 1999—focuses Australian Government interests on the protection of matters of national environmental significance, with the States and Territories having responsibility for matters of state and local significance.

That would be cold comfort to the people of South Guildford, Rosehill, Forrestfield, High Wycombe and Maida Vale, who live next to Perth Airport. The proposed amendments in this bill give highest priority to fast-tracking environmental assessments and approval processes and to reducing the time and expense of development interests in meeting their environmental protection obligations. In conclusion, I strongly endorse the comments of those senators who have spoken against this bill—and I note that not one senator from the government has. I urge senators to oppose the bill.

Senator McLUCAS (Queensland) (11.14 am)—The Environment and Heritage Legislation Amendment Bill (No. 1) 2006 encapsulates all that is wrong with the current Howard government. Debate began in the other place less than a week after the 409 pages of amendments were tabled in the House, without a Bills Digest and without the informed public discussion that such an environmentally critical piece of legislation warrants. The legislation makes very important and significant changes to the Environment Protection and Biodiversity Conservation Act, which in itself, as you would know, Mr Acting Deputy President Murray, is a very long and complex piece of legislation.

It proposes more than 400 pages of amendments to the EPBC Act and yet public comment was limited to the magnificent total of 11 hours of inquiry in the Senate Standing Committee on Environment, Communications, Information Technology and the Arts. Labor senators had less than 10 minutes to question each witness who attended. Despite the bill’s importance to North Queenslanders, my constituents—we can gauge that from the number who made written submissions to the inquiry process because of the impact on the protection of the Great Barrier Reef and the Wet Tropics, to name two icons in my part of the world—not one individual or organisation from the region was able to appear before the committee.

The way this bill has progressed is just another example of the debasement of political processes, of democratic processes, by the Howard government. But it is worse than that. In the lead-up to the parliamentary debate, the public was deliberately misled about the import and impacts of the bill. For North Queensland, the EPBC Act is critical, and increasingly so, to the protection of the Great Barrier Reef in particular, through the management of the reef by the Great Barrier Reef Marine Park Authority, and the Wet Tropics, along with our savannah lands and Cape York.

What is going to happen as a result of the proposed changes to the Great Barrier Reef Marine Park Act and this legislation is that the minister, who is well known for putting the Howard government’s political interests ahead of the protection of the environment, will get far greater discretionary power. To provide this minister with even greater scope for abuse of due process and disregard for environmental science and independent ad-
vice is dangerous in the extreme. The interface between proposed changes to the Great Barrier Reef Marine Park Act and these amendments are so-called by the minister ‘a simple alignment and harmonisation of the two acts’. In effect, the way that that will play out has not yet been analysed properly, but here we are passing a bill that has been exempted from the cut-off, has not had the scrutiny that it requires and has certainly not had the level of input that it should have had from my constituents in North Queensland.

This bill is not only bad for what it does do; it is bad for what it does not do. Its most glaring omission, of course, is climate change. It gives the lie to the Howard government’s claims to be concerned about the impact of climate change. Here was a golden opportunity to actually do something other than add verbally to the emission of greenhouse gases. My colleague in the other place the shadow minister for environment, Mr Anthony Albanese, has suggested that the act should include a climate change trigger—that is, a section that stipulates that new projects must be assessed for their climate change impact as part of any environmental assessment process if the project emits or is likely to emit more than 500,000 tonnes of carbon dioxide, or its equivalent, per year or permits any other action, series of actions or policies that would lead to such an emission outcome. This is eminently sensible policy. It is eminently responsible policy and it is simple to do. But, no, the Howard government will not have a bar of it. The Howard government is content in its arrogance, its laziness and its incompetence to expose North Queenslanders and our natural heritage to all the demonstrable risks of climate change. It is prepared to bet the Great Barrier Reef and the tropical rainforests against the best science in the world and against the evidence that is plainly there.

Just a week or so ago it was reported by Central Queensland University researchers that yet another coral bleaching event had resulted in:

... 100 percent mortality of all hard coral species on the reef flats at Middle, Shelving, Monkey, Miall and Halfway Reefs ...

These are near Keppel Island. The researchers referred to the bleaching as:

... a fairly calamitous event. These reefs copped a fair hiding. They are definitely compromised.

One hundred per cent is a fair compromise, I have to say. This disaster comes on top of the widespread bleaching that occurred last summer, as we know. The impacts of climate change are right before this government’s eyes but it refuses to open them. It is hard of hearing as well. My constituents in the Torres Strait have been crying out for some Commonwealth leadership—any Commonwealth leadership—to deal with the impact of rising sea levels, which put them at immediate risk.

The issue that they want leadership on is a survey to establish baseline geophysical climate data—tide heights, land elevation, potential temperature rises, potential rainfall rises and the like—so that they can start planning for the future. But instead what have they got? They have got misleading information from the minister and the member for Leichhardt. There are 8,000 people who live in the Torres Strait, many of them only a metre or so above the existing sea level, and they cannot even get permanent tidal gauges out of this government to establish present high tide heights accurately. These are islands that were extensively flooded by king tides earlier this year and whose residents are afraid that they will be forced off their island homes by climate change. Only last week, there was a meeting of concerned residents on Thursday Island, in the Torres Strait, and it was reported in the
The people of the Torres Strait are trying very hard to reduce their emissions and to think about ways to ensure that emissions from the Torres Strait do not impact any further on events that they predict are about to occur. The leadership is being shown by the people of the Torres Strait—not by this government. This government has done nothing to support the people of the Torres Strait in dealing with a real and emerging concern that scientists say could very well lead to people having to be moved from their islands in the Torres Strait in the foreseeable future. This is not something that is going to happen in a couple of generations time; it is something that scientists say could happen in the very foreseeable future—in our generation.

But this government will not even give the Torres Strait Islanders a tide gauge so that they can find out what the tide levels are at the moment.

This legislation was a chance to provide a foundation in the EPBC Act for action against climate change. But the Howard government’s adherence to its free market dogma has meant that the opportunity has passed us by once again. Instead, we have a mishmash of spending that is largely reactionary rather than proactive, we have scientists who do not conform to the Howard government’s view of the world being told to be quiet or else, we have a policy on renewable energy that essentially actively discourages its use in Australia and forces its developers and proponents overseas and we have a pro-nuclear policy that utterly ignores the fact that nuclear energy is not greenhouse friendly and is not economically competitive.

We have a policy vacuum when it comes to carbon trading. We have a Prime Minister and an industry minister making the running on just about every aspect of climate change policy as they thrash around trying to make up for 10 years of lost opportunities. And what is the Minister for the Environment and Heritage doing while this is all going on around him? He is off to China to open a $300 million wind farm that is funded entirely under principles of the Kyoto protocol. Labor says: sign the Kyoto protocol, as a start, and then we can get on with the business of dealing with climate change.

In the 400-plus pages of amendments that this bill proposes, there is not one single, solitary mention of the words ‘climate change’. The environment minister does not want to talk about climate change because of his admission in this chamber that Australia was not meeting its own emissions targets. While he blocks wind farms in Australia and forces Australian renewable technology overseas, our greenhouse emissions continue to soar. Between 1990 and 2004, Australia’s greenhouse gas emissions rose by 25.1 per cent, once you exclude the decisions of New South Wales and Queensland on land clearing—and I commend those governments for taking the hard but required decision on land-clearing matters.

When the environment minister made his admission, he offered no preventative measures. In contrast, Labor will take decisive action to avoid climate change impacts and to prepare the Australian economy for an era in which carbon based energy is in increasingly short supply. We know that signing the Kyoto protocol is just a start, but it is a very important start in dealing with climate change. We will also continue with amendments to the EPBC Act through the climate change trigger mechanism. Any action covered under the trigger mechanism will require ministerial approval—unless the minister decides that the action is not controlled under the act. If the action is approved, the minister can, under the act, attach conditions...
to the approval, such as the need to mitigate the resultant greenhouse emissions. Labor will also ensure that the minister considers whether the direct or indirect emissions of carbon dioxide that are likely to result from an action will be minimised by the use of best practice environmental management and low-emissions technology.

In effect, Labor will act to ensure that climate change becomes an integral consideration of the EPBC Act. We will add a new objective to the act ‘to protect Australia from dangerous climate change’; we will add a new principle of ecologically sustainable development to note ‘decision-making processes should consider and minimise where possible the adverse effects of climate change on Australia’; we will add a new section 3B, outlining the significance of climate change; and we will add a definition of climate change to reflect the definition of the Intergovernmental Panel on Climate Change, which was established under the UN Framework Convention on Climate Change.

The minister for the environment has stated that climate change is ‘a very serious threat to Australia’—yes, we know that—but his actions with regard to the amendments to the EPBC Act show otherwise. The failures of this bill are not confined to climate change. It curtails third-party appeal rights, it undermines public consultation processes and it politicises the decision-making processes. It removes the checks and balances and makes the application of the act much less transparent. The minister, who already plays fast and loose with his powers, becomes much less accountable. Our experience at False Cape in Far North Queensland—an iconic piece of land on Trinity Inlet, in Cairns—has exposed the current limitations in the act. Unfortunately, these amendments will extend those limitations so that any power that the community may have to question decisions made by the government will be further eroded.

The bill contains five separate measures to strip away the right to appeal ministerial decisions before the Administrative Appeals Tribunal. They relate to threatened species, migratory species, marine species, whales and dolphins and wildlife trade permits. We have all had correspondence from the RSPCA urging us to change those measures which will strip away appeal rights. Labor will repeal the sections of the bill that remove the right to appeal ministerial decisions to the AAT.

This bill also further undermines our system of heritage protection by abolishing the Register of the National Estate. In its usual way, the Howard government has employed innocent-sounding phrases to hide the real intent of the government. The parliamentary secretary, in his second reading speech, referred to the archiving of the Register of the National Estate. If there were a shred of honesty left in this government, the parliamentary secretary would have said straight out that the register is being abolished. This bill removes the requirement for the minister to have regard to the Register of the National Estate when making decisions, and, five years after the act comes into force, the Register of the National Estate in effect ceases to exist. Labor will move amendments to restore the Register of the National Estate and to require the minister to have regard to the register when making decisions.

This is a sad and sorry piece of legislation. It is a dangerous bill and it is bad policy. It does nothing to extend or entrench the protection of the environment or Australia’s national heritage.

Senator WEBBER (Western Australia) (11.30 am)—I rise as the 10th speaker in this debate on the Environment and Heritage Legislation Amendment Bill (No. 1) 2006,
and I would like to place on the record, as my colleagues have, that we are yet to hear a convincing case from the government about why this is good legislation. It would seem that not even the government members of the committee that examined the legislation have been prepared to come in here and defend it.

If my time in this place has taught me anything about the political process, it is that each government will be remembered for its stance on only a few of the big issues facing our country. That is why I felt that it was very important to speak about the Environment and Heritage Legislation Amendment Bill (No.1) 2006. Due to the importance of this matter, in discussing this bill I will devote my time primarily to the issue of climate change, as my colleagues have done. However, I do wish to acknowledge the significant procedural concerns that my colleagues and I have both in terms of granting extra power to the Minister for the Environment and Heritage and also about the haphazard way that this bill has been designed and submitted to this place.

In the context of this parliament, climate change must surely be amongst the biggest challenges that we face. The community is certainly aware of the significant predicament facing the world if we remain on a course of environmental disregard. The massive attendances that were seen at climate change rallies earlier this year demonstrate to me that the community at large craves a serious dialogue on this subject—not the token gestures that it has been presented with during the years of the Howard government.

The Prime Minister has been making louder noises than normal about climate change lately. The populist value in the matter obviously has not escaped his highly tuned political radar. But, sadly, when it comes to the crunch, this government has done nothing about one of the biggest issues facing the world. It is not through lack of opportunity, I must stress. I take this opportunity to quote the Prime Minister in a speech he made regarding the 28th South Pacific Forum—a speech delivered in October 1997. He said:

A second significant outcome from the forum was the leaders’ retreat statement on climate change. My objective in discussions on this topic was to promote and protect Australia’s national interest. Some members opposite have criticised me for this, but I am never going to be apologetic about standing up—particularly abroad—for the national interests of Australia.

The Prime Minister went on to say:

Australia’s position is that any regime will be effective only if it is realistic and fair and therefore has a reasonable chance of being implemented. There is no gain for the environment from an agreement which is not worth the paper it is written on because the commitments are not credible and the burden of efforts and cost is not equitably distributed.

This strikes me as a particularly interesting yardstick in determining worth. To the government’s credit, they have stayed true to their word in this case, having not mentioned climate change once in the amendments to Australia’s primary environmental act—not one mention of climate change printed on paper. In 409 pages of amendments, the government could not bring themselves to even utter the term ‘climate change’ let alone devise a solution. I ask the government: did their advisers perhaps tell them that, if you cannot say anything nice, don’t say anything at all? Inaction on climate change and on the environment generally is one of the worst legacies the government will leave.

I acknowledge that devising the right response to such a complex problem is not easy. That said, the Kyoto negotiations and subsequent protocol provided this government with a solution that had the support of
the global scientific community. The Prime Minister said this of Kyoto in 2004:

Australia will not ratify the Kyoto protocol until the ratification of that protocol will protect the long-term national interest of this country. We have a very simple proposition. We are not blinded by some mythical belief that by ratifying the Kyoto protocol you are going to bring untold benefits to Australia.

He then went on to say:

The problem with the Kyoto protocol as presently cast is that developing countries such as Russia and China would not be subject to the same strictures as developed countries such as Australia. And if we adhered to the protocol, as requested by the Leader of the Opposition, that would disadvantage the resource industries of Australia because they would incur burdens that the resource industries of countries like Russia and China would not incur. That is the reason why we will not sign.

I see absolutely no reason to believe that the government’s attitude to environmental management has changed. The fact that the amendments in this bill do nothing to acknowledge or deal with the environmental burden of global warming suggests to me that this government does not know, nor cares to know, how to contribute to the global climate change movement.

The recent growth in awareness within the media and the community at large about the importance of this issue has meant that the government must appear to not be sticking its head in the sand. The Minister for the Environment and Heritage, Senator Ian Campbell, enthusiastically proclaimed to this place last month:

The problem of greenhouse gas emissions, the problem of climate change, is the mother of all global problems. People talk about ‘Think global, act local’. There are a whole range of environmental issues which you can talk about as being global—obviously, ocean type issues and water quality type issues can be quasi-global. But when it comes to greenhouse gases and climate change, a tonne of carbon saved in Australia or a tonne of carbon saved in China has an absolutely identical benefit for the environment.

I hate to rain on the government’s, and particularly the minister’s, parade, but that secret was already out. The trouble for them is that the Prime Minister has consistently, since his election in 1996, dismissed global collaboration in the name of national interest.

As an issue global warming is, as the name suggests, global. The national interests and the global interests are one and the same. Just as we rely on the rest of the world to consider the environment in their industrial practice, they rely on us to do the very same thing. This concept has by no means eluded the Australian people, but on the basis of this bill it still eludes the federal government. My Labor colleagues and I point out these issues not to be nay-sayers but rather to try and achieve a positive outcome for the Australian environment. That is why the shadow minister for the environment, Mr Anthony Albanese, moved a series of amendments to incorporate a climate change trigger into the act.

It is regrettable that the government has turned down this offer of support from the opposition and relentlessly pressed on with its mindset of blissful ignorance. However, that ignorance is sometimes evolving to be a direct denial of the very existence of climate change. On 20 August this year the Minister for Industry, Tourism and Resources, Mr Ian Macfarlane, took great delight in declaring himself to be a ‘sceptic of the connection between emissions and climate change’. If that is the view he insists on maintaining, I wish the remainder of his government colleagues luck.

Despite the Prime Minister’s new-found interest in things like solar power and climate change more generally, the truth is that the government is doing nothing to get seri-
ous about global warming. This month the Climate Action Network released its annual *Climate change performance index*, based on the last 12 months. Countries that were in the top 20 assessed performing nations included Malta, Argentina, Brazil, India, Latvia, Romania, Iceland, Lithuania, Morocco and Portugal. Australia, a country that under previous governments has often been an environmental leader, was placed 47th. Even regionally we were a poor performer, with both New Zealand and Indonesia above us in the rankings.

I contrast this to the media release issued by Senator Ian Campbell two weeks ago. Discussing new initiatives being undertaken by the US and Australia—or, for want of a snappier title, the coalition of the polluting, Senator Ian Campbell boasted:

> The Australian Government is more interested in taking real action than in simple slogans. Climate change is a serious problem that requires a ‘multi-track’ approach and we will continue to take action through a range of international forums.

I ask this government and the minister: what are these multiple tracks? They clearly are not located within this legislation. If you do not wish to discuss climate change in our primary environmental law, where do you wish to discuss it? Has climate change perhaps become part of the tourism portfolio? Some illumination from my government colleagues would be most appreciated. It would seem that perhaps it is now part of the tourism portfolio, as I am sure we all recall the announcement of Minister Bailey suggesting that we put shadecloth over the Great Barrier Reef to ameliorate the effects of climate change.

I return to the claim that this government has made under successive ministers about Kyoto being an impediment to our economy. Some of my colleagues, including the shadow minister for environment, have already spoken of the missed opportunity to establish Australia as the centre of green technology in the world. Unfortunately, the environmental decisions that have been made by this government have been acts of politics, not governance.

In the case of this bill, we have evidence that this government is making policy on the run. In the month of November alone, the Prime Minister announced projects aimed at climate change objectives under the Asia-Pacific partnership, he demanded a water meeting and he went to the launch of a solar city project. I applaud the Prime Minister for his new-found interest in this topic. A quick scan of the press releases available from his website for the entire year of, say, 1998 reveals not one mention of climate change or global warming. Yet, all of a sudden, we are holding three such events in one month.

The government must surely be feeling generally nimble lately. This bill has been introduced with no exposure draft and with less than a week between its introduction and debate. Most alarmingly, no environmental or heritage groups were consulted in the formulation of this bill. As Senator Siewert pointed out yesterday, it is no wonder that the few environmental groups that supported the government on its first construction of this law have condemned it this time around.

The government in my home state of Western Australia, like all current state governments, has had the guts and the foresight to deal with conservation throughout its whole term, not just when the issue was worth a couple of points in the next opinion poll. The economy in Western Australia is booming, on the back of the strong minerals sector. Under the previous Premier, Dr Geoff Gallop, the state government made the very admirable decision not to develop the Ningaloo Reef tourism site. Furthermore, the government has a tremendous series of programs in place to allow people to start good envi-
ronmental practice in their local communities. This includes rebates for wood heater replacements, subsidies for solar power within local schools and a very successful water-wise rebate plan. I am proud to say that the Western Australian state government has had a long-held focus on environmental policy rather than the ostrich approach that the federal government had adopted until extremely recently.

The trouble is that short-term interest and irregular piles of money do not make for good long-term results. I assume this bill to have been quite some time in the making, yet the government cannot bring itself to cater for an issue it seems ever so excited about all of a sudden. Temporary fixes are just that: temporary. I ask the government: what is next? What is the long-term plan to become a decent global citizen? When do you plan to start taking this issue seriously?

Of course, I should not limit those questions to the subject of climate change. The recent charade that was the Switkowski nuclear report is proof that the government is willing to handcraft any message that is politically suitable to its agenda. That is the prerogative of the government but, unfortunately for it, the result of reckless environmental legislation—like this piece of legislation—is that the degradation of Australia’s natural resources is becoming more and more apparent. You cannot PR your way out of smog. You cannot spin droughts. Poor green policy leads to poor green results. As the recent spike in awareness shows, people are waking up to the decade of policy inertia we have endured during the Howard government years.

I have been fortunate enough to hear from a lot of my constituents about the environment generally. As I have alluded to before in this place, I distributed a petition calling for a ban on nuclear power production and dumps within Australia, particularly in Western Australia. The response to that petition was nothing short of extraordinary. I am sure that we have seen a cultural shift in our community on the environment. Years of raising awareness through green NGOs and the media has been very well taken up by the general public. The combination of these campaigns and the visible changes to the environment in recent years has obviously led to a genuine concern within our community about the future. If the government insists on pursuing nuclear power, and other such follies, community awareness will quickly turn to community outrage.

Labor will not be supporting the legislation before us today unless our amendments are accepted by the government. We cannot in good conscience engage in a meaningful debate on the environment without acknowledging the biggest problem facing it. Let us be honest with ourselves, if with no-one else. We should be honest with the Australian people and face up to the fact that we have a serious problem. It disgusts many Australians that countries with far greater social and economic challenges than our own are able to take environmental issues much more seriously than we are. The passage of this bill as it is will only epitomise the reasons for that frustration.

I conclude with this observation: the people who raised this issue with me are not left-leaning; they are not even habitually environmentalists. Often they are parents or grandparents worried about the apathy and the incompetence this government displays on environment policy and that that incompetence will have catastrophic consequences for their children and their grandchildren. If the Australian people are thinking about the future, why isn’t their government?

Senator IAN MACDONALD (Queensland) (11.47 am)—I want to congratulate
the Minister for the Environment and Heritage, Senator Ian Campbell, and his predecessors in the Howard government for the very fine work they have done in protecting and nurturing Australia’s environment. In fact, in 10 years, the Howard government has done more for the environment than all other governments in Australia’s history put together. I often say that this is the greenest government Australia has ever seen. The congratulations for that go as far back as when Senator Rod Kemp was the shadow environment minister prior to the 1996 election. He was followed by Senator Hill, who was undoubtedly one of the most competent environment ministers ever to have graced Australian government, followed by Dr David Kemp, who was a very good environment minister, and now by Senator Ian Campbell, who is doing a very fine job in the portfolio.

Rather than there being policy inertia, as the previous speaker said, the current government has done more things for the environment than any government in Australian history. I could spend the whole 20 minutes of my speech listing the things that this government has done that the previous Labor government never even addressed in its 13 years. I will not do that, because time does not allow me to, but I will mention a couple. Versions 1 and 2 of the Natural Heritage Trust have put more money into the environment, done more good works for the environment and encouraged more people to do work for the environment than ever before in Australian history. I encourage the minister to make sure that, when the third version of the Natural Heritage Trust is considered by cabinet, it is adopted in line with the Keogh report to the government on that particular issue. I certainly hope that the next version of the NHT will be as well funded as the previous two versions.

Through the Great Barrier Reef Marine Park Authority, this government has been responsible for putting about a third of the Great Barrier Reef under the protection of marine parks, up from about two or three per cent in Labor’s years. Labor talk about this a lot—Senator McLucas often talks about this—but it was the Liberal government that actually put a third of the Great Barrier Reef into marine parks, protecting what is undoubtedly one of the seven wonders of the natural world. Congratulations to the government for that.

If you look at a range of issues you will see that this is a government that has genuinely supported the environment with practical measures that actually do something, not just talk about it. I have not even mentioned the great work that Senator Ian Campbell has done in the areas of whaling and climate change, just to name a couple. The Howard government’s implementation of an oceans policy was not only a first for an Australian government but, indeed, a world first. Australia was proudly the first nation ever to have a recognised oceans policy. I am delighted that, at some time in one of my past careers, I had some significant involvement in the implementation of Australia’s Oceans Policy. It is a very significant document that other countries are now looking at and copying.

In relation to this bill, I share the concerns of other speakers about the timing—not so much of the Senate Standing Committee on Environment, Communications, Information Technology and the Arts report but of the consultation with those involved in this piece of legislation. I had the same concern with the very significant package of broadcasting bills which came before this parliament. As a member of the committee that looked at both packages of legislation I went along with the government; I accepted that there was a need to bring these pieces of legislation forward.
quickly. I have to say to my colleagues in the ministry that it will need a lot of persuasion for me to ever accept again that these inquiries should be as truncated as these have been.

I was very distressed on both occasions—during the committee inquiries into the communications package of legislation and this environment package—that people who could have added considerably to the outcomes sought by the government were not even consulted. They were not given any sort of advance warning of the legislation.

Over the years Senator Hill particularly built up a very close rapport with many people in the environment industry—not the ratbag Wilderness Society. You would never want to deal with those people; they are Senator Brown’s mob. They are in it for the politics, to try and defeat a Liberal government. They are not there for the environment; just to make political approaches that will help in their very, very left-wing social view of the world and the very left-wing policies that they put forward.

But there are some groups involved in the environment, whom you would not even call environment groups—people like the national parks associations and WWF. I expect that most people involved with WWF do not vote for us but they have, over the years—through nurturing by Senator Hill and me, as minister for conservation—had an input into government legislation. They understood what we wanted to do, although they did not always agree with it, but they came forward. They were invited to come forward and they were able to point out things that bureaucrats, with all their ability, commitment, intelligence and goodwill, simply had not considered. It was to our credit that we involved these people in consultation—not to defeat the legislation, because most of them understand where the government wants to go, but to come in and contribute to these Senate inquiries.

The same applies to the Senate committee. I have no desire to defeat, alter or misdirect the approach that the government wants to take in this bill. I understand a lot of the reasoning behind the legislation, but it could have been so much better—as could the package of broadcasting bills—if we had involved some of the people at the coalface who could tell us things that our public servants, with all the best will in the world, did not quite follow through on, think about or understand.

So I share the concern of others in this chamber at the process of the investigation into this package of bills. Like other speakers I am distressed that we have not been able to take advantage of well-meaning people. Most of the people who gave evidence were well meaning. There were a couple of the ratbags—a couple from the Senator Brown group who were just there to make a political point—but not many. Most people who came forward and wanted to make a comment had a genuine concern about the environment and a genuine understanding of the Environment Protection and Biodiversity Conservation Act 1999. I think they made some very valid points that perhaps we could have pursued. I was horrified, in evidence, to find that one arm of government had not even consulted another arm of government in an area that this legislation touched upon. I will come back to that later.

It is important to get these bills through and it is important to get them through in a timely fashion. I understand things depend upon it. But I think we as a government are short-selling ourselves and not taking advantage of the goodwill and understanding that could help improve the legislation we want to take forward. Like some others, I am distressed that some groups who gave evidence
expressed a genuine feeling of betrayal. When this legislation was introduced in the first instance there were groups who were consulted. We did not always agree with them—and I suspect we would not have agreed with them on this occasion—but we did them the courtesy of putting it to them, getting their views and perhaps improving the legislation as a result of those views.

There were some environment groups who, whilst they were not altogether happy with the original EPBC Act, eventually saw the merit of it and became firm supporters. But they were not even consulted on this and they felt a sense of betrayal, which I felt for them as well. I certainly urge upon my colleagues that we should consult more widely and show people the legislation. I repeat—I have said it about five times—that we should do that not to divert the government’s goal or course of action but to improve it and get to the goal in a better way.

I congratulate, also, Senator Eggleston, who did a magnificent job as chair of the committee. He dealt with this in and very constrained timetable. I will not speak for Senator Eggleston but I will say that it is difficult for a chairman to deal with these issues when people want to make an input but simply have not had the time to do it. I recall the evidence of the Law Council of Australia. If ever there was a body that could look through all the clauses of a piece of legislation and quickly grasp it and understand it, it would have to be the Law Council of Australia, which comprises all the lawyers and great legal minds in this country. But even the Law Council of Australia came before us and said that they simply had not had time to look through the legislation, understand every clause and make as good a submission as they would have hoped to have made. I do not think that does our government any credit. Senator Eggleston had to deal with this as chairman. He had to deal with some angry people. He had time constraints—as the committee did—but he was able to very skilfully achieve the task he had been set and got to a conclusion and prepared a very fine report.

I congratulate the staff of the committee. They worked under considerable pressure and time constraints to get the report together. Quite frankly, I do not know how they do it. We as committee members sit there and listen to evidence and we make comments, ask questions and get some views, but someone has to commit it to writing in a sensible way. They have to understand the sentiments of the majority of the committee and prepare a report accordingly. I say to the committee secretariat, led by Dr Ian Holland—those involved are mentioned in the report—congratulations and well done on producing such a fine report under difficult circumstances.

I refer briefly to some of the recommendations in the majority report. Recommendation 1 deals with the government investigating the issue of heritage properties within the ACT that are located on designated Commonwealth land to ensure their protection heritage status is not compromised with the repeal of the Register of the National Estate. I have not, I confess, followed that up. I am not sure whether the committee has met to get the government’s response or whether the government or the department has got back to the committee on that. I certainly hope that the department has taken notice of that recommendation and has addressed it.

If the committee is right in its understanding, this is a classic example of an unintended consequence. Because of the ACT situation, because it is a territory, certain things happened that were not the government’s intention. Hence my point that perhaps with a little wider consultation such things would be addressed. Perhaps there is a
government response that I have not caught up with. I hope—I am quite sure it will have—the department has followed up on that.

The second recommendation in the majority report suggests that the minister review the wording of proposed new subsection 179(6) in the light of certain issues. I quote from paragraph 5.64:

The committee does note that there may be an unintended consequence of the proposed amendment to subsection 179(6). The Australian Fisheries Management Authority is required to apply the Australian Government’s Harvest Strategies to all Commonwealth fisheries, and these will be specified in Plans of Management under section 17 ...

The committee went on to point out that with the current proposed wording of that paragraph:

Every Plan of Management developed by AFMA could be considered to be a plan referred to in subparagraph ... If so, this would have the effect (presumably unintentional)—

I would hope it would be unintentional—

of making every species of fish taken in accordance with an AFMA Plan of Management eligible to be listed as conservation dependant under subsection 179(6).

Different people would have different interpretations of this. I am concerned that legislation such as this would have the effect of changing fisheries management into environmental management. We have a very good fisheries management authority, one that is comprised of an excellent and very capable board and very capable staff. I believe that they are able to manage the fisheries in the best possible way. When managing these fisheries, conservation aspects, industry aspects and the sustainability of the fisheries have to be taken into account. No-one knows better than the Australian Fisheries Management Authority and the industry that if fishing is not sustainable there will not be a fishing industry in Australia in future. But it needs the experts in fisheries management to determine that, not some department or organisation that is more focused on environmental concerns which sometimes, I suspect, are not appropriate. I hope that the minister and the department have reviewed that wording. I may pursue that a little further at the committee stage of the bill.

Finally, I raise an issue that is dealt with in recommendation 3 of the majority report and that I think other speakers have referred to. It goes to a suggestion that was made to us, and it was not an aggressive suggestion. Evidence came to us that said: ‘The department does a great job. They’ve got some very capable officers there, but they aren’t well enough resourced to do all the things that the EPBC Act requires them to do.’ Without going into a five-day estimates committee hearing I cannot say whether that is true or not, but from what I would call ‘guarded’ or ‘skillfully bureaucratic’ answers that some of the witnesses from the department who appeared before us gave—and I give them every credit for this; they did not want to agree with that and I can understand why they would not, and well done that they did not—I gathered, reading between the lines, that perhaps they share the concern of many people involved in these areas that they are not well enough resourced to do all of the things which the EPBC Act requires them to do. The committee’s recommendation, as a suggestion to the government—hopefully the minister will be able to use that to advance his claims as the budget process starts—is that the government consider whether the department is adequately and appropriately resourced to administer this very fine piece of legislation.

I repeat that I would like to raise some issues at the committee stage. I support the legislation and I support the minister. I also support our government, which, as I said at the beginning, is the greenest government
this country has ever seen. I congratulate the minister and wish him every support and encouragement in his continuing role in looking after Australia’s environment.

Senator MILNE (Tasmania) (12.06 pm)—I rise today to comment on the government’s amendments to the Environmental Protection and Biodiversity Conservation Act. This act is meant to protect Australia’s environment and conserve biodiversity. We have just heard Senator Ian Macdonald telling us that this is the greenest government that has ever graced the parliament. He claims that on the basis of how much money has been spent, not on the basis of outcomes. I would put a challenge to the government. All of the environmental legislation in this country was abolished and put into this one piece of legislation—this omnibus legislation—several years ago and the claim is that it protects Australia’s environment and conserves biodiversity. My challenge to the government is for them to name me one single environmental trend that has improved since this legislation was brought in. It is not about how much money that you have spent—a gambler spends a fortune in the casino every day, but it does not mean that there is any outcome. You can spend whatever you like. I am asking about performance. It is not about how much money you spend; it is about outcomes. Let us hear of one single trend.

Are there any species that have recovered from the brink of extinction—from being critically endangered—since this government came to power? The answer is no. Is there any ecosystem trend that you can point to that is improving, be it desertification, be it wetlands or be it forest communities? Have any species been on the rise or become set for improvement since this legislation came into being? The answer is no. Every single trend, whether you look at coral reefs, wetlands, desertification, salinity, soil erosion or loss of forest communities, is going the wrong way under this government. The Environment and Heritage Legislation Amendment Bill (No. 1) 2006 sets things even further back.

We all recognise that biodiversity embraces the entire variety of genes, species and ecosystems that constitute life on earth. It stems from over 3,000 million years of evolution. Humankind is part of biodiversity. Human existence would be impossible without biodiversity. It is crucial to the services supplied by nature. The climate; the provision of water and air; soil fertility; the nutrient cycle; the production of food, fuel, fibre and medicines; our economic competitiveness; employment security; and our quality of life all depend on biodiversity. But what we are witnessing, as I said, is a steady loss of biodiversity right around the planet and no more so than here in Australia. It is of great concern from all points of view. Many scientists are now desperate about the plight of biodiversity around the planet, especially since biodiversity loss is being exacerbated by climate change. Loss of habitat and alien invasive species, exacerbated by climate change, are driving extinctions around the planet at a rate never witnessed before.

We only have to look around Australia to see that. Look at the plight of the Tasmanian devil, for example. It is going to extinction as we speak, and nobody could have predicted even 10 years ago that that would be the case. Look at the plight of the coral reefs. Whether this government is prepared to acknowledge it or not, coral reefs have passed the threshold of dangerous climate change. It is too late for the world’s coral reefs. It is too late for the Great Barrier Reef here in Australia—it has passed the threshold. The acidification of the Southern Ocean having already weakened the corals in the Great Barrier Reef, we are now seeing global warming to the point where we are going to have bleaching events much more frequently than
every five years. The reefs cannot recover from that level of bleaching. Evidence has just come in from the Seychelles showing that fabulous reefs have now been reduced to collapsed structures covered in algae. That is the fate in store for the world’s coral reefs. If you have a look in the Stern report, it points out very clearly in one of its diagrammatic pieces of evidence that with an increase in temperature of between one degree and two degrees the coral reefs die, and that is where we are proceeding very rapidly towards because the world is not addressing climate change and, with it, biodiversity loss.

We in Australia have a global obligation to protect biodiversity. We are signatories to the Convention on Biological Diversity and we have ratified that convention. We also support—I would hope—the United Nations Millennium Development Goals. Millennium goal 7 has incorporated biodiversity as one of the targets. In fact, at its most recent meeting the convention incorporated the 2010 target. Halting biodiversity loss in Europe by 2010 is a target of the European Union. Those countries are taking that seriously. We have the government of Finland together with the government of Germany putting a huge amount of effort into bringing together the multilateral environment agreements and building synergies between the framework convention on climate change and the biodiversity convention and moving that work forward so that when Germany chairs the G8 and hosts the biodiversity convention in a couple of years time that work on biodiversity will be well and truly advanced.

In fact, at the most recent COP on biodiversity, the decision of the COP urged:

Parties—

which includes Australia—

Governments, international financial institutions, donors, and relevant intergovernmental organizations, as a contribution towards the Millennium Development Goals, to implement development activities in ways that are consistent with, and do not compromise, the achievement of the objectives of the Convention on Biological Diversity and the 2010 target, including by improving environmental policies in relevant development agencies and sectors such as through integrating concerns relating to biodiversity and the Millennium Development Goals more directly into environmental impact assessments, strategic environmental assessments and other such tools, including at the national level through the national strategies for sustainable and the poverty reduction strategies and programmes.

It goes on to urge:

Parties to report on their actions at the national level to link efforts to achieve relevant Millennium Development Goals and the objectives of the Convention on Biological Diversity in their next national report;

I will look forward to Australia’s national report to the biodiversity COP on how these amendments to the EPBC legislation do that, because they go in exactly the wrong direction.

I have been a critic of this legislation since it was first developed. I stand by that criticism because there is no place that the government can point to where this legislation has facilitated either environmental protection or biodiversity conservation. In fact, it has facilitated continuing degradation of our natural and cultural heritage. It has not provided any incentive for developers and producers to engage in any voluntary environmental programs. And, as the Australia Institute concluded, it is hard to avoid the conclusion that the environmental assessment regime has wasted an enormous amount of public and private resources without realising any significant environmental outcomes. That is my judgement about this legislation as well.

Now the legislation is to be made a lot worse. How is it to be made a lot worse? That has been outlined pretty clearly in a
number of the criticisms made by the environment groups. It potentially wipes out ecological communities from the current waiting list for protection under the EPBC Act. That is because of the repeal of section 185.

Section 267 is amended such that a recovery plan is no longer a mandatory requirement once a threatened species or ecological community is listed under the law as threatened. So we are not even going to have recovery plans. How does that fit with our obligations under the CBD to show how national legislation actually facilitates the protection of biodiversity? We are no longer going to have mandatory requirements to identify critical habitats for threatened species in any recovery plans that might happen to be developed. As I pointed out, you cannot maintain a species unless you maintain the critical habitat for it. We are losing many of our migratory species as well because of loss of habitat surrounding loss of wetlands, loss of forest areas, loss of nesting sites and so on.

The new section in the act, 194K, gives the Minister for the Environment and Heritage arbitrary discretion to remove a publicly nominated species, ecological community or key threatening process from the annual list of species to be assessed for listing. The minister can make these changes for any reason that the minister deems appropriate, so any controversial nominations may never in fact be considered for protection. You have the minister now being able to refuse to have assessed a threatened species that was previously rejected, even if its conservation status has worsened. The koala is an example of a species that that might be applied to.

Section 324 is amended such that the nomination process for including places on the National Heritage List is also controlled by an annual thematic process at the discretion of the minister. There is the potential to allow the indefinite postponement of an assessment so that controversial nominations may never be assessed for protection. On and on and on it goes. What this does is effectively say that it is going to be up to the minister to decide what is assessed, when it is assessed, whether there is a recovery plan, whether the recovery plan is ever implemented. I do not know why you just don’t drop the pretence, repeal the whole bill and say that Australia does not have a commitment to environmental protection or biodiversity conservation—and actually be up front. The rest of the world knows full well that that is the effect of the regime that we currently have. It is now even more so because of this particular piece of legislation.

I intend to insert into this legislation by amendment a greenhouse gas trigger. As Senator Macdonald said, Senator Hill did talk about a trigger—in fact, at the behest of the Prime Minister, who, back in the late nineties, talked about putting a greenhouse gas trigger into the legislation. The government went so far as to put out a press release on 5 May 2000 entitled ‘Greenhouse trigger design released’. Senator Hill released the actual design for the greenhouse trigger, but it never went anywhere—it was just buried. Now the government has the temerity to say that this is not a good idea, when in fact it is its own idea that it chose to bury because it chose to do nothing about climate change.

My amendment on the greenhouse trigger goes much further than the half a million tonnes that the Labor Party has put in. That is because climate change is understood to be a much more accelerating and critical issue now than it was back at the turn of the century, a few years ago. We now know that climate change is the critical issue facing the planet and we have to act on it. How can a federal government say it is committed to reducing greenhouse gases nationally if it has no process for assessing the likely impact
of greenhouse gases from any major development proposal?

So we have a situation where we have people bragging about the fact that the federal government is supposedly doing something on climate change while, at the same time, we have new coalmines up for approval. Queensland coalmines were approved, and now we have the Anvil Hill mine, which is set to generate 0.1 of one percent of the total global greenhouse gas emissions in any one year. That is outrageous. And yet it cannot be considered in terms of Australia’s total emission reductions in the government’s plan because there is no greenhouse gas trigger at the federal level. You cannot be serious about trying to assess Australia’s capacity to reduce its greenhouse gas emissions if there is no capacity at the federal level to look at a development application and see how it might fit in with an overall strategy. So I intend to move that particular amendment.

I also have an amendment in relation to nuclear, to make sure that there are no further loopholes in the government’s legislation in relation to that by making sure that a nuclear waste dump, transportation of nuclear materials and uranium mining and processing facilities cannot be slipped through under the changes that the government is making through its bioregional processes.

I return now to climate change and the greenhouse gas trigger, in particular the appalling criticism in the Australian today of the judge in New South Wales who made a courageous decision in relation to the Anvil Hill mine. What the judge did in relation to the environmental impact assessment was to say that future greenhouse gas emissions should be taken into account in an environmental impact assessment. It is a landmark decision, and for the editor of the Australian to come out and say that this is a narrow ideological decision shows quite clearly that, whatever it says about climate change, the Australian is not serious about any actions that reduce greenhouse gases.

For the benefit of the editor of the Australian, what has to be recognised is that under international law it is illegal for one state to cause harm to another state. That is now codified in international law. Australia selling vast amounts of coal to China and putting huge amounts of greenhouse gases into the atmosphere is in breach of the requirement under international law not to cause harm to another state. In fact, in most countries, it is illegal under domestic law for polluters to cause nuisance to the public and put defective products on the market, and damages must be paid. International and domestic law prohibit human rights violations, and domestic laws impose duties on directors of insurance companies or pension funds to act in the best interests of shareholders who may suffer financial harm as a result of climate impacts.

What we are going to see is increasing litigation around the world on the basis of human rights. One hundred million people around the world depend on coral reefs for their livelihoods. Countries that deliberately do not take action to reduce greenhouse gases and that refuse to ratify Kyoto are in breach of any obligations in relation to this matter, and there will be countries that take action against countries that do not do the right thing. Very soon you will see the European Union seeking to use trade law in order to say that profits generated in countries that do not reduce their greenhouse gases in a mandatory way are giving a subsidy to those, and that will be disputed under trade law.

Australia is setting itself up for a major fall here, because the rest of the world will not tolerate free riding, and that is how they see what Australia is doing on greenhouse
gases. Every single day there is new scientific evidence. Just yesterday, scientists were talking about the Ross Ice Shelf, saying it has collapsed previously and collapsed quickly. A whole new body of law is being looked at in relation to climate change. Just look at the United States. On 8 April last year the Federal Appeals Court in Washington heard a case brought by two dozen states and others against the US Environmental Protection Agency for failing to regulate greenhouse gases under the Clean Air Act. The federal court dismissed the case, but in June this year the United States Supreme Court argued and agreed that it would hear the case. It is still ongoing and the debate it has caused in the US is quite considerable.

So we are going to see the courts doing what governments ought to be doing. The judgement in New South Wales is a courageous judgement. It is completely consistent with what is happening around the world, and we are going to find that cases will be brought against Australian companies under international human rights laws for violating the right to life and livelihoods of people who depend on natural ecosystems because of what those companies and the governments that facilitate those actions permit. I am suggesting that this government is putting the Australian economy and people at risk of financial sanctions, not just ecological outcomes.

We have to have action on climate change. We have to have action to protect our environment and the ecosystems on which we all depend for our life. We get air and water. We get all of these services from the environment but they are being trashed. This legislation is doing nothing to turn around the trends of decline. I want to see some action from the government that will facilitate strong action, not the abrogation of everything to the discretion of a minister who, at his or her own whim, can do as they like. I find it extremely offensive that in this legislation all we see is how much money the government have spent. They cannot point to one outcome of an improved trend in biodiversity conservation. There is not one species that has been taken off the threatened, endangered or critically endangered lists because of the government’s actions. (Time expired)

Senator IAN CAMPBELL (Western Australia—Minister for the Environment and Heritage) (12.27 pm)—I thank all the senators who have contributed to the debate on the Environment and Heritage Legislation Amendment Bill (No. 1) 2006. In closing the debate and in responding to some of the issues that have been raised, I will at the outset make a couple of points. The first point is about coalition senators contributing to the debate. For many years we have had a process in this place where we try to get legislation through. We know that the Labor Party and the Greens quite often filibuster and fill the speakers list and try to delay legislation. Confronted with repetitive speeches and lengthy debates where literally no new material is added, coalition speakers, unless they have an incredibly special point to make—and we witnessed that today with Senator Ian Macdonald—basically share the government’s view about wanting to get legislation through. We know that the Labor Party and the Greens quite often filibuster and fill the speakers list and try to delay legislation.

Confronted with repetitive speeches and lengthy debates where literally no new material is added, coalition speakers, unless they have an incredibly special point to make—and we witnessed that today with Senator Ian Macdonald—basically share the government’s view about wanting to get the legislation through. Coalition senators have chances that opposition senators do not have to discuss legislation in the party rooms and other party forums. Unless they need to make a special point, the only contribution a coalition senator makes to the second reading debate on a bill when confronted with endless, often banal, contributions by opposition senators is to delay the passage of the legislation. So coalition senators do the government and, in this case, the Australian and world environments a benefit by not speaking. For Labor to seek to make some sort of cheap, pathetic political mileage out of the
fact that the speakers list is filled up by Labor senators making generally banal and pathetic contributions is just that—quite pathetic.

Having said that, I want again to address some of the misleading statements by opposition, Green and Democrat senators. This bill is—and it was described by Senator Allison as such—generally speaking, a piece of administrative and technical legislation. It enhances and improves the environmental and heritage protection of the original act, which was brought into this place by the coalition and is heralded around the world by environment groups and other governments as a model piece of environment legislation for a federation. This bill is, generally speaking, a piece of legislation that makes the act more effective.

To say that we need to go through the sort of process that Robert Hill had to go through to build this historic piece of legislation, for an amending bill, is, quite frankly, absurd. To say that I have not consulted on this bill is not only absurd; it is wrong. I have consulted widely on the detail and on the philosophy of this bill, not only with conservation groups but also with industry. I have also used the benefit of the advice of the department, who have been operating with this legislation for the last few years.

The legislation has achieved phenomenal benefits for the environment. It has achieved a whole range of outcomes in terms of changes to development proposals and systematic consideration of development proposals. At its heart, this legislation seeks to implement one of the visions I have for environmental protection in Australia, and that is for it to have a long-term and sustainable focus. Historically, environmental protection legislation and legislation that seeks to assess proposals that may affect the environment has been done on a project by project basis. That is the environmental legacy we have from state and federal Labor governments, whereby marina proposals, mine proposals, any proposals that have an impact on the environment, are assessed one at a time and rarely, if ever, are the cumulative impacts of developments assessed in the process.

I made a statement last year which elicited an interesting response from the Labor Party. I said that our coast was being salami sliced, that the development of the Australian coast worked on the assumption that it was an endless resource. I made the point that around 80 per cent of the Australian population live within a few kilometres of our coast and that the pressure on this incredibly valuable part of the Australian environment and indeed our heritage was at great risk if the sort of population growth and pressure that occurred over the past 30 years, and the development that occurred over the past 30 years, was allowed to go unchecked.

Mr Acting Deputy President Brandis, in your own part of the world you can look at the coast from, say, the Tweed River system up north to Noosa. Fast-forward from what that looked like back in the 1970s, when you and I went to school in Brisbane, to what that bit of coast looks like now. It has been transformed. The development has virtually taken away much of the vegetation and has had massive impacts on the ecosystems up along that magnificent piece of coast. Anyone trying to imagine what that could have looked like 30 years ago would be horrified. That is not to say that all the development is bad. In fact, a lot of it is very good and a lot of it has been done environmentally sensitively. But there has been that sort of population pressure on a pristine part of the coast, an important part of the coast where there are phenomenally important wetlands and marine ecosystems, in Moreton Bay, up through Pumicestone Passage, up north to the Noosa
coast and then down south through Stradbroke and down to the Tweed.

That sort of population pressure is occurring in many other parts of Australia. In Western Australia, Senator Webber will know, there is a similar story. Look at the coastline from, say, Yanchep in the north of Perth down to Bunbury in the south. Compare what that looked like in the 1970s, when Senator Webber and I were going to school, and what it looks like now. Again there has been a phenomenal amount of development. Much of it has been done very sensibly and very sensitively, and I think that coastline is still an incredibly attractive place, but the point I make is that the assessment process has been done development by development and there has not been a strategic framework within which to look at it.

This legislation now achieves what I want to put in place. One of the lasting legacies for the Australian environment of the Howard government will be the possibility to plan 20, 30, 40 years into the future, working with the states and with local government to put in place a strategic overlay for development on a landscape and regional scale for the first time in Australian history—instead of a developer putting a proposal forward, going through the gamut of local and state planning processes and then discovering that there is a threatened species or some other nationally environmentally significant issue that triggers the federal law so that they have to go through another process. The wonderful thing about Robert Hill’s EPBC Act, the Commonwealth EBPC Act, is that it has put in place a mechanism to ensure that the state and federal processes can work side by side and there does not have to be a duplicated process. That is a big achievement. This legislation and the agreement of COAG to get all of the states to sign bilateral agreements so that that process can occur right across Australia is phenomenal.

What we are doing in this bill—and this is the centrepiece of it, apart from changing some processes which we think have hindered environmental protection within the existing legislation—is to allow that long-term overlay strategic development assessment process. This is what we are hoping to achieve, under the legislation, up at the Burrup Peninsula. We want to put in place a long-term management plan there to protect the rock art and the environment but allow the very important LNG industry to continue its expansion. We know in this government that LNG exported to China, to Japan and, let us hope, to North America, where it will replace coal and oil burning, will reduce greenhouse gas emissions by between 30 and 70 per cent.

There will be transformational reductions in greenhouse gas emissions if we can export that LNG, and yet we have the Greens saying that they want to see that development stopped. The Greens say they care about climate change, yet they say that they do not want to export LNG from the North West Shelf. They do not want to expand that operation. They want to stop Woodside’s export of LNG to the world market, which would actually reduce greenhouse gas emissions by 50, 60, 70 per cent. They are saying, ‘We cannot do nuclear.’ I do not know why they say that. It is just a 1960s hang-up or hangover, I guess. They are also saying, ‘We cannot do carbon capture and storage, because we cannot do it quickly enough.’

I remind you, Mr Acting Deputy President, of the seven core technologies to address climate change. There is carbon capture and storage, there is a significant enhancement of the world’s nuclear capacity and there is fuel-switching to natural gas. I think that Professor Socolow at Princeton University said that to achieve a billion tonnes of abatement per annum, you will need 1,400 power stations to switch to natural gas.
There are energy efficiency measures, which this government has addressed through world-leading legislation to require the 250 largest energy users in Australia to mandatorily audit their energy efficiency and energy use and mandatorily publish energy reduction plans.

For energy efficiency in the household sector, we have brought in world-leading legislation to put energy efficiency labels on every single appliance. That is for the people of Australia who care so deeply about their environment and who actually take practical action, as opposed to the Labor Party and the Greens, who think that you can just sign a protocol or legislate away greenhouse gas emissions by putting a law through the parliament. They say: ‘Let us stop some coal mines. Let us stop the coal industry, and we will save the world. Just legislate. We will put a line in the legislation, whack it through the Senate and, hand on heart, look the people of Australia in the eye and tell them we have fixed that problem and are on to the next thing.’ It is very lazy and ineffective.

There has been great action on energy efficiency by the Australian government, working in partnership with industry and, of course, working in partnership with the mums and dads of Australia. Every time they go down to Retravision or Harvey Norman to buy a clothes dryer, a dishwasher or a washing machine, they can look at the label and make a decision that is good for Australia, good for the world and is saving greenhouse gases. That is very good. We know that we have to get a 50 per cent improvement in the world’s energy efficiency of its transportation fleet. That is another really important part of the plans that we have in place to abate carbon across the globe. We need to achieve that to get another billion tonnes.

We need to transform the way we use our land. We need to stop deforestation right across the world, and we need to massively increase the planned planting of new forests, so we need to move to zero tillage. As the Minister for Fisheries, Forestry and Conservation, who happens to be in the chamber at the moment, knows, in Australia we are doing very well in that. Under this government, in the past 10 years, we have gone from being a net deforestation nation to one that is moving in the direction of planting more trees than we are cutting down.

Senator Milne interjecting—

Senator IAN CAMPBELL—Senator Milne, instead of coming in here and whining and carping and instead of going across to Nairobi and talking Australia down, should actually be going across there and saying, ‘Let’s look at some of the good things Australia is doing.’ Under Labor, they were cutting down hundreds of thousands of hectares of forests a year. We have stopped all of that, and now we are planting more. In fact, we are on track to plant the billion trees that former Senator Richardson and former Prime Minister Hawke went down and stood on the banks of the Murray and said they were going to plant. They never did it. In fact, trees were being chopped down on the very day that the photo of them making that announcement was taken. They were chopping down more trees than they were planting. That is another one of the technologies we need. We have to change land use practices across the globe.

So there are seven technologies you absolutely must have, and the Greens have said no to carbon capture and storage. They do not want to capture the carbon, stop it going into the atmosphere and bury it under the ground. This legislation and the government’s action allow us to do that. The Greens say no to nuclear, yet they have the rank hypocrisy to side with the French when it comes to lecturing Australia. They are cheer-
ing on the Europeans, including the French Prime Minister, who 10 days ago said that he is going to start taxing Aussie wine. They hate Aussie wine over there in France, because we make better wine than they do. They hate Aussie champagne over there, because we make it better than they do, so of course they want to tax it.

Senator Milne—the hypocrisy knows no bounds—comes in here and talks about coral reef protection, when Australia leads the world with the Great Barrier Reef. We get international awards. WWF gave me a Gift to the Earth award last year because we have protected the Barrier Reef and put in place 34 per cent protection, which the Labor Party are going to tear up. Senator Milne cheers on the French, saying, ‘Vive la France!’ What do they do to coral reefs? We know what they do to coral reefs in the Pacific. She is defending the French. They get 80 per cent of their power from nuclear energy, and Senator Milne says, ‘Oh, we’ll turn a blind eye to them.’ Europe is run on nuclear energy, but she says: ‘They are good fellows. They have signed the protocol.’

As to her own country, which she should be cheering for, she wanders around the halls in Nairobi saying, ‘Australia is so dreadful.’ She hates Australia and she cheers on the French. What do they do to coral reefs? Eighty per cent of their power comes from nuclear energy and they are not happy with that. Their greenhouse gas emissions are going to go nine per cent over their Kyoto target. You do not hear Senator Milne getting up at Nairobi and saying: ‘Look, Australia is trying really hard. I do not actually agree with the Howard government. I think they should do more.’

**Senator Milne**—You’re not trying hard enough!

**Senator IAN CAMPBELL**—She could easily say that the Howard government is not trying hard enough, but she cheers on the Europeans and says, ‘Let’s go and belt up Australia,’ and, ‘Three cheers, France, for belting up Australia and blowing up atolls in the Pacific,’—that is how the French look after coral reefs—and she gets three cheers from the Greens. It is appalling.

What she should be asking some of those European countries that she seems to just love is: ‘Why are Ireland 30 per cent over their target? Why are France over their target?’ They have 80 per cent nuclear energy and they are nine per cent over their target. Spain are over their target. Portugal are over their target. Norway are over their target. They are all over their targets, but it is okay; they have signed the Kyoto protocol, so they have salved their consciences! That is the difference between the coalition approach to the environment and that of Beazley Labor and the Greens. This vote shows the quintessential difference. All of their focus is on saying: ‘Oh, look. We are not going to have a five-year review of threatened species plans.’

They would rather spend millions of dollars creating thousands of pages of reviews of threatened species plans, paperwork, legislation, bureaucracy, more jobs for bureaucrats. You would have to keep buying bigger and bigger buildings for my department if these guys were in power. What do we want to spend the money on? We want to spend it on something unique: it is called the Australian environment; it is about protecting our wildlife. We would rather spend the millions of dollars on actually rebuilding habitat.

What is on the record? The record shows that under Mr Keating, under Labor, the last time Mr Beazley was finance minister—he has found green credentials now, he has all of a sudden become a greenie and even started talking about climate change lately; 10 years down the track, Mr Beazley has discovered climate change; it is a bit late but
better late than never—Labor spent $390 million a year on the environment. What does the coalition spend? It spent $3.9 billion this year. That is a 10-fold increase on investment.

**Senator Milne**—What did you get for your money?

**Senator IAN CAMPBELL**—That is a very fair question. Let us look at what we have got. In a video clip which I saw at his memorial service, Steve Irwin said: ‘What would be a great way to protect the Australian environment? The best way would be if I could just buy it all. If I had enough money, I’d buy the whole of Australia.’ Do you know how much the government have bought? In a phenomenal achievement, through the National Reserve System, under this government we have accomplished the ownership and reserve of 10 per cent of Australia.

**Senator Abetz**—She’s gone quiet now.

**Senator IAN CAMPBELL**—She should be quiet; she should be embarrassed by her criticism. Labor spent $5 million on building that reserve system and increased it by one per cent in their time in office. We have spent $87 million and increased it by 25 per cent. There are 21 million hectares of Australia under the reserve system. That is the most phenomenal habitat protection and ecosystem restoration project anywhere on the planet, and Senator Milne cheers the Europeans.

This legislation gives our money, our effort and our partnership a renewed focus. It gets away from saying, ‘Let’s have legislation, let’s have bureaucracy and let’s have more paperwork.’ Let us, in fact, have more action to protect Australian wildlife, protect habitat and actually protect our environment. I commend this bill to the Senate.

Question put:

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

The Senate divided.  [12.51 pm]

(The President—Senator the Hon. Paul Calvert)

| Ayes | 33 |
| Noes | 37 |
| Majority | 4 |

**AYES**

Allison, L.F.  Bartlett, A.J.J.
Bishop, T.M.  Brown, B.J.
Brown, C.L.  Carr, K.J.
Crossin, P.M.  Evans, C.V.
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.
O’Brien, K.W.K.  Polley, H.
Ray, R.F.  Sherry, N.J.
Siewert, R.  Stephens, U.
Sterle, G.  Stott Despoja, N.
Webber, R.  *Wong, P.
Wortley, D.

**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. *
Fielding, S.  Fierravanti-Wells, C.
 Fifield, M.P.  Heffernan, W.
Johnston, D.  Joyce, B.
Kemp, C.R.  Lightfoot, P.R.
Macdonald, I.  Macdonald, J.A.L.
McGauran, J.J.J.  Minchin, N.H.
Nash, F.  Parry, S.
Patterson, K.C.  Payne, M.A.
Ronaldson, M.  Santoro, S.
Scullion, N.G.  Troeth, J.M.
Trood, R.B.  Vanstone, A.E.
Watson, J.O.W.

**PAIRS**
Witnesses: Senator IAN CAMPBELL (Western Australia—Minister for the Environment and Heritage) (12.58 pm)—I move:

That consideration of this bill in Committee of the Whole be made an order of the day for a later hour.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (12.58 pm)—I could not hear the motion, so could we have it put to the Senate again, please?

Senator IAN CAMPBELL (Western Australia—Minister for the Environment and Heritage) (12.58 pm)—With pleasure; we are having trouble with the audio. I think a later hour of the day is a better idea, because it gives us more flexibility. So I will amend the motion that I previously moved and make it ‘a later hour’. I move:

That consideration of this bill in Committee of the Whole be made an order of the day for a later hour.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (12.58 pm)—I want to record opposition to that motion. We have just had the second reading debate and we should, logically, be moving into the committee stages of this bill. This is just a manipulation by the government to have debate on this bill put off until a later hour. We do not support this motion.

Senator BARTLETT (Queensland) (12.59 pm)—As reflected by our vote on the second reading—and as was reflected, I might say, by evidence given to the Senate
committee by, amongst others, the Australia Institute—there are positive components in this legislation, and we would like to ensure that they are not lost. I suppose more time for government members to be made aware that there are also negative components in the legislation and to be convinced to support amendments to take them out of the bill would be welcome. Of course, more time for the government to consider the amendments that are put forward, whether by the Democrats, the Greens or the Labor Party, is also fine with us.

I hope that the Minister for the Environment and Heritage takes the opportunity of the extra time that he now has to examine the meritorious arguments behind some of the amendments that are being put forward and considers changing his view so that there is actually a net positive in the amendment legislation. There are a range of amendments to this legislation, and the minister’s suggestion that the bill should come on for a later hour today or tomorrow is fine either way with the Democrats. If it is not going to be amended then he can put it off until next year—and the longer he leaves it, the better.

Ordered that consideration of this bill in Committee of the Whole be made an order of the day for a later hour.

MEDIBANK PRIVATE SALE BILL 2006

Second Reading

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

That this bill be now read a second time.

(Quorum formed)

Senator FIFIELD (Victoria) (1.03 pm)—I rise to contribute to the debate on the Medibank Private Sale Bill 2006. This bill will implement the government’s policy in relation to the sale of Medibank Private. It will establish a framework to give the government the flexibility it needs to sell Medibank in the way best suited to the achievement of its objectives. These objectives include: to contribute to an efficient, competitive and viable private health insurance industry; to maintain service and quality levels for Medibank Private contributors, including in rural and regional Australia; to ensure the sale process treats Medibank Private Ltd employees in a fair manner, including through the preservation of accrued entitlements; to minimise post-sale residual risk and liabilities to the Commonwealth; and to maximise the net sale proceeds from the sale.

The Senate Standing Committee on Finance and Public Administration—which I chair—conducted an inquiry into the bill, the report of which was tabled in the Senate on Monday. The committee received 13 submissions from members of the public and organisations and heard from 12 witnesses at a public hearing. The submissions and evidence have provided valuable contributions to the committee’s consideration of the bill, and I would like to put on record the committee’s thanks to all those who took the time and effort to make submissions.

The committee’s report addresses concerns relating to Medibank’s ownership and the government’s right to sell it; the impact of the sale on Medibank’s performance and that of the private health insurance market; the protection of members and employees; and the provisions which restrict ownership and control of Medibank Private for five years from the date of sale. The government’s independent legal advice is unequivocal on the question of ownership. The Commonwealth owns Medibank Private and, with the passing of this bill, will be free to sell its shares. It is also clear that legal and beneficial ownership of Medibank Private vests in the Commonwealth, which removes any right by contributors to claim against Medibank’s assets.
A number of witnesses were concerned that privatisation would lessen Medibank’s ability to continue providing competition in the health insurance market. The fact is that Medibank Private is already a market pace-setter in efficiency and innovation. It has successfully negotiated with health providers on the basis of its bulk buying power. This has brought with it gains for members, through minimised premiums, and has served as a model for other private health insurers in the way they approach their businesses.

From the evidence received by the committee, Medibank Private is also highly competitive in terms of the ratio of revenue it spends on management, its member retention and its very high market share. There is no reason that this should not continue under private ownership. Indeed, it is difficult to imagine a circumstance where future owners would risk their investment by running the company less competitively than its current managers. Medibank Private, regardless of ownership, will continue to be an important player in the health insurance market. Consumers will continue to benefit from strong competition, and the sale will help to ensure that any premium increases are minimised.

Some are concerned that the quality of insurance sold by Medibank would somehow diminish after the company’s sale. The sale will not result in any reduction in the surety of the insurance product sold by Medibank Private. The capital adequacy and solvency provisions, which all private health insurers must meet, remain untouched by the bill. Medibank Private will be no less safe and solid than any of its competitors.

The Community and Public Sector Union and the Save Medibank Alliance expressed concern that the sale of Medibank Private would lead to reduced security for Medibank employees. The committee appreciates that the prospect of changed ownership may be unsettling for staff but believes that the union’s concerns are unfounded. After all, the bill does not dilute any of the entitlements and protections currently afforded Medibank’s employees. Medibank Private Ltd is a public company, limited by shares, and existing employees work for this entity. The mere fact of Commonwealth ownership makes no difference to the legal position of its employees, nor would employee status be affected by the transition of ownership to private hands.

The bill imposes restrictions to ensure the company must remain incorporated and managed in Australia and must not be broken up. No one shareholder may hold more than 15 per cent of the company, and the majority of board members must be Australian citizens. The appeal of these provisions lies in their safeguarding against radical changes to the business in the short and medium term. The sunset clause on these restrictions achieves the best of both worlds. Employees are protected during the transition period, while the company’s new owners will be free to run their business unfettered in the longer term. The potential benefits of sale are readily apparent to the committee majority, as are the important safeguards which have been put in place to ensure that the best interests of all parties are observed and taken into account.

These include powers residing with the Private Health Insurance Ombudsman, the Private Health Insurance Administration Council, the Australian Competition and Consumer Commission, the Minister for Health and Ageing and the Department of Health and Ageing. Representatives of each of these entities made submissions to the committee, signalling their readiness to uphold the oversight responsibilities for which they are each responsible. The committee was convinced that the sale of Medibank
Private is in the interests of health consumers and that the interests of health consumers will still remain the paramount concern of Medibank Private.

I would like to take this opportunity to thank committee members for their cooperation. I also thank the secretariat, particularly Alistair Sands, Tim Watling and Monika Sheppard, for their assistance with the inquiry. I commend the report of the committee to the Senate and I commend the bill to the Senate.

Senator WEBBER (Western Australia) (1.10 pm)—It is difficult not to get a sense of déjà vu as I stand here today to discuss yet another Howard government bid for privatisation. This government, led by the great ideologue himself, has pursued the goal of privatisation with great vigour and often total economic abandon. While I could spend considerable time discussing my ideological opposition to this bill, I feel that my Labor colleagues and I have drawn a very clear line in the sand when it comes to the continual sell-out being perpetrated by this government. Instead, I would like to focus on some of the more practical concerns that I have with this bill and that feature highly in my decision to oppose it.

An experience that I think would be common amongst many members of this parliament is membership of local sports clubs. Often within these clubs, members will devote themselves to the organisation for periods of years or even decades. I wonder how the long-term members of a local football club would feel if the president decided to sell off the clubhouse and then pocket the proceeds.

If the Medibank Private Sale Bill 2006 should pass this place, we will see this very experiment play out on a much grander scale—except, with Medibank, the government not only is removing an asset from its membership but is then expecting those same people to buy it back again and to pay perpetually more and more in premiums. This bill represents another chapter in the Prime Minister’s war on public assets; however, the war on public assets seems to have somehow evolved into a general war on the public, period.

The very idea of the public is at the heart of this debate. Medibank Private is inherently a public institution. It was established with public dollars and relies on the long-term patronage of a significant proportion of the Australian public to remain financially viable. Despite being a public good—an entity that provides social dividends over financial ones—this organisation still commonly turns over a sizeable profit. However, this success would not be possible without those Australians who are members of Medibank Private. Their patronage is not incidental; it is the reason that such an organisation can exist.

The government must see the role of Medibank Private’s membership very differently. The three million Australians who are currently members of Medibank Private—and I must acknowledge here that I am one of them—are right to worry about being out of pocket if this sale goes ahead. In Mr Howard’s economy, loyalty obviously means very little. Despite the loyalty of people who have remained members for several decades, once the organisation of which they are a member is sold, they will not see any compensation—no reward for their loyalty whatsoever. I am unsure if some of the more ambitious members of the government would be too happy with that treatment of loyalty either.

But that has not stopped the still government owned Medibank from trading on a nice idea. As recently as this week, the Medibank Private website proudly refers to
its product as a membership. My understanding of membership is that it is reciprocal: one is a member of an organisation as much to contribute to and benefit from its functioning as to merely receive a service. This is what differentiates a membership relationship from a seller-buyer one: the buyer has no role in directing the seller, whereas a membership is inherently interactive.

Just because the government chooses to call it privatisation rather than mutualisation does not make it so. Likewise, a politically friendly legal opinion from one law firm does not mean that this perspective will hold up in court. When amounts of between $500 million and $1 billion are being discussed, I would hope that the government gets its legal basis rock solid. At the very least, I would like to see a government that respects the members that allow Medibank to have such a plump price tag.

Thus far, the government’s approach to this asset has been anything but respectful. As with any coalition initiative, this proposal is allegedly designed to increase competition and, consequently, lower costs for the consumer. We are supposed to believe that the health insurance market will be a laissez-faire paradise for the average Australian. I consider that to be wishful thinking, at best.

The Australian Medical Association opposes this sale for a number of reasons, prominent amongst which is that the sale will actually reduce competition in the insurance sector. I would like to quote their submission to the ACCC on the matter:

Health fund mergers have occurred and will continue to occur because the overall regulatory environment is conducive to the market being shared among a few dominant players. This does not serve consumer interests. The increasing concentration of the private health insurance industry has had a counterpart in the private hospital industry where there has been consolidation in an endeavour to counter the increasing market power of the funds. The end result is less choice for the consumer.

Any economist will justify this claim, or at least acknowledge it as a strong possibility. In recent weeks we have seen large consortia aggressively pursue Australian businesses, including those that are publicly listed, yet the government claims that market forces and the ACCC will inhibit Medibank Private from the same fate. Why does such a claim fail to inspire me with confidence?

The AMA goes further in its assessment of the proposed sale. They describe the health insurance sector as already being non-competitive in nature. This is a market dominated by a handful of major players who have all been granted generous price increases by the Howard government. Complacency has bred amongst these companies. Smaller operators are being adequately suppressed by the large corporations that already account for 80 per cent of the market. Even mutual funds have demonstrated a tendency to become bloated from time to time. Medibank Private is one of the few insurers in the market majority.

A former director of Medibank Private, Professor John Deeble, has said that Medibank’s establishment was to create a conscience for the private health insurance industry. The sale therefore of Medibank Private will simultaneously allow other insurers to consume one of the other big fish and, conveniently, also remove the last semblance of social consideration within the industry. Unfortunately, the proof will be in the pudding. With Medibank Private in a for-profit modus operandi, the government no longer has a price-setting mechanism within this powerful oligopoly. If the government were serious about free market price factors, they would simply mutualise the fund and ensure that competition does not diminish any further. The reality is very different.
The AMA and many other pundits are stating the obvious: this bill will deliver less competition, less choice and much higher premiums. The legislation will also serve to divest a significant Australian asset. The incredibly buoyant Australian dollar is proof that international investors are very keen on Australian assets. If we are to take the government’s competitive argument at face value, it stands to reason that Medibank must be protected from multinational takeover as well as from domestic entities. Yet the best that the minister for finance and his colleagues could muster is a lacklustre five-year freeze from foreign ownership.

It is no secret that the government moved from an outright sale of Medibank to a public float. There is obviously a feeling amongst the government that the public finds these floats awfully palatable. Consequently, the means have changed when it comes to selling Medibank but the ends are very much the same—and the government knows this. It does not matter how you sell something, once it is gone it is gone for good.

Earlier, I alluded to the economic recklessness that has become a hallmark of this government. The Minister for Finance and Administration, Senator Minchin, has openly acknowledged that the sale of Medibank Private will be delayed until 2008 to allow the sale of the government’s remaining Telstra shares to flow through the market. I take that to mean that the minister for finance would like the same people who purchased T3 to pony up again for Medibank Private.

The Howard government would have you believe that they are the saviour of the mum and dad investor. But, as we have seen with the T2 debacle, the forthcoming T3 debacle and the worst housing affordability figures on record, this government is anything but a friend to the investor. Having encountered a number of constituents who borrowed significant sums of money to invest in the T2 float, I dare say they will disregard the government MPs who will no doubt spruik the Medibank sales bonanza.

It seems to me that this government is taking from the same group of hardworking families and giving very little back. The share floats keep coming, but thus far they have delivered minute reward. This float must surely rank amongst the most insulting. A large proportion of those people who may buy shares in Medibank Private were once members. This is a double dip of the highest order. Only this time they will, in all probability, be slugged with perpetually higher premiums, all whilst their investment carries with it no guarantees of a positive return.

This will of course be incidental to the government, who will have already cashed in their chips. With the global economy looking precarious and local economic conditions looking more so—the phenomenal housing boom in my home state of Western Australia being a case in point—it seems foolhardy to actively promote this float as the government no doubt will.

But, then again, we should not be surprised by the government’s very deliberate timing. Indeed, timing is something that this government specialises in. I find it interesting that the government is doing its best to ram this contentious legislation through in the last sitting period before going into an election year. A 2008 sale date can easily be accomplished by passing this legislation some time next year. In fact, it makes prudent economic sense to schedule the passing of the bill closer to the sale date to allow for an assessment of the company’s worth. Those on the other side of this place may label me cynical, but it seems to me that the forthcoming election period seems to bisect the interval between the passing of this bill and the selling of our asset.
It is also interesting to take a longer term perspective for a moment. I would like to remind the government that Medibank Private was a product of the Fraser government. Even Mr Fraser, a Liberal Prime Minister, had the decency to admit that government owned businesses provide an efficient means of keeping the market in a reasonable position. Recently he wrote this on the matter:

When Medibank Private was introduced we believed that, if the Government were actively involved in the business, we would have a better handle on costs and outcomes than if they were all done by private enterprise.

He went on to say:

I believe it would be a great pity if Medibank Private were sold and that it would lead to escalating fees.

It must be kept in mind that escalating fees will be a result that affects not just the current membership but the entire private health insurance market. Former Prime Minister Fraser’s point is correct in that the government is willingly forfeiting its ability to be a price setter in one of the biggest regular expenditures for Australian families. It demonstrates very clearly to these people what the government’s real priorities are. But do not worry, the government will crow, ‘We will toss them a few dollars back in tax in return.’ Of course, any such cut will not make up for the inevitable price hikes in the cost of insurance—after all, who can forget the supposed compensation for the implementation of the GST?

I am pleased to see that the Greens, the Democrats and even Family First are opposing this bill. A rational assessment of this bill uniformly returns to the conclusion that selling an organisation that meets social ends whilst still making a profit simply does not make sense. But, just as the government is opting for the most blinkered legal opinion possible, they are also opting for a similar political mindset.

I return to what Professor Deeble said about the role of conscience in the insurance sector. My Labor colleagues and I have grave fears that this government is selling the body that represents our national conscience in health care. It seems that everybody in this place, excluding the government, shares the same fear. But perhaps that is par for the course during the term of this government: throwing a few dollars at the place where a conscience used to be.

If this legislation is passed, as seems likely, and Medibank Private is eventually sold, and if the government gets its way, what next for the delivery of health care in this nation? What next for the status of the delivery of universal health care? What next for Medicare Australia? Where does this government draw an end to privatising service delivery? As far as I can see, they have been on a 10-year crusade against public assets and delivery of service in the public sector. So far we have seen the sale of numerous public assets that deliver essential services, whether that has been the staged sale of Telstra or, now, the proposed sale of Medibank Private. Where next for the state of delivery of universal access to health care? What does this government propose to do with Medicare? What does this government propose to do with the funding of our public health system?

And why the great hurry? Why do we have to pass this legislation now? Why did we have to have a half-day committee hearing, which in this place has been colloquially termed ‘a quick and dirty committee hearing’, where we are given an alarmingly short time to consider contentious legislation, call for public interest, have hearings and write committee reports? Then all of a sudden we have to rush through the passage of this legislation. Why the hurry? If the government is true to its word and it does not propose to sell Medibank Private until 2008, surely
there are more than enough sitting days between now and the proposed float before the passage of any legislation is required. We could use that time to have a more considered look at the impact that the proposed sale would have on the state of the private health insurance industry in Australia, rather than just have to take the word of a couple of hand-picked witnesses in a half-day committee hearing. We could actually use the extra time to, as I said, look at the state of the industry and the impact that such a float would have on the Australian investment market. But, instead, we seem to be on some ideological crusade that I think even some in the government would find a little startling: we propose to sell something in a couple of years time, so we have to rush through the legislation now. Perhaps they are concerned that they will lose the next election and, with that, lose control of this place and not be able to continue their vendetta against the public ownership of assets and the delivery of public services by the government.

As I said, they have an ideological obsession with the sale of the creation of the Fraser coalition government and an ideological obsession against the delivery of universal health care. Let us face it: it is only because of the popularity that Medicare has that there is still some commitment to it. The coalition used to campaign long and hard against the continuation of Medicare until they realised they were out of step with the Australian people. Of concern to me and, I am sure, the rest of the non-government senators in this place is not just the future of the private health insurance industry but also the future delivery of health services and the commitment of this government to public health care for the Australian community.

Why the rush? As I said, I do not understand why we are in such a hurry. The opposition is assisting the government in facilitating the passage of legislation and, all of a sudden, they say it is essential and has to be dealt with before we rise at the end of next week. As Senator Evans said earlier today, there has been agreement on how to manage the process of legislation in this place. What do we not accept, and what we did not accept when this bill was put up for exemption from the cut-off, is that this is in fact urgent. You do not need to pass legislation two years before a proposed sale. It is not urgent, it is not critical and it is actually not the right thing to do by the people who hold private health insurance in Australia, particularly the three million-odd policyholders—including me and a lot of other people in Australia—who actually hold policies with Medibank Private.

Debate interrupted.

DATACASTING TRANSMITTER LICENCE FEES BILL 2006
BROADCASTING SERVICES AMENDMENT (COLLECTION OF DATACASTING TRANSMITTER LICENCE FEES) BILL 2006

Second Reading

Debate resumed.

Senator SANDY MACDONALD (New South Wales—Parliamentary Secretary to the Minister for Defence) (1.30 pm)—These bills are part of the implementation of the government’s media reform policies in relation to the allocation of datacasting transmitter licences for the two unallocated television channels. They are part of the raft of reforms so cleverly and competently developed by Minister Coonan. These changes will revolutionise the television viewing experience in Australia and add to the wide range of services now available to Australian consumers. The government has undertaken this task in a way that promotes a smooth transition from analog to digital. These bills are a small but important part of the government’s media reform package and they will allow for the
emergence of a range of new services for Australian consumers as we head towards the digital switch-over. I commend the bills to the Senate.

Question agreed to.

Bills read a second time.

Third Reading

Bills passed through their remaining stages without amendment or debate.

TELECOMMUNICATIONS AMENDMENT (INTEGRATED PUBLIC NUMBER DATABASE) BILL 2006

Second Reading

Debate resumed from 29 November, on motion by Senator Colbeck:

That this bill be now read a second time.

Senator STOTT DESPOJA (South Australia) (1.32 pm)—Judging by the fact I am the only speaker on the speakers list, I have obviously got the popular bill of the day. I rise today to speak on the Telecommunications Amendment (Integrated Public Number Database) Bill 2006. I am doing it on behalf of the Democrats as I am the privacy spokesperson for the Democrats. While I believe there are strong reasons to support the intent and the spirit of this legislation, there are also some flaws in this legislation.

This bill amends the Telecommunications Act 1997 to allow for information contained in the integrated public number database to be used in connection with the conduct of research considered to be in the public interest. The intent of this bill is also to implement relevant safeguards to ensure that IPND information is only disclosed and used for the purposes specified in part 13 of the Telecommunications Act.

The IPND is an industry-wide database containing both unlisted and listed residential and business telephone numbers, and includes all customer related information, such as name and address information. It is established by law as a consolidated database for a specific purpose—to act as a resource for emergency service and law enforcement use, and for the provision of directory services.

I note that the Australian Communications Management Authority has been concerned for a number of years about the potential misuse and misuse of data stored on the IPND by public number directory producers and directory assistance service providers. The ACMA was concerned that customer information was being used for purposes beyond those specified within part 13 of the Telecommunications Act 1997. As a result, the ACMA released a draft industry standard in May 2005 to protect the contact information held by telecommunications customers in the IPND from inappropriate use or disclosure.

The intent of this legislation is to address the privacy concerns of people whose information is stored within the IPND, which is basically everyone with a telephone, and comes in response to reports that the information held on the database has been, and continues to be, misused by various marketing companies. While the Democrats support the government in attempting to prevent the misuse of public numbers and related information, we think there is a lot more that this bill could do. Indeed, there is, generally, more that the government could do to ensure that that information is kept safe and is not misused.

The Democrats have received a number of comments, letters, emails and submissions from privacy groups and companies pointing out that the legislation as currently drafted will not necessarily achieve its stated objective because it will not apply to telephone directories that do not source their information from the IPND. The dominant Sensis white and yellow pages—Sensis being a sub-
sidiary of Telstra—do not source information from the IPND, so they fall outside the coverage of this legislation. The Australian Privacy Foundation has argued that Sensis white and yellow pages ‘and other directories not sourced from the IPND will be able to be used in a way that the bill prohibits for IPND sourced directories, including the provision of privacy intrusive reverse search facilities’.

We also received submissions from companies concerned about the anticompetitive environment this bill may engender. It will leave the Telstra-Sensis database operating at the high end of a slanted playing field. In 1997, the ACCC found—I am sure that some senators are familiar with this—that Telstra:

(a) has a substantial degree of market power in the directory database market and/or the telephone directories market;

(b) has refused to supply such data on reasonable terms (including price) to a number of market participants who have sought supply; and

(c) by engaging in the conduct described in paragraph (b), has taken advantage of its power in each of the said markets and that such conduct on the part of Telstra contravenes section 46 of the Trade Practices Act.

I stress that, while we support the intent of this bill before us and the measures that are being put in place today, we believe it is inadequate in a general sense in achieving what it purports to achieve, and it may also have the unintended consequence of establishing an anticompetitive environment.

The purpose of this bill and the bill itself should be extended to the public directories whether sourced from the IPND or not. This would have been a powerful tool for consumer protection and it is something that I ask the government to consider. Clearly, it is not going to happen today and, clearly, I do not have the support of the majority in the chamber to move an amendment along those lines, otherwise I would have done so. Furthermore, as the Australian Privacy Foundation indicated to me:

While covering all directory producers might require legislative changes beyond the Telecommunications Act, there is no apparent reason why that Act cannot regulate the activities of all directory producers who are also carriage services providers.

That might be something that the minister can take up in her comments to this legislation today: why is it that the government has chosen not to go down this road and, while acknowledging as I do that there may be broader amendments required not just to the legislation before us in this bill but also to the Telecommunications Act in general, why is the government not pursuing those? Is there a particular reason? Is it something that they have examined and investigated and rejected for a particular reason? I am happy to discuss this at another time because, as I say, I understand that the proposals that I could put forward on behalf of the Democrats do not have support necessarily of others in this chamber. This bill is non-controversial; it has been given half an hour. I am not going to suggest that I hold up the Senate’s time but I am going to put on record a couple of amendments that could and should be made to this legislation.

We need a new section stating that no person shall publish or maintain a public number directory other than within the framework of the integrated number databases scheme in force under section 295A. In making all public number directories subject to the same regulation, the intended protection provided under this bill would be fully realised. That is the view of the Australian Democrats, and I ask the government to consider an amendment along those lines.

Secondly, there should be an addition to the new section 285(1). We propose that the government should have considered, or at least should consider for future reference, a
subparagraph (d) which ensures that for any activity covered under subparagraph (c) the carrier or the carriage service provider holds an authorisation in force under the integrated public number database scheme permitting it to use the information or document. Without an addition of that kind carriers and carriage service providers, including Telstra, which choose to publish a public number directory, will not be subject to the same controls, supervision and penalties as other publishers.

There is another thing that the government could have done, and perhaps should do. They should add a new section to section 285(3). It could be that the minister must not specify a kind of research that does not require it to be undertaken by an independent contractor and on condition that the client for the research does not receive any information from the contractor that identifies any respondent, again ensuring that the information is held securely. This would also prevent the minister from allowing marketing, fund-raising and political polling to masquerade as research.

Another change would be to subparagraph (e) under the new definition of ‘public number directory’, section 285(2), because I do not necessarily believe that the minister should be able to vary the substantive nature of public number directories by regulation. And finally, as another suggestion, there should be an addition to new section 295A to ensure the ACMA scheme covers all publishers of public number directories.

The reason I am putting this on the record in the form of suggested amendment ideas and not amendments is partly related to the fact that these amendments, which I was happy to pursue and move, have not had time because of the backlog of legislation and the backlog of amendments from the non-government side. Because of the backlog, it has been too difficult to get these amendments drafted even though it is something that I have been looking at for a reasonable period of time. I also understand that in this new post 1 July 2005 world the Senate is dominated by the government and, unless you have the numbers and the support for such amendments, sometimes there is questionable value in putting people, including the clerks—the Clerk Assistant (Procedure) in particular who does such wonderful work in this place—to such trouble. It is sometimes questionable value as to whether or not you want to put people to the trouble of drafting those amendments no matter how important they may be or how valuable they could be to the legislation when you know that we bring them to this place and often they receive perhaps cursory debate but certainly not the numbers in support.

In no way am I wishing to abrogate my responsibility as a legislator; instead, I seek to put forward these ideas to the government. I understand that they are not going to be adopted today but I am curious as to the rationale behind the legislation before us. Is there a reason that the government perhaps is categorically ruling out some of these changes? Is the government conscious of what has been perceived, for example, as an unintended consequence of this bill? Is it the case that the government has examined the possibility of the so-called anticompetitive environment and decided to pursue this particular bill in its current form regardless? Perhaps some answers to those issues would satisfy me and the Australian Democrats.

In general, and in conclusion, you and others will know that the Democrats by virtue of having a portfolio that deals with privacy recognise that this is an issue that is incredibly important to us. It has been important since our inception in 1977. We were among the first—in fact, probably the first—to call for not just a privacy scheme in Australia but an extension of that scheme to
cover the private sector as well as the public sector. Some senators may or may not be aware of the work of former Senator Michael Macklin in that regard. Since then we have maintained vigilance. We have scrutinised legislation to ensure that the privacy needs of Australians are protected wherever they can be. I note today the government has brought down, finally, its response to the Democrat initiated Senate inquiry that dealt with the issue of privacy protection in Australia and in particular examined the loopholes in the privacy regime in this country—and I am sure I will have an opportunity to talk to that later today.

I think Australians do care about their privacy. They do not believe that it is a fundamental right; they do acknowledge that there are balances that have to be struck—and, when it comes to a commercial environment or databases such as this one, I think Australians are happy for governments to allow them. They recognise that businesses are entitled to them but they want the best protections in place so that their personal details, whether it is their residential address or their phone number, are kept safe and not disclosed in a way that is inappropriate. So I support the changes in this legislation and I urge the government to go further. Maybe that will be a discussion for another day between the Australian Democrats and the government.

Senator COONAN (New South Wales—Minister for Communications, Information Technology and the Arts) (1.45 pm)—I will now sum up on behalf of the government the second reading debate on the Telecommunications Amendment (Integrated Public Number Database) Bill 2006. Privacy and the protection of people’s personal information has of course become a key issue of concern to the Australian community, and the government has well and truly listened. With the passage of this bill today, the government tightens access to personal information for the purposes of producing a telephone directory. The legislation is an important step forward in taking action against the unauthorised use of personal information which is provided by customers when they sign up for a telecommunications service and recorded in the Integrated Public Number Database, or IPND.

The bill introduces a definition of ‘public number directory’ into the act in order to prevent personal information held in the IPND being directly used for unauthorised purposes. Under the current provisions of the act, IPND data must not be directly combined with or appended to additional information before producing a public number directory. This has always been the case, and the legality or otherwise of current industry practices is not affected by the current bill.

The bill also gives the Australian Communications and Media Authority, or ACMA, a key gatekeeper role in deciding on applications for access to IPND information by public number directory producers and researchers. Currently the IPND gatekeeper is Telstra. The bill requires ACMA to establish a scheme for the granting of authorisations, permitting persons to use and disclose IPND information. This is a significant enforcement of privacy protections. To further enhance privacy protections, the bill requires ACMA to consult with the Privacy Commissioner and the Attorney-General’s Department on the development of the scheme. Existing and prospective IPND data users will be required to apply to ACMA for an authorisation to access the IPND. Telstra will only be permitted to disclose IPND data to persons holding such an authorisation.

As well as clarifying IPND access arrangements for public directory producers, the bill allows for limited access to IPND information for some specified social re-
search purposes that are clearly in the public interest. But importantly the bill does not permit unlisted customer information, including silent number information, to be published in public number directories or used to conduct research. Criminal sanctions will apply for unauthorised secondary disclosure and use of IPND data, and for breaches of conditions of authorisations issued under the IPND scheme. The purpose of providing access to the IPND for the production of public number directories is to permit competition in the production of public number directories. Public number directory producers will continue to provide directory products in competition with Sensis and others, and the bill does not change that.

The government’s strategy in developing legislation has always been to ensure that we listen to the views of industry and the community. ACMA has undertaken exhaustive consultations on the issues addressed by this bill, and the government believe that the bill is a robust and effective response to the problem at hand.

I thank senators for their support of the bill. I listened carefully to Senator Stott Despoja’s suggestions and criticisms, and I am grateful for her overall support for this important piece of legislation. I probably have just a little bit of time to deal with her point about whether there are any unintended consequences or any anticompetitive consequences of this particular scheme. That is probably all I will be able to deal with today. I intend to disparage or otherwise not deal appropriately with Senator Stott Despoja’s suggestions. Of course, where appropriate, the government continue to look at whether or not there is any way in which we can improve our responses through all of our legislation, and this bill is no exception. But this particular bill is not about Sensis; it is actually about the IPND.

Sensis as a telecommunications contractor is subject to the primary disclosure provisions in part 13 of the Telecommunications Act. Part 13 of the act includes criminal offences and penalties for unauthorised disclosure and use of personal information. The maximum penalty is two years imprisonment for an individual or a pecuniary penalty of $13,200 for an individual, or a pecuniary penalty of $66,000 for a body corporate. The bill does not alter the strong controls on Sensis under the act. For Sensis to disclose customer data legally, it must do so under an existing exemption under part 13 of the act. Sensis does not obtain directory information from the IPND; rather, it enters into commercial contracts directly with other carriers for the provision of this information. Other parties could, for example, both pre and post passage of the bill, seek to enter into similar arrangements should they wish to compete with Sensis. As such, the bill does not prevent businesses developing and marketing competing directory products using information sourced directly from carriers.

Further to Senator Stott Despoja’s point, I can inform the Senate that advice I have received from the ACCC is that it has received no evidence to support claims of anticompetitive conduct by Sensis in the provision of directory services. Moreover, the ACCC has powers under the Trade Practices Act to effectively deal with such behaviour should it occur in the future.

In conclusion, the government take the view that this bill is an appropriate and measured response that significantly improves the Telecommunications Act; it is obviously an improvement on the current arrangements. Once again I record my thanks to the Senate for their support for this bill on a non-controversial basis and I commend the bill to the Senate.

Question agreed to.
Bill read a second time.

Third Reading
Bill passed through its remaining stages without amendment or debate.

Sitting suspended from 1.53 pm to 2.00 pm

QUESTIONS WITHOUT NOTICE
Black Hawk Helicopter Accident

Senator CHRIS EVANS (2.00 pm)—My question is directed to Senator Minchin, the Minister representing the Prime Minister. In so doing, I express on behalf of all Labor senators our distress and regret at the tragic crash of the Black Hawk helicopter on the HMAS *Kanimbla* yesterday. We extend our deepest sympathies to those involved, all other members of the Australian Defence Force and, of course, the families of the deceased soldier and the SAS trooper still missing. Can the minister inform the Senate of the latest developments, the welfare of the injured troops and the progress in the search for the missing trooper?

Senator MINCHIN—I thank Senator Evans for that very important question. The government, of course, joins with the opposition, and, I am sure, the entire Senate, in expressing our sadness at what has been a tragic accident. As Senator Evans noted, an Australian Army Black Hawk helicopter conducting a routine training flight crashed yesterday afternoon while attempting to land on the HMAS *Kanimbla*. The pilot regrettably lost his life and, as Senator Evans noted, another serviceman, an SAS trooper, is missing. I am sure that I speak for all senators in extending our deepest sympathies to the family of the pilot. We also feel for the family of the SAS trooper, desperately waiting for news of his whereabouts. An Orion P3C aircraft has been deployed to assist with an intensive search for him. Seven of the other Army personnel sustained minor injuries, but we can all be thankful that they have not been more seriously hurt. We certainly wish them a very speedy recovery. The deceased pilot and seven of those involved in this accident are being repatriated to Noumea by the HMAS *Newcastle* where they will be picked up by a C130 for return to Australia by tomorrow afternoon. I assure the Senate that they are being escorted at all times.

There will, of course, be an inquiry into the causes of the accident in the hope that we can minimise the risks for any future operations. The investigation of the accident has commenced. The HMAS *Newcastle* will pick up a specialised accident investigation team in Noumea and return to Fiji waters. The Chief of the Defence Force has indicated that the feasibility of recovering the helicopter is being investigated, but notes that the helicopter appears to be in waters around 3,000 metres deep. The Black Hawk is a tried and tested helicopter. It is in use in 25 countries and it has been in service in Australia for some 18 years, including in the maritime environment. As the CDF has said, we have full confidence in the protection and survivability that it provides our crews.

The Defence Community Organisation is focused on supporting the families of those personnel affected by this accident. Additional support is being provided to those aboard the HMAS *Kanimbla* and their parent units. Despite this tragedy, our defence forces remain ready and able to assist Australians in Fiji, if that contingency arises. Our defence forces earn plaudits for their efforts around the globe, but I think Australians are particularly proud when they see our troops involved in humanitarian and peacekeeping efforts, whether they be in Timor, Aceh or, as in this case, the South Pacific. These servicemen stood ready to assist their fellow Australians in Fiji, if the need arose, so this terrible accident is a reminder that all service, whether it be in war or peace, has sig-
significant risks attached. Our defence personnel shoulder those risks, knowing their service is in the interests of the nation and of their fellow citizens and we thank them for it.

**Drought**

Senator FERRIS (2.04 pm)—My question is to Senator Kemp, the Minister representing the Minister for Human Services. Will the minister please update the Senate on measures being developed as part of the government’s drought assistance program to help communities at this time of severe drought?

Senator KEMP—I thank Senator Ferris for this very important question. Senator Ferris knows only too well that the current prolonged and severe drought is having a significant impact on many Australian communities. I noted in the chamber earlier this week some of the government’s drought assistance measures in response to the current drought, particularly for local communities. The government, as I mentioned, has committed more than $1.1 billion in drought assistance for farmers and farming communities in the last two months alone. This is in addition to the $1.2 billion that the Australian government has already spent on drought assistance measures to date. This brings the government’s total package of measures to help communities and individuals through this difficult time to more than $2 billion.

The Department of Human Services, through its agencies Centrelink and Medicare, has an important role in ensuring farming communities have access to government services and assistance. For the last three weeks, a drought bus has been making its way through regional Australia, providing a link between farmers and the relevant support services, including counselling staff. I am pleased to report to the Senate that rural communities have warmly embraced this service. Specialist rural support staff on the bus have been on hand to issue exceptional circumstances certificates on the spot. They can also provide farmers with the information that they need to apply for assistance and they can even help fill out the paperwork.

The feedback on the drought bus has been very encouraging. It is obviously providing an important service. More than 80 per cent of those who have spoken with staff from the drought bus have never previously approached the government for drought assistance. In fact, I am advised that more than 580 farmers have signed up for assistance for the first time. This is why the Minister for Human Services, Joe Hockey, and the Minister for Agriculture, Fisheries and Forestry, Peter McGauran, today announced the extension of the drought bus program. Two new drought buses will join the existing mobile service unit, making their way through western New South Wales, South Australia and Queensland as of next week. The government’s drought bus program proved that there is an obvious need for this kind of service and the two extra vehicles will ensure that we are able to provide drought assistance and other support services to those who need it most. As well as general drought assistance advice, the drought bus offers counselling services for farming families struggling to cope with the emotional impact of the drought.

People in rural communities will also have access to Medicare staff, who can assist with non-cash transactions such as Medicare claims, enrolling people for Medicare or updating their personal details. People within these communities have also been able to speak one on one with rural service officers and financial information service officers. The first drought bus, I am advised, has travelled more than 3,000 kilometres so far and the two new buses will travel this distance or
more. As the two buses will be signed up to the green fleet program, 219 trees will be planted to offset the 56 tonnes of greenhouse gas emissions annually.

We hope farming communities will continue to take advantage of the expertise being offered through the drought bus services. As we all know, the drought is having a very severe impact on our farmers and communities across Australia, and the Australian government and its agencies stand ready to provide the support that they need to help them get through this very difficult time.

Workplace Relations

Senator WONG (2.07 pm)—My question is to Senator Abetz, Minister representing the Minister for Employment and Workplace Relations. Can the minister confirm that under the government’s workplace laws, jury service provisions, such as make-up pay and leave entitlements, can be removed from employment contracts? Doesn’t this mean that employees who are called up for jury service face a severe financial penalty as their employer is not required to continue to pay them? Aren’t there already reports of jurors seeking to be discharged from hearings due to financial hardship? In particular, is the minister aware of the case in the New South Wales District Court where a juror had to be discharged on the second day of a three-week trial due to financial hardship, requiring a new jury to be assembled and meaning consequent delays to the hearing? Doesn’t this demonstrate that the government’s workplace laws not only undermine fairness in the workplace but also undermine the foundations of our justice system?

Senator ABETZ—The short answer to the honourable senator’s question is no. State and territory legislation prescribes a range of provisions for jury service fees. Work Choices does not prevent state or territory jury service laws from applying. Work Choices preserves all existing jury service entitlements in federal awards. These existing award provisions will continue to apply to existing and new employees covered by these awards. Many awards provide for employers—

Senator Wong interjecting—

The PRESIDENT—Order! Senator Wong!

Senator ABETZ—Mr President, the interjections from those opposite will not make up for the lack of numbers at their rallies today.

Opposition senators interjecting—

Senator ABETZ—I thought that would get them going!

Senator Kemp—Pretty poor effort, Penny!

The PRESIDENT—Order! The Senate will come to order! Order, Senator Kemp!

Senator ABETZ—Many awards provide for employers to make up the difference between the court attendance fees and the juror’s normal pay and provide scope for leave from work to attend court when required. In addition, jury service arrangements can also be negotiated between employers and employees through workplace agreements. For instance, latest data for current collective agreements reveal that half of all employees covered have negotiated jury service make-up payments. It is open to state and territory governments—and they are all Labor—to deal with any problems of availability for jury service—for example, by increasing attendance payments to jurors. So, as I set out earlier, the simple answer to the honourable senator’s question is no, and I have now outlined the reasons that the answer to her false assertion is no.

Senator WONG—I have a supplementary question. Can the minister confirm that under Work Choices an AWA can remove all
entitlements to jury service? Isn’t it the case that the removal of these entitlements also undermines the job security of jurors? Isn’t this why at least one juror has already been sacked as a consequence of their absence from work due to their involvement in a long trial? Does the minister seriously think that employees being sacked for undertaking their lawful duty as citizens is a demonstration of what he said yesterday was the ‘wonderful impact’ of the government’s workplace laws?

Senator ABETZ—I am delighted that the honourable senator does listen to some of my answers and I agree with her that Work Choices has been wonderful for the workers of Australia. What I invite her to do now is to listen to my last answer, and she will then get the answer that she is seeking.

Senator Wong—You know you are wrong.

Senator ABETZ—I correct myself; she is not seeking that answer. She is not seeking that answer because she wants to continue to peddle the mistruths that she and the Australian Labor Party have absolutely set their minds on—to misrepresent that which has now delivered Australians over 200,000 new jobs and higher wages.

Workplace Relations

Senator BARNETT (2.13 pm)—My question is to the Minister representing the Minister for Employment and Workplace Relations, the Hon. Senator Eric Abetz. My question is about a very important matter: Work Choices. The question to the minister is: what evidence is there with respect to the effects of Work Choices on jobs, wages, productivity and the level of industrial disputes in this country? How does this compare to the claims made by the Labor Party and the union movement with respect to the effects of Work Choices? Finally, if he wishes to share a comment on today’s rally that would also be of interest.

Senator ABETZ—I thank Senator Barnett for his very important question. The facts are clear. The evidence is in: Work Choices is undeniably good for Australian workers and for their families. Let us look at the evidence—the undisputed evidence.

Senator Lundy—It doesn’t matter how long you say it; it doesn’t make it true.

The PRESIDENT—Order! Senator Lundy! Senator Lundy, come to order!

The PRESIDENT—Order! Senator Lundy, I asked you to come to order.

Senator ABETZ—What they do not want to hear is that, under Work Choices, employment is up, unemployment is down—it is at an historic 4.6 per cent low—wages are up 16.5 per cent, industrial disputes are at the lowest level since records were kept in this country and, in the last year, productivity has increased by 2.2 per cent. This is the complete opposite of that which was so falsely prophesied by Labor and the union movement. So it is little wonder that the Labor-union scare campaign against Work Choices has stalled, just like Mr Beazley’s leadership has stalled.

Today, in a desperate attempt to confect community concern, the unions, the Greens and Labor organised what they claimed would be mass rallies. Like Senator Brown, they overestimated their support before the event and, when confronted with the actual results, with egg all over their face, they falsely went about trying to deny the expectations they had set. Even with a free Jimmy Barnes concert they could not fill the MCG. Let me say, as an aside, that it is a sad day when the man who originally performed this country’s classic song Working Class Man is corralled into campaigning against the fun-
damental right of all Australians to have a job.

So why the low turnout? According to the opposition spokesman, Mr Smith, it was because—the trains were not running on time in Melbourne. Come on! What a lame excuse. You don’t believe that yourselves. So what was the excuse in Canberra? They do not have trains in Canberra, so guess what the excuse was: the buses were not running on time in Canberra. What were Senators Hutchins and Sterle, the trade workers union operatives in the Senate, doing? I wonder what they were up to. Possibly they were too busy undermining Mr Beazley.

I tell those opposite that it was not the workers who missed the bus; it was the Labor Party and the trade union movement who missed the bus. The workers were on the bus but, instead of getting off at silly rallies, they were getting off where all the new job opportunities have been created in this country. They are getting new jobs, they are getting AWAs and they are getting higher wages. The workers of Australia know that Mr Howard is their true friend because his actions, in creating jobs and higher wages, speak so much louder and more effectively than the empty rhetoric of those opposite and the trade union movement.

Workplace Relations

Senator FORSHAW (2.17 pm)—My question is directed to Senator Abetz, the Minister representing the Minister for Employment and Workplace Relations.

Senator Ian Macdonald—Another doro-thy.

Senator FORSHAW—Dorothy is a dino-saur like you, isn’t she? Can the minister confirm reports that the National Water Commissioner, Mr Peter Corish, is under investigation for failing to lodge Australian workplace agreements made with his employees? Is it true that Mr Corish’s failure to properly register the AWAs was only discovered after one employee, Mr Brett Goodwin, complained to the Office of Workplace Services about underpayment of wages and was told that the agreement he had signed was never officially lodged? Is it also the case that Mr Goodwin is claiming lost wages of $71,000 while employed by Mr Corish under his phantom AWA? I ask the minister: what penalties apply to employers who fail to lodge agreements in the manner required under workplace law and what message does it send to other employers when government officials do not understand their obligations under workplace law?

Senator ABETZ—I have been advised that the Office of Workplace Services is investigating Corish Farms Pty Ltd in relation to the claims reported in today’s press. It is important to let the investigation run its course before making any public comment on OWS deliberations or findings. However, I would like to make two important points. The first is that the Workplace Relations Act requires employers to lodge finalised AWAs with the Office of the Employment Advocate within seven days. Employers that do not fulfil this requirement risk significant penalties. Secondly, OWS investigations into Corish Farms emphasise that it is operating as an independent agency—an independent agency that Mr Beazley called ‘snivelling little liars’, if I recall. It operates free of the political influence claimed by certain members of the opposition and the ACTU.

I was asked about the importance of government officials abiding by workplace laws. I thank the senator for that. I think it is very important, and that is why it was such a disgrace that the first member of parliament to fall foul of Labor’s unfair dismissal laws was none other than a Labor member of this parliament, the former member Con Sciacca. If you want to dredge up these things, be my guest. What I do know is that the Office of
Workplace Services is investigating this matter properly and appropriately and people can have confidence in the way it operates.

I also heard a snide interjection from those opposite about the importance of those that may be endorsed some time in the future abiding by the industrial laws of this country. That interjection came from Senator Kerry O’Brien. If that is so important, the Labor Party will now—in my home state of Tasmania disendorse Kevin Harkins, the Labor candidate for Franklin, who was mentioned so often in the Cole commission of inquiry into the rorts in the building industry. If that is the standard that the Australian Labor Party are setting, I invite them to disendorse Kevin Harkins by close of business tonight.

Senator FORSHAW—Mr President, I ask a supplementary question. I thank the minister for his answer but I note that he refused to comment on Mr Corish’s AWA, even though yesterday he was claiming that AWAs are superior and people on them get paid higher wages. Is the minister aware of comments by Mr Goodwin’s wife, Ms Kylie Schipper, that after the Office of Workplace Services was contacted she and her husband realised that the AWA with Corish ‘wasn’t worth the paper it was written on’? Isn’t Ms Schipper right, Minister, when she says, ‘If Mr Corish can’t get it right you have to wonder how many businesses out there are looking after their workers properly’?

Senator ABETZ—I am delighted that Senator Forshaw was finally able to get up the wind to get out all of his supplementary question. In relation to AWAs, I simply say this: we as a government believe that AWAs are very effective and that is why so many Australian workers are signing up to them. The statistics are quite clear. The statistics are based only on those that are actually lodged in the proper legal way. If the allegation here is that it was never lodged and it never found its way into the system, then therefore its legality will undoubtedly be questioned. But I do not want to go there because I am not sure what the investigation will reveal. But the allegations as they have been made publicly would suggest that it is not the sort of AWA that would be lawful under our legislation, which gives confidence to the workers of this country that our regime is robust.

Skilled Migration

Senator BERNARDI (2.23 pm)—My question is to the Minister for Immigration and Multicultural Affairs, Senator Amanda Vanstone. Will the minister advise the Senate whether there are any signs of an increase in the use of temporary skilled migration by state and territory governments? Will the minister also advise the Senate of the consequences of not having an effective program to allow temporary skilled workers into Australia? Is the minister aware of any alternative policies?

Senator VANSTONE—I thank Senator Bernardi for a very sensible question. He clearly recognises the value of the immigration program to the Australian community and in particular the use of temporary skilled migration. Yes is the simple answer in relation to Senator Bernardi’s question. There is very strong support for the 457 visa. There is no better indication of that than the use of the visa by state governments. I have said in this place before that state governments use around nine per cent to 10 per cent of the 457 visas around Australia. When I went to have a look at the figures for the first quarter of this financial year, it was interesting to see that the state governments—some of whom lend support to my colleagues opposite in being critical of this visa—have been using it a bit more.
I thought that I would have a look at Queensland. What do you reckon has happened up there in the Labor state of Queensland? In the first quarter of this year, their usage went from 9.8 per cent to a whopping 17 per cent. This visa must be terrible! The Queensland government cannot get enough of it. And yet their colleagues opposite come in and criticise it. In my own state of South Australia, the usage went from 2.4 per cent in the previous year up to 11 per cent. That is a 300 per cent or a 400 per cent increase. Even in the ACT, that bastion of liberalism, it went from a mere 17 per cent up to 21 per cent. So, yes, Senator Bernardi, there has been an increase in the use of this visa.

You asked me, Senator, what the consequences of not having an effective migration program might be. I have made this point before: if you do not have an effective migration program and you have skills shortages, there will be a wages breakout. Senators on this side will remember senators on that side complaining about that. ‘You’ve let the cat out of the bag! Shock! Horror!’ said Senator Wong—following, I note, a line that she got from Stephen Smith; she did not think of it originally. It is such an original line: ‘The cat’s out of the bag.’ Skilled migration will help keep wages down. I have sat here and I have dutifully put up with the sledging from the other side on this matter. I put up with the attacks because I do not really mind. It does not really worry me. If they want to display their ignorance, that is okay.

I thought that I would have another look at other things people have said. It is important to note that the Prime Minister of the United Kingdom understands this issue. He had to explain it to his trade union, too. What he pointed out was:

The last two decades have seen a transformation of what is happening in our world economy. You should remember in everything you do that fairness at work starts with the chance of a job in the first place …

This is Mr Blair talking to the unions. He went on and said, as quoted by Matt Price in his column in July of this year:

You have a responsibility to people who are unemployed as well as employed …

Mr Blair might come and join us. He would be welcome. Labor have never understood this. They have always wanted to put prices up. I have a little bit more to say about this, Senator Bernardi. I have something more to say about the consequences of not having a proper skilled migration policy.

Honourable senators interjecting—

The PRESIDENT—Order! There is too much noise in the chamber. Senator Vanstone, your time has expired.

Senator BERNARDI—Mr President, I ask a supplementary question. I was wondering if the minister would care to elaborate a little further about the consequences of not having a skilled migration program.

Senator VANSTONE—I thank Senator Bernardi for that question, because there are consequences if you do not have a skilled migration program. There are consequences if you say, ‘We’ve got a skills shortage, so we’ll put everybody’s wages up.’ I was surprised to find that even Mr Beazley agrees. They come in here and say: ‘That’s terrible—you’re using migration to suppress wages.’ What a terrible thing to use skilled migration to keep wages at a reasonable
point! I quote from Mr Beazley’s media statement of 10 may this year:

Industry groups and Labor agree the Australian economy desperately needs more skilled workers to relieve upward pressure on home loan interest rates.

So, if you want to know why the Labor Party’s polling is down, it is because you cannot run two arguments at one time. What you need to learn is to do what this government does. You need to learn what the Prime Minister does—that is, say what you think, argue your case, stick to your guns—(Time expired)

Workplace Relations

Senator FIELDING (2.30 pm)—My question is to the Minister representing the Minister for Employment and Workplace Relations, Senator Abetz. Australian families want to feel financially safe and secure. Is the minister aware that, except for Western Australia, the latest statistics show that average weekly earnings are not keeping up with inflation? ABN AMRO’s chief economist is reported as saying this is because Work Choices has been ‘reducing the bargaining power of workers’. Unemployment is low, so workers should be in a good bargaining position. The government says that, since Work Choices was implemented, wages have been going up. How does the government reconcile this rhetoric with the statistics that show average weekly earnings are not keeping up with inflation? What does the minister have to say to Australian families whose wages have gone backwards?

Senator ABETZ—With great respect to the honourable senator, I do not agree with his figures or his calculations. The simple fact is that, since the Howard government has come to have its hands on the levers of the economy, Australian workers have enjoyed a real wage increase of 16.5 per cent. That of course is in stark contradistinction from that which they got under Labor—13 years of Labor got them a 0.2 increase in real wages. Since Work Choices came into being on 27 March we have seen a huge increase in employment, and there is nobody suggesting that that huge increase has come from anything other than the change in the climate as a result of Work Choices. So, when the honourable senator refers to security for families, giving them a job is the best form of security any government can provide to its citizens. Since Work Choices, when unemployment was slightly above five per cent, we have seen it come down to 4.6 per cent. So we have seen a very real benefit to the families of Australia through Work Choices.

The indications are that, in the past 12 months, Australian workers have in fact provided a 2.2 per cent increase in the productivity of this country. The last statistics indicated that the real wage increases over the past 12 months were about 4.1 per cent, if my memory serves me correctly. I see some senators nodding, so I hope that is correct. If it is not, I am more than willing to come in and correct that figure. Suffice to say that Australian workers are undeniably knowing the benefits of Work Choices and the Howard government’s method of looking after the economy and workers.

We have seen industrial disputation at the lowest level ever. If you honestly thought workers were worse off today than they were before, can somebody explain to me, and all the other Australian people, why industrial disputation is at the lowest level since records were kept? I would have thought that statistic was a very important statistic in indicating worker satisfaction with the current industrial regime, with the wages that they are getting and with the job opportunities that they receive courtesy of the tough decisions that we as the Howard government have taken.
Senator FIELDING—Mr President, I ask a supplementary question. The statistics being used in this supplementary question are from the Australian Bureau of Statistics. Is the minister aware that in the last quarter, apart from wages not keeping pace with inflation, average weekly earnings have actually fallen in Tasmania by 3.2 per cent and in Victoria by 1.4 per cent? Minister, won’t Australian workers and their families have less money in their pockets this Christmas care of Work Choices?

Senator ABETZ—The simple answer is no, because there are over 200,000 people who will actually have jobs this Christmas who did not have jobs last Christmas. So you have well over 200,000 families this Christmas actually enjoying a wage.

In relation to the statistics in Tasmania, I daresay that could well be an indication of the consequences of the trade union movement and that state Labor government working together to keep people out of the federal system and under these old, decaying state awards. Undoubtedly, what I would suggest to Senator Fielding is that, if he is getting those sorts of statistics, he asks the state Labor government in Tasmania why they are holding wages back from the workers of Tasmania rather than freeing up the system so that people can enjoy the benefits of our industrial relations reforms.

Energy

Senator PAYNE (2.36 pm)—My question is to the Minister for the Environment and Heritage, Senator Campbell. Will the minister advise the Senate of the role that coal will play in the world’s future energy supply and the need for clean coal technology? Can the minister also advise the Senate of any alternative approaches of which he is aware?

Senator IAN CAMPBELL—It is an incredibly important issue because we know that coal will, if we read the International Energy Agency reports on this, play an increasingly larger role in providing the world’s energy needs and Australia’s energy needs in the coming 25 years. In fact, their latest report shows that coal production in the world last year was just under five billion tonnes and that it is actually on track in the next 20 years to rise to around 7½ billion tonnes, in answer to Senator Payne’s question.

This shows that if you are serious about addressing climate change, which we absolutely must be as a global community and as a nation, you cannot ignore coal. We know that mankind has pumped about one trillion tonnes of carbon dioxide into the atmosphere over the last 150 years. We know that that has had a contribution to warming the temperatures across the globe by around 0.7 of a degree, and roughly doubled that at the poles, has warmed our oceans and will have potentially very dangerous impacts on the climate, on mankind and on our ecosystems, so it is absolutely vital that we address that but that we address it in a practical and sensible way.

Senator Payne has asked about alternative approaches, but if you listen to the Australian Labor Party and you see the way they behave towards coal, you will know that the Labor Party controlled Newcastle City Council voted to ban any new coalmines in the Hunter. In a letter to me, Kelly Hoare, a Labor Party member of the House of Representatives, has described the mining industry in Newcastle as the home of a rapacious coal-mining industry. Senators opposite voted for a Greens motion in support of closing down the Isaac Plains and Sonoma coalmines in Queensland and the Waverley City Council in Sydney—the Labor-Green dominated council, all part of Mr Beazley’s Labor Party—voted in August 2006 to stop the Anvil mine. And this afternoon or tomorrow morning the Labor Party and the Greens will
combine to put an Anvil Hill amendment into the environment protection law. That is because of Justice Pain's decision to stop the approval of the Anvil coalmine because they had not assessed the impact of the greenhouse gas emissions coming from burning coal on the opposite side of the world.

Luckily, in the debate today Senator Milne belled the cat on the Labor party by saying that we need to assess every project in Australia for its greenhouse impact. Why would you do that if you did not want to stop the coalmines? The reason you assess it for its greenhouse impact is to stop it, because Senator Milne does want to stop it. The Labor Party are dog-whistling to the Greens by saying, 'Oh no, we want to have a greenhouse trigger in the EPBC; we want to have the Anvil coalmine trigger in the EPBC; we want to ensure that a future Labor government can stop every coalmine in Australia by putting a provision into federal law to do so'—the anti-coal amendment—and Mr Beazley is absolutely silent on this. He is very happy for the coalminers who turned up at those abysmal rallies today with abysmal performances to have no assurance about the future of their jobs, because a federal Labor government, with the support of the Greens, would stop every coalmine in the country. Can I tell you what the impact of that would be? If you closed down every coalmine in Australia, there would only be a reduction of around 400 billion tonnes of coal in 20 years time. There will be a massive increase in the amount of coal used in the world. What we have to do is clean that coal, not close down the coalmines. *(Time expired)*

**Workplace Relations**

**Senator HOGG** (2.40 pm)—My question is to Senator Abetz, the Minister representing the Minister for Employment and Workplace Relations. Can the minister confirm that, under the government's workplace laws, the Commonwealth Bank has the choice to offer all new employees AWAs that scrap 46 existing conditions, including rostered days off, overtime pay, shift allowances, penalty rates and leave loading? Isn't it also the case that the employer has the choice of not offering any guarantee of a pay rise over the five-year life of the AWA to offset those lost conditions? Can the minister confirm that, under the government's workplace laws, new Commonwealth Bank employees only have the choice to accept the AWA or not get the job?

**Senator ABETZ**—You can tell that the Australian Labor Party are running out of questions, because I was asked an identical question on that yesterday. I will remind honourable senators opposite of what I informed them yesterday: that the Commonwealth Bank has in fact been offering AWAs—

**Senator Chris Evans**—Mr President, on a point of order: the minister has clearly misunderstood the question. It referred to new employees, so I suggest that he not read the answer to yesterday's question but try to answer the senator’s question, which referred to new employees.

**The PRESIDENT**—Minister, I ask you to return to the question and I remind you of it.

**Senator ABETZ**—I think the Labor Party are getting somewhat desperate with their points of order. I was hardly a few seconds into your answer. If you want to talk about AWAs with the Commonwealth Bank, it is important to put it into context that they have been offering AWAs since 1997—for a period of about nine years. Under AWAs, the Commonwealth Bank has said that staff on AWAs get a higher salary and that they also choose not to have overtime or rostered days or some of the other award based allowances. They are getting remuneration in place of some of the allowances they previ-
ously received. That is what Work Choices is about: it is about choices. So, as the Commonwealth Bank indicated yesterday, workers at the Commonwealth Bank can determine that they have the capacity to make that choice.

In the past, with the Australian Labor Party, when a person applied for a job the employee was told, ‘You sign up to the conditions of the award; take it or leave it.’ They never complained when an employer had the capacity to say that to a worker. But they hate it when the Commonwealth Bank and the worker sit down together and work out an Australian workplace agreement.

Opposition senators interjecting—

Senator ABETZ—That is something that those opposite do not want to hear about, and that is why we have this cacophony of interjections. No matter how much they interject, it will not make up for the appalling turnout, because the workers of Australia actually know what AWAs mean. The leader of the Labor Party’s state of Western Australia has the highest rate of take-up of AWAs in this country. Guess where the highest approval rating of AWAs in this country is? In Western Australia. So, as people are experiencing AWAs, as people see the benefits of AWAs, they are taking them up and the community is accepting them.

So, despite all the fear, all the hysteria, all the attempts by those opposite—even wearing their pathetic little lapel badges in question time today—to whip up some sort of community activity, the community stayed away in droves today because they do not believe the campaign, they do not believe what is being so mischievously peddled around the community. The 200,000 people that have got jobs as a result of Work Choices actually know the reality. And the mums and dads and brothers and sisters of those people know the reality, and that is why they support these changes.

Senator HOGG—Mr President, I ask a supplementary question. The minister failed to answer that part of my question which went to the issue of the employer not having to give a choice in offering a guarantee of a pay rise over the five-year life of the AWA to offset those lost conditions that I outlined in the first part of the question. In addition to any pay rise being at the discretion of the employer, under the Commonwealth Bank AWA, isn’t it true that paid parental leave is also a matter entirely for the employer to decide? Can the minister also confirm that the Commonwealth Bank employees the minister says are already on AWAs signed their agreements with the protection of the no disadvantage test? Hasn’t the government scrapped that protection for employees, opening the door to agreements that wipe out existing conditions and offer nothing in return?

Opposition senators—Yes.

Senator Chris Evans—The short answer is yes.

Senator ABETZ—No. The short answer is in fact no, because the no disadvantage test was replaced by the five guaranteed minima which we legislated for. We legislated basic minima. For the first time ever, workers have a legislative guarantee and protection, which they did not have before. It is a pathetic academic argument to try to say the no disadvantage test was removed. That is true but, as is always the case with the Labor Party, they only tell half the truth, because the other half of the equation is that we legislated minimum guarantees for workers to ensure that protection. That is why the workers of Australia support us and believe that the Howard government is the friend of the worker.
Oil for Food Program

Senator MURRAY (2.47 pm)—My question without notice is to the Leader of the Government in the Senate, the honourable Senator Nick Minchin. Senator Minchin, in your capacity as the Minister for Finance and the Minister representing the Prime Minister, do you agree that the result of both the Volcker report and the Cole report is that there is now a potential for AWB itself and its officers and directors to be subject to criminal and/or civil legal action, including class actions? Do you accept that, in the event that that occurred, there would be a danger that the assets of AWB and related entities could be subject to contingent risk? Is it wise for the government to continue in law to force wheat exporters to sell their product through a monopoly that may be the subject of such legal action? Does that not lay the government open to future claims for compensation if farmers are either not paid or only part-paid for their crop, are paid below the free world market price or are unable to export their crop?

Senator MINCHIN—With respect to the question of possible prosecutions, can I confirm that Commissioner Cole recommended the referral of possible breaches of the law identified in his findings to the appropriate authority for consideration of whether proceedings should be commenced. He recommended the establishment of a joint task force comprising the AFP, Victoria Police and ASIC to consider possible prosecutions in consultation with the Commonwealth DPP and the Victorian DPP. He recommended that administrative responsibility for the conduct of the task force should reside with the Commonwealth Attorney-General.

As recommended and as has been announced, the Commonwealth will establish such a task force to consider possible prosecutions in consultation with the DPP. The Prime Minister is writing to the Victorian Premier to invite the participation of the Victoria Police and the Victorian Director of Public Prosecutions in this process. It is our intention to introduce legislation and seek its passage in this sitting fortnight to facilitate access by the task force to the documents held by the Cole commission. Of course, we are not going to pre-empt the work of the enforcement and investigative agencies by talking about the substance of the matters being referred and in particular by summarising or paraphrasing the report, which may be misleading and may give rise to legal proceedings. So we have adopted the recommendations from Cole with respect to the investigation of possible prosecutions of individuals associated with the oil for food scandal as it is.

The separate question which the senator asks is in relation to the issue of whether the company, AWB, should in the light of all this retain its legislated monopoly over wheat exports. As Senator Murray knows, the Prime Minister has said quite clearly that, as a result of the Cole commission of inquiry, the status quo cannot any longer pertain and that the government will take to the coalition joint party room next Tuesday the government’s proposed approach to the way forward with respect to the marketing of Australia’s wheat and will announce the outcome of its deliberations in due course.

Senator MURRAY—Mr President, I ask a supplementary question. I thank the minister for his answer as far as it goes, but the issue I raise is really: is the government prepared to pay compensation, stand as guarantor or offer an indemnity, all at taxpayer cost, to possible claims of compensation? If it is not, the obvious consequence—surely the minister would accept—is that, on the precautionary principle, it would be more sensible to take the veto power from the AWB because it is in a classic conflict-of-interest
situation and because it is under threat of material legal action. If the government cannot produce legislation in the short term to do that, at least give the power of veto to the Treasurer. My question arising from that is: isn’t it better in the short and medium term that the Treasurer exercise final approval power for wheat export licences in the national interest on a case by case basis, particularly to assist my Western Australian wheat growers who need to move their crop and are unable to do so at present—

The PRESIDENT—Senator, this is a very long supplementary question.

Senator MURRAY—My question is: do you accept the immediacy of this problem and will you do something about it now?

Senator MINCHIN—The government is of course reminded not only by Senator Murray but also by other members of the coalition from Western Australia of the importance of the Western Australian wheat growers, and it is a matter of which we are very conscious. That is why, effectively within a week of the tabling of the Cole commission of inquiry report, the government will be taking to the coalition joint party room the proposed approach to the way forward with regard to wheat marketing, taking account of the very strong claims of Western Australian wheat farmers in respect of their particular position.

Australian Federal Police

Senator LUDWIG (2.52 pm)—My question is to Senator Ellison, the Minister for Justice and Customs. I refer the minister to the following comments made by the Prime Minister on Tuesday regarding the Cole commission of inquiry:

If we had wanted to cover up, do you know what we would have done? We would have sent this off to some kind of investigation by the Australian Federal Police.

Does the minister share the Prime Minister’s view that the Australian Federal Police is the place to send matters that you want covered up? If the minister agrees with the Prime Minister, can he indicate how many times the AFP has been used by the government in this way? Does this mean that the reason why the Australian Federal Police is investigating seven potential breaches of the Customs (Prohibited Imports) Regulations is that the government wants to cover them up?

Senator ELLISON—Senator Ludwig needs to get into context what the Prime Minister said the other day. What the Prime Minister said was that it was an appropriate thing to do to send the AWB issue off to the commission of inquiry. It is interesting that in the *Age* the other day it was reported that Jeffrey Meyer, the senior counsel to Mr Volcker, who started all this with the Volcker inquiry, said:

If there is a silver lining here, it is that Australia took this report very seriously.

The larger global scandal here is so many other countries failed to take any kind of action despite the fact that the Volcker commission exposed, and conclusively proved in many instances, illegal payments.

What the Prime Minister was saying was that when you have an issue such as the one we had with AWB, it necessitates a commission of inquiry and that that was an appropriate way to deal with the matter. That has been endorsed internationally, and I refer to no less than the comments of the senior counsel to Mr Volcker, who ran the Volcker inquiry, which started it all.

Senator Ludwig mentioned the Prime Minister’s comments in relation to the AFP. What he did not tell the Senate is that the Prime Minister said that the AFP does a very good job, a very thorough job, if I remember correctly. Certainly, matters which contravene the law are referred to the AFP. We do that regularly, both through me, as the Minis-
ter for Justice and Customs, and also through other avenues of referral. The Prime Minister was quite right when he was outlining the difference between a police investigation and a commission of inquiry. The commission of inquiry was the appropriate path to take in relation to the AWB matter. Matters of criminality, which may or may not be proved, may well be referred from that commission of inquiry, as is normal when you have a commission of inquiry. The Prime Minister certainly endorsed the very good work done by the Australian Federal Police, and so do I.

Senator LUDWIG—Mr President, I ask a supplementary question. Don’t Tuesday’s comments by the Prime Minister, and his poor choice of words in particular, risk tarnishing the Australian Federal Police and all of its dedicated officers? Will the minister now apologise on behalf of all of the government for the Prime Minister’s outrageous slur on the integrity of the Australian Federal Police and its officers?

Senator ELLISON—As I said, in the very answer that Senator Ludwig referred to, the Prime Minister acknowledged the very good work done by the Australian Federal Police, as do I. We all do. The Prime Minister certainly acknowledged that. There is no need for an apology at all. In fact, the Prime Minister praised the work of the AFP.

Security Industry

Senator JOHNSTON (2.56 pm)—My question is to the Minister for Justice and Customs, Senator Ellison. Will the minister inform the Senate of measures being taken by the Australian government to assist and enhance the private security industry?

Opposition senators interjecting—

Senator ELLISON—Despite the mirth of the opposition, this is a serious issue. It is one which the Australasian Police Ministers Council looked at recently. There have been some concerns over a period of time in relation to Australia’s private security industry. There is always the risk that organised crime can infiltrate private security, and Senator Johnston’s question is a very sound one. In relation to the recent security environment, COAG looked at this in February and referred the issue of reforming Australia’s private security industry to the Australasian Police Ministers Council.

I am pleased to say that a report which was commissioned by that body has now made 32 recommendations, which have been sent to all jurisdictions. They relate to a number of areas. The first recommendation is that jurisdictions provide nationally consistent training—and this is something I think the opposition would be interested in. It is certainly desirable that where we have private security guards carrying out a very important function we have consistent benchmarks across the country and we have consistent training requirements.

As well as that, one of the recommendations was to introduce a close associate requirement—that is, you look not only at any criminal record in relation to the person who is being employed in the security but also at any of those people with whom they associate and with whom they have a financial interest. This is extremely important when you are looking at the aspect of a possible infiltration by organised crime. It was also recommended that all jurisdictions require a 100-point test for identification for the issuing of a security licence. That is something that is required.

It was also recommended that there be mandatory fingerprinting at the time of application for the purpose of verifying identity. This is something which we as a country need to address, not only for the current environment in which we have a heightened security alert but also for the fact that you
have the risk, as I said, of organised crime targeting the private sector in the security industry. The report, as I understand it, is the first of its kind. It is comprehensive, and the Commonwealth government urges all state and territory governments to abide by and implement its 32 recommendations.

There certainly was support from the jurisdictions and the police ministers at the time, but I think that it now remains for those jurisdictions to implement in state and territory legislation the recommendations which have been made by this report. I might say that New South Wales, which carried the lead in this, did a very good job in relation to this inquiry. It indicates yet again the very good work you can do when you have a partnership in relation to security and law enforcement matters. This is something which is serious for Australia and which does require a whole-of-government approach. I want to endorse the vein in which this was approached by police ministers, but now what remains to be done is the implementation of these recommendations so that we can see reform in the private sector for the security industry. So it is a very important step forward.

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

QUESTIONS WITHOUT NOTICE: ADDITIONAL ANSWERS

Workplace Relations

Senator ABETZ (Tasmania—Minister for Fisheries, Forestry and Conservation) (3.00 pm)—I have some brief further information in answer to the question asked by Senator Hogg. I have been advised that, other than executives, for new employees with the Commonwealth Bank acceptance of an AWA is not a condition of employment and they may choose to be employed under the relevant certified agreement. In relation to the issue of parental leave, I am told that in the AWA the standard clause is: ‘After 12 months employment with us, if you become a parent then we will provide parental leave; this may include paid leave of up to 12 weeks’—and on it goes, so there is a provision for parental leave as well.

QUESTIONS WITHOUT NOTICE: TAKE NOTE OF ANSWERS

Workplace Relations

Senator WONG (South Australia) (3.01 pm)—I move:

That the Senate take note of answers given by the Minister for Fisheries, Forestry and Conservation (Senator Abetz) to questions without notice asked by Senators Wong, Forshaw and Hogg today relating to employment and workplace agreements.

Today we had Senator Abetz spruiking yet again in response to opposition questions what he regards as the ‘wonderful impact of the government’s workplace laws’. The wonderful impact includes an employer being able to give you a take it or leave it contract. The wonderful impact includes jurors being able to be sacked for doing jury service because they have lost their jury service leave and people not being able to serve on juries because they are not entitled anymore to make-up pay. The wonderful impact includes employees being offered AWAs at the Commonwealth Bank which remove no less than 46 entitlements they would otherwise have got, including penalty rates, overtime rates, rostered days off and leave loading. These are some of the wonderful impacts of the government’s workplace laws. The fact is that Senator Abetz is completely unable in his answers to explain why this is good for Australian families.

Why is it good for Australian families to be in the situation where they are told, ‘You can have this job but only if you sign up to an AWA which removes 46 conditions, in-
cluding your overtime rates, your penalty rates and your leave loading’? Why is it good for Australian families to be in a situation such as that of Mr Goodwin, an employee of Mr Corish, where he worked under an AWA which apparently was not even registered and under which he is claiming around about $70,000 of underpayment? This is hardly an advertisement for the wonderful impact of the government’s WorkChoices laws.

The minister made this point. He said, ‘People have a choice.’ The reality is that if you go and talk to most employees they understand what sort of choice they have. They understand what it means. They know what happens if their employer says to them: ‘Look, I’m offering you this job on the basis of this contract. It doesn’t have leave loading, penalty rates, overtime rates and, by the way, because I’ve got under 100 employees, you actually do not get any access to unfair dismissal rights, but that’s the job, take it or leave it.’ That is the sort of choice that the Howard government’s workplace laws give. That is the sort of choice they give Australian workers and their families. Here is a contract which takes away all your overtime rates, penalty rates, rostered days off and leave loading. It does not have an entitlement to paid maternity leave or family friendly workplace provisions—none of those things—but you have to sign it if you want the job. Perhaps the worst thing is that they talk about choice but under their laws all those things can be taken away without anything being given back.

This is the big difference between now and what the minister was spruiking when he talked about the history of the Commonwealth Bank and other employers having previously offered AWAs: previously at least employers actually had to give something back. That is pretty logical: you take something away, you have to give something back. They no longer have to do that. Employees can be handed a contract that says, ‘We take away all these longstanding historic entitlements and we don’t have to give you one cent extra.’ I think one cent was what they got, or was it two cents—

Senator Ludwig—Two cents.

Senator WONG—at Spotlight. Yes, that was the princely sum Spotlight employees got—we remember that—two cents in return for a whole range of penalty rates and other entitlements. But the reality is that under the government’s workplace laws you can be told to give up all of these entitlements without any requirement for the employer to give you a single cent extra. So the wonderful impact of these workplace laws that Senator Abetz so proudly and triumphantly espouses is that you and your family can be told: ‘You give up your penalty rates, you give up your overtime rates, you give up your shift loadings, you give up your leave loadings, you give up your rostered days off and you know what? I, the employer, do not have to give you a cent extra.’

This is what the government are putting on the Australian people. This is the choice they are giving people. The choice is take it or leave it and get nothing in return. It is choice all on one side and you can spruik it as much as you like, but out there people understand what is happening. They understand what is happening to their kids and they understand what is happening in their own workplaces because they know that when it comes down to it people are not going to sit down with them, as Senator Abetz says the Commonwealth Bank will, and they will not be able to negotiate an additional payment. (Time expired)

Senator Barnett (Tasmania) (3.06 pm)—It is a pleasure to take note of the answers from Senator Eric Abetz, the Minister representing the Minister for Employment and Workplace Relations, and to respond to
Senator Wong and the other opposition senators. The opposition made two simple claims about Work Choices. They said that jobs would decrease and that wages would be cut as a result of Work Choices. It is not rocket science. They ran a campaign, publicly and privately, using union money. Since 1996, $47 million of union money has been provided to and expended by the Labor Party, and they have been promised another $20 million in the lead-up to the next election. Of course, he who pays the piper calls the tune. We know who your masters are. You are obviously doing the bidding of the union movement. We know it. It is on the public record.

The opposition made those claims about Work Choices in this parliament and outside. And what happened? Let us have a look at what has happened as a result of Work Choices coming in on 27 March this year. There has been a record increase in jobs. We have the lowest unemployment in 30 years, at 4.6 per cent. We have 165,000 new jobs since Work Choices came in. So the number of jobs has not gone down. Why don’t the opposition come in here and admit their mistake and say, ‘I’m sorry for misleading the Australian public,’ and apologise to Australians? In particular, they should apologise to those Australians who have new jobs—those 165,000 people, 129,000 of whom have full-time jobs—and say, ‘I’m sorry; I was wrong.’ You got it wrong. With respect to wages, you said wages would go down. What has happened since Work Choices and what has happened under the Howard government since 1996? I will tell you what has happened: wages have gone up in real terms by 16.5 per cent.

Senator Marshall interjecting—

Senator Barnett—What happened under 13 years of Labor? Wages went down—d-o-w-n—by 0.2 per cent. The record speaks for itself, Senator Marshall, as you know full well. Let us talk about the facts. I am very happy to have a debate, an argument and a discussion based on the facts. What we do not want to happen is to have a debate based on misrepresentation and untruth—and that is exactly what has been happening as a result of this union-Labor campaign.

What about industrial disputes? Goodness me; according to the Labor Party and the union movement, there was going to be an absolute balls-up as a result of Work Choices. But industrial disputes are now at the lowest level since records came into being. The rate today is 33 times lower than the highest rate recorded under Labor. Who was the employment minister under Labor when those figures were alive? It was Mr Kim Beazley, the Leader of the Opposition. He was minister for employment at the time. Not only do we have that low rate; productivity has also gone up.

What we are talking about here is putting food on the table of working men and women and their families across this country. The Labor Party are trying to deny that. They should accept it, because that is exactly what is happening. What do the Labor Party want to do about industrial relations? They want to deny people choice. They now have a policy, in black and white, which says that they will abolish Australian workplace agreements at a time when people are flocking to have agreements between employers and employees. In my home state of Tasmania we have 24,000 live AWAs, and we have had over one million signed since they came into being under this Howard government.

You want to deny those Australians—the men and women who are earning more money on AWAs—at the next election. We will see. The people of Australia will have a choice. They will have a choice between this
government and a political party that wants to cut wages. You want to cut the wages of those on AWAs and send them back to the bad old days. You have got just one way to go, and that is the award system, or the collective agreement. What is wrong with choice? If people want to choose to be on an AWA, so be it. Sadly, the rallies today have not delivered for you. The numbers have not been delivered. (Time expired)

Senator MARSHALL (Victoria) (3.11 pm)—After that contribution, I am not surprised that this government is really struggling with the issue of industrial relations, because there was only one thing that Senator Barnett was right about—and that is that the Labor Party will abolish AWAs. We do not make any apology for that, because AWAs are unfair. Under this government’s legislation, there is no choice. Work Choices in itself is a lie. The name is a lie because there is no choice. The only choice that is ever given to people under an AWA is: take it or leave it. People do not have the ability to sit down and negotiate with large or even small employers on an equal basis. It is based on a lie. It is a false premise. The employer always has the superior bargaining position and the bargaining power, and employees as individuals do not have the same ability to negotiate reasonable wage outcomes.

The cracks are showing. Senator Barnett really should have updated his own figures before he started talking about wages. Just before I get on to that, the main mantra the government now throws at us is that Work Choices has created jobs. Let me tell the chamber the problem the government has with that argument. The first month after Work Choices, employment actually reduced by 3,000. There has been growth over the period of time that Work Choices has been in place, but we are in a growing economy. Just understand the logic of this: this government would have us believe that, since the introduction of Work Choices, every single new job is a result of Work Choices. Where did the jobs come from before Work Choices? You cannot have it both ways.

We have been in a growing economy for a 15-year period—and what happens in a growing economy? Jobs increase. Jobs will fluctuate up and down, the statistics will bounce around and we will see that Work Choices will actually cost jobs at the end of the day. These are not statistics that any of us can rely on at the moment, because the statistics over a period of time are not there. But for this government to say that every job that has been created since Work Choices is a result of Work Choices is simply dishonest. It is a dishonest argument.

The other thing the government says is that there has been wages growth. What did we see in the last ABS statistics? We actually saw real wages reducing. And where do we see them reducing? We see them reducing in some of the most exploited sectors. We see wages being reduced in the retail and hospitality industries. What have we seen over the last 12 months? With the underlying inflation rate of 3.9 per cent, we saw retail wages grow by only 2.8 per cent—much less than the inflation rate. The real value of those wages is now going backwards. And what did we see in the hospitality industry? With the inflation rate of 3.9 per cent, hospitality wages grew by only 2.4 per cent—again, a reduction in real terms in wages.

Do you know when the biggest reduction has been? It has been in the last two quarters since Work Choices was introduced. We are now seeing people in the hospitality and retail industries who have no bargaining power having their wages driven down. And why wouldn’t that happen? We know from the sample of AWAs taken since the introduction of Work Choices that every AWA has re-
moved at least one protected award condition—or so-called protected award condition.

Senator Ferris—Stop shouting!

Senator MARSHALL—I have to shout to make you people understand what you are doing to the wages and conditions of ordinary working Australians. Sixty-four per cent of every AWA entered into since the introduction of Work Choices has removed leave loadings; 63 per cent removed all penalty rates; 52 per cent removed shiftwork loadings; 41 per cent did not even contain gazetted public holidays; 31 per cent modified overtime loadings; 29 per cent modified rest breaks; 27 per cent modified public holiday payments; 16 per cent of every AWA excluded every single award condition—every award condition gone; and 22 per cent of AWAs provided for no wage increase during the life of the AWA. This government says that it is driving wages up, when the facts clearly show that AWAs are reducing conditions and reducing wages for ordinary Australians. The ABS statistics on wages are starting to demonstrate that. (Time expired)

Senator FIERRAVANTI-WELLS (New South Wales) (3.16 pm)—It is very interesting to hear you, Senator Marshall, talking about dishonesty, because the only dishonesty that has been heard is the dishonesty that is coming from state Labor, the union movement and from those on the other side continuing their scare campaign of false, misleading and hysterical claims that Australia is changed forever—fertility rates will decline; divorce will increase; children will not be able to go on holidays; weekends will be lost; BBQs will be gone; families will be set against families; and friends will be set against friends. Seven months into the operation of Work Choices, this doomsaying from the Labor Party has been exposed for what it is, and that is pure hysteria.

Senator Ferris—Fraud.

Senator FIERRAVANTI-WELLS—that is right, Senator Ferris: fraud. Kim Beazley and his union bosses are about special rights for unions, not about individual rights or the right to get ahead. Australians want a workplace relations system that is about incentive, about being able to have a go, about getting ahead, about giving people the opportunity to earn more and about being able to determine your future. We want incentive built into the wages system so that you can be rewarded for what you are worth and the work that you do. The government has put into place a

**Senator Marshall interjecting—**

Senator FIERRAVANTI-WELLS—Yes, it has fallen, Senator Marshall, to a 30-year low of 4.6 per cent, and wages have risen strongly. The Australian Fair Pay Commission increased the minimum wage by $27 a week. The ABS labour price index publication reported that total rates of pay, excluding bonuses, increased by 1.1 per cent in the June quarter of 2006 and by 4.1 per cent over the year to the June quarter. Strikes and industrial disputation fell to a record low in the June 2006 quarter—just over 3.1 working days lost per thousand employees. That is the lowest quarterly rate of disputes ever recorded by the Australian Bureau of Statistics.

But, of course, in an attempt to gain public support for their political campaign, the opposition leader and the union movement continue to make misleading and hysterical claims that Australia is changed forever—fertility rates will decline; divorce will increase; children will not be able to go on holidays; weekends will be lost; BBQs will be gone; families will be set against families; and friends will be set against friends. Seven months into the operation of Work Choices, this doomsaying from the Labor Party has been exposed for what it is, and that is pure hysteria.

Senator Ferris—Fraud.
framework of opportunity that is good for individuals, for family breadwinners, for students and for small and large businesses—and that is good for the Australian economy.

Today we have seen communities around Australia disrupted to aid in perpetuating this political scare campaign. Thankfully, it was not as disruptive as intended, because the numbers were so low. But I want to raise what happened in Wollongong. My electorate office is based in the Illawarra. I will start by congratulating the overwhelming majority of Illawarra workers who did not take part in the political protest organised by the South Coast Labour Council. There are approximately 170,000 workers in the Illawarra region; yet only a very minute number of these marched today, causing disruption for the sake of some cheap political point-scoring exercise for the Labor Party and the South Coast Labour Council. It is a continuation of the scare campaign in the Illawarra, and Wollongong was, once again, needlessly disrupted in this desperate struggle.

How surprised was I this morning to learn that the National Secretary of the CFMEU, Mr John Sutton, came to my electorate office in Wollongong, demanding to speak to me about industrial relations laws when, clearly, this is a parliamentary sitting week! The local union boss was standing outside my office spruiking that I was not there to listen to their claims—and I was at work. Unlike him, I was here representing my constituents in New South Wales. How desperate are they when they have to spruik outside parliamentary offices because we are not there to listen to their—(Time expired)

Senator POLLEY (Tasmania) (3.21 pm)—I rise to take note of answers given by Senator Abetz on the issue of industrial relations. Despite what Senator Abetz would have us believe, today we have seen tens of thousands of people around the country gather to march against this arrogant government and its unfair industrial relations laws. Today Australians have vowed not only to fight for their rights at work but to vote for them. We saw more than 60,000 people in Melbourne at the MCG, whilst 40,000 took to the streets of Sydney and 25,000 in Brisbane. There were several thousand here in Canberra who marched through the streets to the forecourt of this great building, where we stand today, to demonstrate their opposition to these archaic and unfair laws.

According to the Prime Minister, this sort of show of opposition to his Work Choices laws could be deemed illegal. I have absolutely no doubt that many more workers would have been present at events around the country but for fear for their jobs. The government has tried to play down the turnouts at today’s National Day of Action, but the reality is the outrage over these laws is not going to disappear, as the Prime Minister, Mr Andrews and even Senator Abetz and others across the chamber would have us believe. No, it is only going to grow. Australian workers are not going to give up until this war is won.

Australian workers and their families know that there is a simple choice to be made at the next election: Mr Howard’s extreme industrial relations laws and wage-cutting AWAs or Kim Beazley’s pledge to rip up these unfair laws and build a modern, flexible system based on Australian values. The Howard government’s extreme workplace laws are no good for Australian families and they are no good for the Australian economy. The Prime Minister is fooling himself if he believes he can treat Aussie workers this way and they will sit down and take it. The proof really is in the pudding. If Mr Howard were really confident in his industrial relations ideology he would have told voters his plan before the last election. But he decided that it was not an important
enough issue. Or perhaps he just did not believe that Australians had the right to know what the government they were electing was going to do: to systematically remove all their rights at work—their penalty rates, leave loading and the right to public holidays. You name it, the Howard government has hacked it away.

In contrast to this government, which wanders from arrogance to incompetence to downright deception, all Australians can be confident that they know exactly what they will get from Labor: fair workplaces, built on Australian values. I will repeat that for Senator Barnett's benefit: they know what they will get from Labor, and that is fair workplaces, built on Australian values. The Prime Minister and his wannabe deputies crossed the line when they began ripping away the rights of Australians and the values on which this country is based and built.

Mr Howard will try to make a few little tweaks to these laws, a few cosmetic changes in the hope of fooling Australians that they are not quite as bad after all. But voters will not be fooled. Australian workers will not be fooled. Only yesterday we debated the arrogant government's Independent Contractors Bill, which is their latest attack on workers. We know that they will use their numbers in this place to once again attack Australian workers. If we needed any more proof that the government are deadset on hurting those people who need our help the most, then we have it.

This is not a government that cares about Australians. This is not a government that cares about Australian values or cares for the basic principle that a fair day's work deserves a fair day's pay. This is a government that stands only for big business and the high end of town. All Australians want is a fair go, and they know that in fighting these laws they are fighting to defend the Australian way of life. At the next election, they will send a message loud and clear to Mr Howard: they do not want your unfair laws and they do not want your government because, not only are their rights at work worth fighting for, they are worth voting for.

Question agreed to.

**COMMITTEES**

**Legal and Constitutional Affairs Committee**

Reports: Government Responses

Senator MINCHIN (South Australia—Minister for Finance and Administration) (3.27 pm)—I present two government responses to committee reports as follows:


In accordance with the usual practice, I seek leave to have the documents incorporated in *Hansard*.

Leave granted.

The documents read as follows—

**GOVERNMENT RESPONSE TO SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE REVIEW OF THE DEFENCE LEGISLATION AMENDMENT (Aid to Civil Authorities) BILL 2005**

November 2006

**RECOMMENDATION 1**

The Committee recommends that the amendments to Part IIIA should include a statement of intent that the Part should apply only when all other avenues have been considered and rejected.

**Government Response:**

Not supported. The bill (now Act) indicates that an order is made and call out of the ADF activated only when a domestic security incident
occurs or is likely to occur that exceeds or is likely to exceed the capacity of the civil authorities to deal with the incident. The Government is satisfied that this provision (which is consistent with the 2000 legislation) provides the necessary safeguards for the call out of the ADF.

The central principle underpinning Part IIIAAA is the provision of aid to the civil authorities. The authorising Minister(s) therefore need only be satisfied that the capacity of the civil authorities is overwhelmed, or will likely be overwhelmed, by a domestic security incident before authorising call out. However the inclusion of a statement of intent that the Part should apply only when all other avenues have been considered and rejected introduces additional layers of complexity that an authorising Minister(s) would be required to consider before call out. In particular, as all other avenues could apply to authorities, capabilities or agencies outside the scope of the civil authorities of a State or Territory, the inclusion of such a provision would go beyond the current purpose and construction of Part IIIAAA. This could potentially delay the making of an order and therefore inhibit the requirement for a flexible and effective ADF response to a domestic security incident.

**RECOMMENDATION 2**

The Committee recommends that a stronger proportionality test be included in Schedules 1 and 3.

**Government Response:**
Not supported. The concept of proportionality is already evident in the current legislation under Section 51T. Specifically, the use of 'reasonable and necessary force' is in essence a proportional response to an incident, where an ADF member is authorised to take appropriate action in relation to an incident. That is, an ADF member operating under Part IIIAAA is not automatically authorised to apply the most extreme form of force, but must apply a test of whether that force is both reasonable and necessary (and therefore clearly proportional) in responding to an incident.

Furthermore, this proportionality is subsequently captured in Defence processes, including Rules of Engagement.

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**Government Response to Recommendations of the Senate Legal and Constitutional References Committee Report The Real Big Brother: Inquiry into the Privacy Act 1988 Comprehensive Review**

**Recommendation 1**

The committee recommends that the Australian Government undertake a comprehensive review of privacy regulation, including a review of the Privacy Act 1988 in its entirety, with the object of establishing a nationally consistent privacy protection regime which effectively protects the privacy of Australians.

**Response**
Agree. The Government has given a reference to the Australian Law Reform Commission (ALRC) to review the extent to which the Privacy Act 1988 and related laws continue to provide an effective framework for the protection of privacy in Australia. This review is due to be completed by March 2008.

**Recommendation 2**

The committee recommends that the Australian Law Reform Commission undertake the review proposed in recommendation 1 and present a report to Government and to Parliament.

**Response**
Agree (see response to Recommendation 1 above).

**Consistency**

**Recommendation 3**

The committee recommends that the review by the Australian Law Reform Commission, as proposed in recommendations 1 and 2, examine measures to reduce inconsistency across Commonwealth, state and territory laws relating to, or impacting upon, privacy.

**Response**
Noted.

**Recommendation 4**

The committee recommends the development of a single set of privacy principles to replace both the National Privacy Principles and Information Privacy Principles, in order to achieve consistency of privacy regulation between the private and public sectors. These principles could be developed as
part of the review by the Australian Law Reform Commission, as proposed in recommendations 1 and 2.

**Response**

Noted.

**Emerging Technologies**

**Recommendation 5**

The committee recommends the Privacy Act be amended to include a statutory privacy impact assessment process to be conducted in relation to new projects or developments which may have a significant impact on the collection, use or matching of personal information.

**Response**

Not agree. The Government notes that the Privacy Commissioner is developing a privacy impact assessment process for use by agencies and considers that at this time a statutory process is not appropriate.

**Recommendation 6**

The committee recommends that the review by the Australian Law Reform Commission, as proposed in recommendations 1 and 2, examine the definition of ‘personal information’ in the Privacy Act 1988, and also any amendments to the definition which may reflect technological advances and international developments in privacy law.

**Response**

Noted.

**Genetic Information**

**Recommendation 7**

The committee recommends that the Australian Government responds to, and implements, the recommendations of the Essentially Yours report into the protection of genetic information by the Australian Law Reform Commission and the Australian Health Ethics Committee of the National Health and Medical Research Council, as a high priority.

**Response**

Noted.

**Private sector provisions**

**Recommendation 10**

The committee recommends that the Australian Government responds to, and implements, the recommendations of the review of the private sector provisions by Office of the Privacy Commissioner as a high priority.

**Response**

Noted.

**Exemptions**

**Recommendation 11**

The committee recommends that the review by the Australian Law Reform Commission, as proposed at recommendations 1 and 2, examine the operation of, and need for, the exemptions under
the Privacy Act 1988, particularly in relation to political acts and practices.

Response
Noted.

Small Business

Recommendation 12
The committee recommends that the small business exemption be removed from the Privacy Act 1988.

Response
Not agree. The Government considers that the small business exemption strikes an appropriate balance between the risk of privacy breaches and over regulation of small businesses. Removal of the exemption would be inconsistent with the Government’s commitment to workplace reform and cutting red tape.

Employment records

Recommendation 13
The committee recommends that the privacy of employee records be protected under the Privacy Act 1988.

Response
Noted.

Recommendation 14
The committee recommends that the review by the Australian Law Reform Commission, as proposed at recommendations 1 and 2, should examine the precise mechanisms under the Privacy Act to best protect employee records.

Response
Noted.

Direct Marketing

Recommendation 15
The committee recommends that the review by the Australian Law Reform Commission, as proposed at recommendations 1 and 2, consider the possibility of an ‘opt in’ regime for direct marketing in line with the Spam Act 2003.

Response
Not agree. The appropriate mechanism for dealing with privacy issues raised by direct marketing is a matter that could be considered as part of the ALRC review.

EU Adequacy

Recommendation 16
The committee recommends that the review by the Australian Law Reform Commission, as proposed at recommendations 1 and 2, examine measures that could be taken to assist recognition of Australia’s privacy laws under the European Union Data Protection Directive.

Response
Not agree. International negotiations are a matter for the Australian Government and negotiations with the European Union are ongoing.

Credit Reporting

Recommendation 17
The Committee recommends that the Privacy Act not be amended to allow the introduction of positive credit reporting in Australia.

Response
Not agree. Review of the credit reporting provisions in the Privacy Act is a matter that could be considered as part of the ALRC review.

Health information & medical research

Recommendation 18
The Committee recommends that the Australian Government, as part of a wider review of the Privacy Act, determine, with appropriate consultation and public debate, what is the appropriate balance between facilitating medical research for public benefit and individual privacy and the right of consent.

Response
Noted.

Resourcing & powers of the OPC

Recommendation 19
The committee recommends that the Australian Government provide an immediate allocation of additional funding to the Office of the Privacy Commissioner to enable it to more efficiently and effectively fulfil its mandate and to ensure genuine and systemic improvements to its operation, both now and into the future.

Response
Noted. The Office of the Privacy Commissioner received a substantial increase in funding of $8.1 million over four years in the 2006-07 Budget.
Responsibility for administration of the Office of the Privacy Commissioner, including decisions about the allocation of resources, is a matter for the Office itself.

DOCUMENTS

Issues from the Advance to the Finance Minister

Senator MINCHIN (South Australia—Minister for Finance and Administration) (3.27 pm)—I table the statement of Issues from the Advance to the Finance Minister as a final charge for the year ended 30 June 2006.

COMMONWEALTH RADIOACTIVE WASTE MANAGEMENT LEGISLATION AMENDMENT BILL 2006

Report of Employment, Workplace Relations and Education Committee

Senator FERRIS (South Australia) (3.27 pm)—On behalf of the Chair of the Employment, Workplace Relations and Education Committee, Senator Troeth, I present the report of the committee on the provisions of the Commonwealth Radioactive Waste Management Legislation Amendment Bill 2006, together with the Hansard record of proceedings and documents presented to the committee.

Ordered that the report be printed.

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

Second Reading

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

That this bill be now read a second time.

Senator CARR (Victoria) (3.28 pm)—I rise to speak to the Avoiding Dangerous Climate Change (Kyoto Protocol Ratification) Bill 2006 [No. 2], which I introduced. The second reading speech has, of course, already been attached to the tabled documents. What I wish to canvass today is the need for the chamber to give this matter urgent attention. As you may have gathered, Mr Deputy President, I was not aware that the second reading debate was going to be brought on at this hour. We are pursuing this today to give effect to the deep concern that members of the Labor Party have on the issue of climate change.

In recent times, the government has sought to change its tack on the issue of climate change. The government initially understood the importance of climate change. I do not think it is generally understood in this country that in the period post-1996 there was a view within the government that climate change was an extremely important matter which was affecting the welfare of the people of the planet. In fact, the government sought to produce a discussion paper on such matters and to pursue specific policy initiatives on climate change, to the point where the question of signing the Kyoto protocol was contemplated. But that position changed very quickly.

The change of government in the United States meant that the Australian government changed its position. The government of Australia, as is all too often the case, has essentially taken a derivative attitude on these matters to keep in step with the position taken by the more extreme elements of the Republican Party of the United States. We saw that attitude expressed in the last few years, to the point where the government refused to sign the Kyoto protocol. It moved from a position of being essentially sympathetic to a position of complete opposition. We have had some of the world’s leading climate change sceptics populating the Treasury benches of this country.

As we have noted, there has been a further change in the government’s attitude in recent times. It has increasingly been acknowledged
in the country at large that the Australian people understand the significance of this issue. As a consequence of that realisation, the government of Australia has sought to change tack and to present to the public the view that they really are keeping pace with public concern on these matters despite the overwhelming body of evidence that they are dragging the chain.

Climate change is real and it is happening right now and the government has had to face up to that fundamental proposition. The Kyoto protocol is real and it is happening right now, but you will not hear that from the Howard government. Despite the various manoeuvres that it has undertaken, it remains in denial on climate change and the importance of the Kyoto protocol. It is out of touch with reality and with the concerns of the Australian people. As I say, climate change is real and it is happening. Our dams are dropping while our sea levels are rising.

The Australian Greenhouse Office have reported on the risks and vulnerabilities that they suggest climate change is likely to bring. I think the statistics are quite disturbing. The Australian Greenhouse Office are predicting an increase in annual national temperatures of between 0.4 and two degrees by 2030 and between one and six degrees by 2070. We are likely to see more heat waves and fewer frosts. We are likely to see more frequent El Niño southern oscillation events, resulting in more pronounced cycles of prolonged drought and heavy rains. We are likely to see a further 20 per cent reduction in rainfall in the south-west of Australia and up to a 20 per cent reduction in the run-off from the Murray-Darling Basin by 2030. We are likely to see more severe wind speeds in cyclones associated with storm surges amplified by rising sea levels and we are likely to see an increase in severe weather events, including storms and high bushfire propensity days.

Further proof of the damage of climate change can be found in the 2006 annual review of the Insurance Council of Australia. It said that:

During the last 12 months, most states experienced either severe rain and/or windstorms with associated flooding, and extensive property damage.

Apart from Cyclone Larry ... hail and heavy rain caused over $100 million in household and commercial damage in Queensland, while a wind storm across South Perth in May, 2005 caused insured losses of $53 million, a record for the state.

Australians know that the Howard government has failed the nation on climate change. A survey on the recent Stern report showed that 92 per cent of Australians thought that the Howard government was not doing enough on climate change. Mr Howard dismissed this as an online opinion poll. Of course, he had to come back into the parliament at one minute to five to apologise for misleading the House. The Stern report is a strong warning of a clear and present danger not just to our environment but to our economy. The Stern report highlights not what it will cost to act but what the costs involved will be if economies in our region and the world fail to act. The report says that early action will be much cheaper than if no action is taken. The report highlights that it might be as much as 20 times cheaper to act early in the prevention of the drastic effects of climate change.

The Stern report demonstrates the sharp contrast between the attitude taken by the government of the United Kingdom and the actions of the government of Australia. I know that the Australian government is desperate to become associated in any way with the actions of the United Kingdom in terms of propaganda, but it is not so anxious to be involved in specific measures. The Stern report highlights that we cannot afford to wait
any longer. The only way to tackle climate change in Australia is to change the government. That is the strong implication of that report.

On 27 September, Mr Howard said that he was not interested in what might happen in 50 years time. Climate change is one of the greatest challenges facing Australia and the global community but we have a government that essentially refuses to take action. Mr Howard has been in denial on this issue for 10 years. Whatever immediate tactical manoeuvres he undertakes in terms of his present political difficulties it has to be understood that the Howard government is twice as keen on self-promotion and propaganda as it is on addressing the issue of climate change. Since 1996 the Howard government has spent over $1.5 billion on government advertising but it has only spent $670 million on climate change programs. Under Mr Howard, self-promotion comes first and then there is clear daylight before anything else, with actions on important matters such as climate change running a very distant last.

We are now seeing the government seeking to promote its latest fantasy, which again is driven by its understanding of its focus group research. It is now seeking to promote its nuclear fantasy. This is an approach where the government once again seeks to talk about issues without actually undertaking any action. Once again the government will present itself as being concerned about a particular matter without having to actually do anything.

The government has produced a report for public consumption in which a proposition is advanced whereby we should build some 25 nuclear reactors on the east coast of Australia over the next 25 years. And this, somehow or another, is going to be the magic silver bullet that is going to fix our environment problems. Of course, the fundamental question the government fails to address in this new publicity drive—this new propaganda offensive—is the issue of where these reactors are going to go. And it fails to deal with the question of where the waste from these nuclear reactors will go. It fails to deal adequately with the issue of the economics of these nuclear power stations and it fails to provide a comprehensive economic case for change, particularly in an economy where there is such a profound supply of basic energy resources that for hundreds of years we are likely to have energy supplies which cannot be dismissed and which are available at a price that makes any suggestion of nuclear power totally uneconomic.

The Howard government is trying to push the myth that nuclear power is the silver bullet solution to climate change, but, as I said, nothing can be further from the truth. Australia’s greenhouse pollution will increase by 29 per cent by 2050 under Mr Howard’s plan to build 25 nuclear reactors. The Switkowski report confirms that Mr Howard’s nuclear power plan will not cut greenhouse gas emissions. It is not a plan to avoid dangerous climate change. Mr Switkowski’s report shows that, with the 25 nuclear reactors that are proposed across the east coast of Australia and the government’s existing programs—such as the new Low Emissions Technology Demonstration Fund—Australia’s greenhouse emissions will soar from 558 megatonnes in 2000 to 718 megatonnes in 2015. These are figures that we have taken from page 81 of Mr Switkowski’s report. Mr Howard’s nuclear plan would take Australia further down the path towards dangerous climate change. It is exactly the opposite of the propaganda that he is seeking to peddle to suggest that this government is concerned about a particular matter, when all the actions that it is undertaking suggest the contrary.
Under these circumstances, if global greenhouse pollution rose by a further 29 per cent by 2050 the world would probably experience a four per cent rise in global temperatures. Under that scenario, the evidence suggests that a four per cent rise in global temperatures, with the concurrent rise in sea levels, would see the Great Barrier Reef destroyed. We would see cuts to water flows to the cities of Australia and we would see the flow in the Murray-Darling Basin decrease by some 48 per cent. Under that scenario there would be quite substantial increases in bushfire dangers and we would see a substantial move down the Australian mainland of dengue fever transmission zones through to Brisbane and possibly as far south as Sydney. So it would fundamentally change the nature of Australian society and it would fundamentally change the circumstances in which Australians would have to try to cope with quite adverse conditions.

The Stern review states that global emissions must be cut by 60 per cent by 2050—not increased by 19 per cent; cut by 60 per cent—if we are to avoid dangerous climate change. But Mr Howard’s nuclear plan takes Australia in the opposite direction. Sir Nicholas Stern’s review made it very clear that delaying action costs the economy and our society in massive ways and that taking action now would reduce the costs on a longer term basis. Climate change is a serious threat and we must not posture about expensive and toxic nuclear energy which—even at the planning stages—would not see one kilowatt of power produced for perhaps 15 to 20 years under this proposal. As the Minister for Finance and Administration has pointed out to us on numerous occasions, it would not be financially viable in this country for probably 100 years. We are seeing a great myth being created so that Mr Howard can claim to marginal seat voters that he is genuinely interested in these matters when, as I say, the evidence is quite clearly to the contrary.

Labor takes the view that it is time for the Commonwealth government to take action. That is why Labor will pursue the long-term targets of a 60 per cent reduction in emissions by 2050. That is why Labor will join the global community and ratify the Kyoto protocol. That is why Labor will give a price signal by having a national emissions-trading scheme which will be linked to other schemes. That will encourage investment in the clean coal technology and renewables that this country so desperately needs. That is why Labor will significantly increase our renewable energy targets. That is why Labor supports the development of alternative sources of energy but not nuclear reactors.

Labor will introduce a climate change trigger in Commonwealth environmental legislation. Labor will make every school in the Commonwealth a solar school. Labor will support green cars being built in Australia and undertake action to encourage the car companies to take that up. Labor will ensure that transport and sustainable cities are integral to our plan to avoid dangerous climate change.

The Stern review makes it perfectly clear that, unless economic mechanisms are put in place which encourage investment in clean coal technology and renewables, we will not be able to get the transformation to the carbon constrained economy that we need. Australia needs a whole-of-government approach to avoid dangerous climate change. That is why Labor has a systematic plan that offers Australia a way to avoid dangerous climate change. We say that we must take action not just to protect the environment but to protect jobs and the economy. It is also about protecting Australian society. The only future that Mr Howard seems interested in is his own. The only science he is applying to these
matters is political science, with a view to securing enough marginal seats to allow this government to continue the policies it has been pursuing. That is why I recommend to the Senate that this important private senator’s bill be carried.

Senator EGGLESTON (Western Australia) (3.48 pm)—There is no doubt that climate change is occurring and the evidence of it is around us all the time. For example, in the south-west of Western Australia there has been a dramatic decrease in rainfall over the last 30 years. Something like 25 per cent less rain is falling in the south-west of Western Australia. I understand there is some evidence of melting of icecaps and glaciers in Greenland. We know there are climate changes in Europe. In the UK, for example, for the first time in many centuries water rationing has been required in the summer months, which is very unusual. Less rain has been falling in Europe. Recent news that there was an iceberg floating off the coast of New Zealand perhaps suggests that the Antarctic icecaps are also changing and melting.

So climate change, it seems, is with us. I must say that there is a lot of controversy and there are differing opinions about the causes of this climate change. The world, after all, is cycling out of an ice age. We may in fact be no more than the victims of that kind of progression, or it may be that greenhouse gas emissions from the industrialised world have something to do with what is happening.

While climate change may be occurring, the Kyoto protocol is not the answer to the problem of climate change which the world now faces. The Kyoto protocol has become a symbol of concern about climate change, but beyond that, as a symbol of concern, the Kyoto treaty is a flawed treaty which would produce very little change in the level of greenhouse emissions around the world. For that reason the Australian government, while being concerned about climate change, has not signed the Kyoto protocol and has no intention of doing so.

The Kyoto treaty has very severe limitations in the sense that a mammoth 75 per cent of global emissions are not covered by the treaty. The reason for this is that most of the great emitting nations—China, India, the United States and some South American countries—are not signatories to the Kyoto protocol. While ever those great emitters are not signatories to the protocol, it is not going to make any significant difference to world greenhouse gas levels or—if they are the cause of climate change—to climate change.

Most importantly, many of the developing nations in the world have not signed onto Kyoto and, if the Kyoto protocol is to have any chance of making significant reductions in emissions, means must be found to include the developing nations of the world within its terms. It is not only inequitable but surely pointless that the developing nations can go on merrily increasing emissions while the developed nations are being asked to reduce theirs. The net outcome will be almost no change at all in greenhouse gas levels in the world.

The consensus of scientific opinion is that significant reductions in global greenhouse emissions will be needed this century. It is a good thing to do whether or not we are sure that it is causing climate change. The Australian government believes that it is important to focus our resources on finding constructive solutions to greenhouse gas emissions. The Australian government is working with other countries to develop a global response to limit climate change—a response that is environmentally effective and economically efficient, which involves all major emitters and which will reduce greenhouse gases to levels that scientists tell us are needed and achievable.
In fact, the Australian government is leading the way in this international effort, including through the major role we are playing in the Asia-Pacific Partnership on Clean Development and Climate. This partnership brings together some key countries, including Australia, China, India, Korea, Japan and the United States, to explore ways to develop, deploy and transfer cleaner and more efficient technologies, which the world will need to make the required cuts in global greenhouse emissions. The importance of the partnership is clear when you consider that between them these six partners account for almost half of the world’s population, GDP, energy use and greenhouse gas emissions.

Distinctive features of the partnership include the way it seeks to address climate change, air pollution, energy security and sustainable development in an integrated manner and the way it fully engages business in developing and implementing solutions. Importantly, the partnership builds on and does not replace the United Nations framework convention on climate change, which is most usually known as the Kyoto protocol. As a clear demonstration of Australia’s commitment to the success of this partnership the Prime Minister, John Howard, has announced an additional investment of $100 million over five years to support practical international cooperation projects. At least 25 per cent of the Australian government’s commitment is dedicated to renewable energy technologies.

Australia continues to also play a key role in international climate change negotiations. In recognition of Australia’s expertise and constructive approach to addressing climate change, the head of the Australian Greenhouse Office has been chosen to co-chair new international talks on post-Kyoto approaches for long-term cooperative action on climate change. These talks, which commenced at the United Nations climate change convention meeting in Bonn in May 2006, will address issues such as realising the full potential of technology in addressing climate change, adaptation to unavoidable impacts of climate change and the link between sustainable development and climate change. These themes are central to the work of the G8 dialogue on climate change, clean energy and sustainable development—which Australia is also playing an active and constructive role in, may I say. It is interesting also that the fact that we have a head of a Greenhouse Office in Australia is a world first. Australia was the first country in the world to establish a Greenhouse Office, just as we were the first country in the world to establish an oceans policy. We have a number of firsts.

The Howard government has a really outstanding record when it comes to dealing with the environment and climate change. Just on this issue of climate change, it is very interesting to have a look at the coalition’s record. Our record is second to none, may I say. It is a very outstanding record which we in the government are very proud of. The coalition government has taken a leadership role at an international and national level in response to the threat of climate change and is investing some $2 billion in climate change programs. These include hundreds of millions on solar and wind energy, on developing new technology to make cleaner and more efficient fossil fuels and on ways to capture and store greenhouse gases to stop them going into the atmosphere.

I will give a couple of examples. There is the $500 million Low Emissions Technology Demonstration Fund, which aims to leverage $1 billion from industry to develop technologies to significantly reduce greenhouse gas emissions. There is the $100 million renewable energy development initiative, which will provide competitive grants to support the strategic development of renewable energy technologies. Australia is one of...
the few countries that are on track to reach their international greenhouse gas emission targets. It is important to understand that, while we are reaching our greenhouse gas emission targets, we are doing this not having signed the flawed Kyoto protocol.

Australia’s record is proving that there is a way forward that allows emission cuts and economic growth. As a result of our climate change strategies we are forecast to save 85 million tonnes of greenhouse gas emissions a year by 2010 while the economy of Australia itself is expected to almost double in size. This is equivalent to taking every one of Australia’s 14 million cars, trucks and buses off the road, and furthermore stopping all rail and shipping activity, while still providing for major economic growth. As a percentage of our total economy, this saving represents a fall of 43 per cent in greenhouse gas emissions between 1990 and 2010 while the Australian economy doubles in size.

Australia contributes only 1.46 per cent of global greenhouse gas emissions, which, when compared with China’s greenhouse gas emissions, is an extremely small percentage. If Australia were to close down all of its power stations today, the savings in greenhouse gas emissions would be replaced by the growth of China’s energy sector in less than 12 months. So there is really very little point in Australia signing on to the Kyoto treaty when in fact we are meeting our Kyoto targets and when we have such a strong record of striving to put in place programs which will reduce our greenhouse gas emissions.

The Australian Bureau of Agricultural and Resource Economics, ABARE, has estimated that ratification of the Kyoto protocol could increase electricity costs by about one-third in Australia, with consequent severe implications for energy intensive industries such as our bauxite, alumina and aluminium producers as well as industries that use electricity all over this country. One of Australia’s greatest resources in fact is that we have boundless supplies of cheap coal. Were we to sign on to the Kyoto treaty, we would no longer be able to use that coal to produce electricity. That is part of the reason why, if we were to sign Kyoto, our electricity costs would go up by around one-third. If electricity and energy costs went up, that would adversely affect industries. Not only in the coalmines of Queensland, New South Wales and Victoria would there be jobs lost if the coal producers were no longer able to go ahead with mining, which would be the case were we to sign the Kyoto treaty; but closures would occur in many other industries around Australia if the cost of energy was increased as a result of us signing on to the Kyoto treaty.

It is interesting to look at liquefied natural gas, which is another matter where there is a significant flaw in the Kyoto protocol. Within the protocol there is no mechanism to recognise that, although certain actions might result in a domestic increase in greenhouse gas emissions, the net result will actually be a decrease in global emissions. Australia, for example, exports liquefied natural gas to Japan and China, resulting in significantly lower levels of greenhouse gas emissions in those countries where the Chinese and Japanese use LNG instead of coal to generate electricity. This is because the life cycle emissions of natural gas are about 50 to 60 per cent of those of conventional fossil fuels.

Our recent $25 billion liquefied natural gas contract with China illustrates this point well. The contract will add around one million tonnes of carbon dioxide annually to Australia’s emissions but, by replacing coal fired power stations in China, it will reduce China’s emissions by around seven million tonnes annually. This means that China will
gain greenhouse credits from using LNG while we will in fact not be the recipient of those credits.

Senator Milne—We’re not in the protocol, that’s why!

Senator EGGLESTON—The protocol adds nothing at all to reducing greenhouse gases around Australia, Senator Milne, and I think you know that. I am quite sure that the Greens are well aware that the Kyoto treaty is a flawed treaty, a meaningless treaty—it is a symbol of concern about climate change. That is the only thing that it is. The Australian government has done more to address the issue of climate change than any other government in the world. We have a very proud record of having done that. We have no intention of signing the Kyoto treaty because, as I said earlier in my speech, the great emitters of the world—the developing nations, China, India and the United States—are not signatories to the Kyoto treaty. Until we have a treaty that does cover all the great emitters of the world, the Australian government will not be a party to such an agreement.

But, as I said earlier also, the Australian government is working on an international treaty agreement, the Asia-Pacific Partnership on Clean Development and Climate, which will bring together key developing and developed countries in the region, including Australia, the United States, India, Japan and Korea, to address the challenge of climate change, energy security and air pollution in a way that strives to encourage economic development and reduce poverty through the development and deployment of new, clean technologies.

So Australia has a very fine record in managing our environmental programs. As I said earlier, we have some world firsts. We were the first country in the world to have an oceans program. We have a long list of achievements in the environmental area, including the establishment of the Natural Heritage Trust, which was set up when this government first came to office and funded initially with $1 billion from the sale of Telstra. There is now NHT2, and in total something like $3 billion has gone into the Natural Heritage Trust. We have the Australian government Envirofund and we set up the Green Corps, which has meant that all over Australia some 13,000 young people have participated in 1,300 projects around this country since 1996. We have a program to tackle salinity and water quality, two of the greatest environmental problems this country faces. So, in general terms, this government has a very fine and outstanding record on environmental policy. We do not need to sign the Kyoto protocol to do what we are doing. We are meeting our greenhouse targets and we are very proud of our record. I believe the Senate should simply reject the proposal put up by Senator Carr, because it is impractical, unrealistic and will achieve nothing.

Senator MILNE (Tasmania) (4.08 pm)—I rise to support the Avoiding Dangerous Climate Change (Kyoto Protocol Ratification) Bill 2006 [No. 2]. Of course, Australia should ratify the Kyoto protocol as a first step and what this bill does is to allow that first step to be taken. I am sorry that the bill is an exact copy of the bill that was introduced and passed here three years ago and that it has not been strengthened and advanced further. That is work that the Greens are doing. I introduced a bill this morning that will do that through a range of measures, including setting targets. Nevertheless, this is a first step, and ratifying the Kyoto protocol is an ambition that most Australians share with the Greens, with the Labor Party, with the Democrats and with the rest of the world, so this is a step we should take.
But I have to say to the Senate that it is time Australians were told the truth about what is going on globally as far as Australia is concerned and as far as climate change is concerned. We need to hear a few home truths, and the first one is that the rest of the world is appalled by the fact that Australia and the United States have not ratified the Kyoto protocol and they are working very hard to improve the protocol. Nobody argues that it is perfect. What they do argue is that it is a first step towards an international framework for reducing greenhouse gases, and there is an expectation that the rest of the world will get behind it.

As to this nonsense we hear time and time again from the Treasurer, the Prime Minister, the minister and now Senator Eggleston that the Kyoto protocol is a symbol: what an extraordinary symbol, because last year the carbon market was worth $US11 billion. That is a symbol that perhaps Treasurer Costello might understand. The Kyoto protocol has three financial mechanisms in order to deliver the reductions. The first is joint implementation—that is, projects between two developed countries. The second is the clean development mechanism, whereby a developed country invests in a developing country to reduce greenhouse gas emissions and the developed country is given credit for the reductions. That is why I think that Senator Eggleston’s example of gas is ridiculous. He argued that China was going to get credit for the result of Australia’s gas, but, no, we are not in the protocol and therefore the credit arrangement does not operate. The third mechanism is emissions trading. The Prime Minister came out recently and said, ‘We’re going to have a mirror strategy, a looking-into-it strategy.’ The only reason he did that was that the Business Council of Australia was about to come out and say that it supported emissions trading, leaving the Prime Minister completely and utterly isolated. He had to come up with something to say at dinner, so he said, ‘We will have a joint task force and we will look into it.’ The rest of the world has already looked into it and is doing it.

The pan-European trading system is up and running. There is a trading system between nine north-eastern states in the US, and there is the Chicago Climate Exchange. There is also work in California, and New South Wales has a version as well. The rest of the world is now talking about how to link up existing emissions-trading systems that will be operating from now—and they are operating now—in the first commitment period, 2008-12, and looking at ways in which they can become a global emissions-trading system in the post-2012 period. Australia will not even have thought about setting up a system, and when it does it will set up some absolutely silly system that does not go with a national cap and will not be compatible with what the rest of the world is doing. So, rather than run around with this nonsense about the Kyoto protocol being a symbol, there is a huge amount of work going on to perfect the clean development mechanism, joint implementation and emissions trading, and Australia is nowhere to be seen.

Let us look at AP6. Senator Eggleston tells us that it is a treaty, but it is not. As Senator John McCain of the Republicans in the US said, it is a nice little public relations exercise. And that is the extent of it. If this AP6 were something to write home about, all the countries involved in it would have met when their representatives were in Nairobi. Did they have a meeting? No. What did they have? They had drinks. That is a fabulous treaty, if ever I saw one: ‘Let’s get our mates together for drinks.’ Worse still, all the countries in AP6, with the exception of the US and Australia, have ratified the Kyoto protocol, and all their serious negotiators were in the meeting of the parties to the Kyoto pro-
tocol. Other people on their delegation were having drinks and chatting with Australia and whatever, but those countries—China, Japan and South Korea—are all involved in the Kyoto protocol, because their economies are now gearing up to benefit from the investment mechanisms. It is giving competitive advantage to the renewable energy sector. Their businesses are getting on with working out how to make money in a low-carbon economy, but Australia is not even engaged. That is where this government is not only letting the world down in terms of reducing greenhouse gas emissions but also actually hollowing out the Australian economy, because all the thinkers and progressive businesses are going overseas as rapidly as possible to get involved in those mechanisms and we are left high and dry with no expertise in a lot of these areas. A classic case is our solar billionaire, Dr Shi, who has made his billions in China in renewable energy.

The Chinese have got a renewable energy target of 15 per cent. Perhaps the Minister for the Environment and Heritage or the Prime Minister or Senator Eggleston, when they keep talking about China, might acknowledge what China has done. Senator Ian Campbell almost created a diplomatic incident in Nairobi by accusing China of being likely to become the world’s greatest polluter. The Chinese got up, very offended, because China has a far lower greenhouse gas emission rate per capita than Australia does. What is more, China is taking significant steps. It has got its renewable energy target at 15 per cent. It has mandatory vehicle fuel efficiency standards such that Australian vehicles will not be able to be imported into China because they do not meet China’s standards. That is the extent to which we are getting behind the eight ball here.

We are told that the dialogue is Australia’s fabulous lead. That is a nonsense as well. Australians should realise that the only reason this dialogue is going on is that, in Montreal, at the first meeting of the parties, Canada was the host country and was terrified that there would not be a commitment to a post-2012 period because of the behaviour of the United States and Australia, so the Canadians came up with this notion of a twin-track process whereby the real meeting of the parties to the protocol would go on and at the side there would be a dialogue, a talkfest, in which Australia and the US could be involved and feel important and it would keep them occupied until such time as there was a change of administration in both those countries or a change of attitude that would bring them into an effective, enforceable compliance regime at the global level.

It was like a main meeting and a creche. Australia and the US were off in the creche with their coloured pencils. They were allowed to come in at the end of the meeting, and what did they have to do with their dialogue? Their obligation in Nairobi was to give an oral report. It was just like bringing in your drawing and saying to the adults, ‘Here we are. We’ve done our drawing.’ And the adults say, ‘That’s nice. Now you can go.’ That is precisely what happened. What do they have to do next year after having given an oral report this year? They have to make a written report, and that will just be noted and accepted. Let us not pretend to this parliament or to the people of Australia that Australia’s contribution in this dialogue is anything other than keeping us occupied while the rest of the world patiently waits for Australia to wake up to itself and get involved in the post-2012 period.

We should be ratifying the Kyoto protocol now. We should be getting the experience of working towards a low-carbon economy, a carbon constrained world, so that that can happen. As I alluded to earlier, the rest of the world is getting very sick of Australia free-loading on it. How do you think European
businesses feel about having to meet emission reduction targets and compete on a level playing field with Australian imports? They do not like it. There will be moves in the World Trade Organisation to put tariffs against exports from Australia into Europe, on the basis that Australian businesses get a subsidy from their government because they do not have to rein in their greenhouse gas emissions.

The minister suggested earlier that they have done something wonderful on energy efficiency simply because the 200 largest energy users in the country have to report on that. They do not have to actually do anything about it. They do not have to implement the findings of their energy audits. They just have to report what they could do if they chose to do it. When I moved an amendment to require them to implement the findings of their mandatory energy efficiency audits, the government voted against it. So why would the Europeans not argue that there is a subsidy going on here and that the rest of the world is not going to tolerate it?

Every year that we stay out of these global negotiations is another year that we are behind, that our businesses are being put at risk, that our economy is being hollowed out. The whole opportunity that is presented in a carbon constrained world—of moving to renewable energy and increasing energy efficiency by reducing demand and increasing the supply of renewables—is out the window in Australia. Why? Because of the coal industry, because of the aluminium industry, because of the oil and gas industry; that is why.

As to carbon capture and storage, which we hear so much about, perhaps the minister could explain the Hunter Valley. My understanding is that the geological structure of the Hunter Valley is such that it is unsuitable for carbon capture and storage. So where is he going to put the carbon emissions from coal-fired power stations in New South Wales? This technology is unproven. Renewable energy technology is proven, available and could be implemented tomorrow.

I want to finish on the China point by saying that the Chinese were deeply offended by Australia’s insulting behaviour in Nairobi. The Chinese have actually done a lot. They have nominated 10 of their states to be in pilot programs to try and develop a way of running a state economy on a low-carbon basis. There is a huge amount of work going on in China. They said of the dialogue that Australia chairs:

This dialogue … is neither a negotiation process nor an attempt to set up emission reduction limitation targets for the developing countries.

So, thank you very much, Australia. It is none of the things that the minister claims it is.

Let me tell you about the new Kyoto. The Australian minister and Prime Minister, for the benefit of the Australian community, said in the Australian press: ‘We are taking a new Kyoto to Nairobi. We are going to impress the world with our new Kyoto.’ The minister arrived there and what happened? His speech was scheduled for ten past seven on Wednesday night. The conference dinner started at seven o’clock in another part of Nairobi, 40 minutes away. The Australian minister spoke to an empty plenary hall. Of course, I was there and there were a few other Australian NGOs there because we were anxious to hear about the new Kyoto, but the rest of the world had gone to dinner—because why would you listen to Australia when they are not involved in this process?

What did the new Kyoto turn out to be? The new Kyoto turned out to be two sentences in the minister’s speech, simply saying that we want a global regime that includes all countries. Wake up, because that is
what the rest of world wants and that is precisely what they are talking about in the article 9 review of the Kyoto protocol, which is a review of the effectiveness of the protocol. Article 3.9 is a review of the appropriateness of the targets that countries have set themselves. Those things are already happening. When the rest of the world was reviewing the effectiveness of the Kyoto protocol, the Australian minister was on the plane on his way home. The Australian minister had left Nairobi before the serious negotiations occurred on article 9. There were a few people from the delegation left, but the minister was long gone.

Let us be realistic here. We are becoming more and more peripheral to the global debate, but in so doing we are also offending our partners in this region and other countries in this region. I would like to read a statement from the head of the delegation from the Pacific island nation of Tuvalu. He was speaking on behalf of the 43 small island developing states. Many of those countries will disappear because of sea-level rise, saltwater incursion and extreme weather events. Already, several of these countries are making evacuation plans, not least of which is the Kiribati islands, where they have already identified 40 islands for evacuation, from which 30,000 people have to be moved. That is happening in the Pacific at the moment—at the same time as Australia utterly refuses to recognise the idea of environmental refugees. We refuse to reduce our greenhouse gases. We are the ones making it worse for the world’s poor. They are the ones most affected the soonest, and the people who are creating the problem are refusing to then take them as environmental refugees.

This is an issue of justice. This is an issue of values. The minister, in this place, or the Prime Minister, in the other place, had better not stand up in the chamber and talk about family values, because family values include things like respect, decency, kindness, charity and generosity. They do not include selfishness, meanness of spirit or exclusiveness. The rest of our Pacific island neighbours are looking at Australia and asking: ‘This is a matter of justice. Who caused the problem and who is helping to do something about it?’ On both counts, Australia fails. I will read this statement because it is really important. I hope there are some government ministers who are listening, because this was the report that was given to the plenary after our minister had left Nairobi:

In a speech to the COP in November 2000, Chair of the IPCC Robert Watson advised all Parties that small island developing states face “the possible loss of whole cultures” due to climate change.

And recent research on the impacts of climate change on SIDS—small island developing states—makes this clear.

For example, a study published in *Global Change Biology* in 2005 shows that a 2 degrees Celsius rise in temperature will make coral bleaching an annual or biannual event in most regions of the world, with most reefs never recovering.

This is significant as the Hadley Centre’s models show that there is a 78% chance of temperatures increasing by 2 degrees Celsius if concentrations are stabilised at 450ppm carbon dioxide equivalent.

So the science tells us that at 450ppm there is a 78% chance that the world’s coral reefs will bleach annually or biannually.

Therefore, at 450ppm, it is highly likely that the world’s four low-lying atoll countries—and most SIDS—will cease to exist.

Sea level rise, which will not stop even if we limit warming to 2°C, will only compound this threat.

So a 2°C increase will clearly be dangerous climate change.

And will clearly violate many of the Articles of the Universal Declaration on Human Rights.
Are you listening, Australia? The statement continued:

Think hard about this—when in the history of the world have we been asked to choose about the future of whole countries?

What will history say of us if we make decisions that let whole countries disappear?

This is an unprecedented issue for the UN system.

We wonder how these negotiations on future commitments might proceed if all Parties were told that 43 of their number would cease to exist in the future—but not which 43. We suggest that all Parties would be striving for big reductions in greenhouse gases.

So we ask all Parties to take this message back to your capitals: failure to achieve significant reductions in emissions will mean the loss of islands, countries, cultures, and a fundamental breach of the human rights of the world’s island peoples.

And given existing concentrations of GHGs—greenhouse gases—in the atmosphere, significantly more assistance for adaptation is required.

The delegates then went on to ask that a special theme on adaptive actions to address the special circumstances and needs of small island developing states be included on the agenda next time. It will horrify Australians to know that the reason it was not on the agenda in Nairobi, even though they moved for it to be on the agenda, is that Australia and the United States blocked it. They blocked that issue of how the small island states are going to adapt to climate change. It was blocked from being on the agenda by our country and by the United States.

Doesn’t that make us all feel proud! That is why I stand here outraged by people on the government side standing up and saying that Australia is responding to climate change in something of an appropriate way. We are not.

What is more, it is apparent to me that most of the members on the opposition benches simply do not believe that this is actually happening, that it is serious, that there is a likelihood that the west Antarctic iceshelf will break up, that there is a likelihood that the Greenland icesheet could slip off or that we could have mega sea-level rise. We are already having extreme drought and extreme fires. This summer, Australia will dry up and burn, and there has been 10 years of inaction by this government. One thing we can do—and one thing which is rushing onto the agenda globally—is stop emissions from deforestation, from logging forests. There is now a recognition that we have to do that. So I now foreshadow an amendment. When we get to the committee stage of this bill, I will be moving to stop deforestation in Australia by stopping old-growth logging. That is the first thing we can do to protect the large carbon sinks of the Tasmanian forests, the Victorian forests and the forests of southern New South Wales.

Deforestation contributes more than transport emissions do globally to greenhouse gases. There is now a major move to stop this. The World Bank has its BioCarbon Fund. There is a move to include a void of deforestation under the Clean Development Mechanism. Once again, the pressure is on Australia, and the joke of it all is that Australia offered to host a workshop next year on a void of deforestation for developing countries. Good; I am glad. At that workshop Australia can perhaps tell developing countries why it is saying, ‘Do as we say and not do as we do,’ because we will most certainly be offering those developing countries the opportunity to—(Time expired)

Senator MOORE (Queensland) (4.29 pm)—Naturally, I rise to support the Avoiding Dangerous Climate Change (Kyoto Protocol Ratification) Bill 2006 [No. 2] in this particularly frustrating discussion. I say it is frustrating not because the issue is unimportant. The frustrating element of this debate is that everyone in this chamber agrees on the importance of the issue. It is almost like that
We have the ability in this country to take on these challenges strongly and we already have done so. Why this government seems unable to accept acknowledging and ratifying the Kyoto protocol as but one step towards our action in the global warming debate is beyond my understanding. I have listened at length to speeches made by various members of the government and a range of ministers. It has not just been the current environment minister who has been peddling this particular rhetoric; it has been all the ministers since the Kyoto protocol was proposed, when there was such a surge of enthusiasm across the world as to how we could effectively identify the threat and work together. There was no expectation that there was going to be some magic cure. No-one claimed that. What we did, as a world community, was to look at the threat of global change and how we could work together. One step was that we as nations together could look at what we were doing with our emissions and how we could share the load.

Consistently the government have put forward how well they have done and how well the Australian community has done in addressing the issues. Why, when claiming all this success, they cannot address the threshold action of becoming part of the global solution I do not understand. No-one is debating the threat. In fact, Senator Eggleston listed in his contribution all the things that we know are happening in our world. Australia, more so than most other countries in this world, has seen the damage caused by climate change to our way of life and our wonderful environment and we know that this damage is occurring now. It is not something that will only happen in the future; it certainly has been happening over a large number of years and we cannot wait quietly and expect that someone somewhere is going to do something about it.
The CSIRO, that flagship organisation, have been expending enormous resources on looking at practical solutions here in our country, and we will be celebrating the achievements of the CSIRO in this place this evening at a celebration of their anniversary. I think it is important that we acknowledge that contribution in this place. They have stated, in one of their wonderful publications, that temperatures in our country could rise by two per cent by 2030. That is an extraordinary figure. We can say two per cent so quietly but what it actually means, and this is outlined in the CSIRO documentation, is rising sea levels and a decrease in water supplies for our cities, and we are all working through that at the moment.

Coming from Queensland, I am most aware of the impact of water shortages in our cities. There is also damage to our reefs. As a Queenslander, again, I can say that although we are blessed by having the beauty of the Great Barrier Reef in my state, it does not belong to Queensland or Australia; it belongs to our world. The concept that our reef could be dying slowly as a result of climate change is one that must cause great fear and concern to all of us.

An issue that I have learnt more about recently is that of potential refugees from our neighbouring islands in the Pacific. Senator Milne referred to some of the island nations. I know that you, Mr Acting Deputy President Watson, have been to many of those and have talked with the people in those areas. In our secure environment here—and I use the word 'secure' with some irony—we may be able to somehow make some distance and pretend that, if we do things immediately with a reduction in water use in our cities and also implement the immediate actions that people suggest, we can put off any impact to our country.

That is not a luxury that is shared by some of our island neighbours. We see photographic evidence from those countries of how their usable landmass has been reduced as their islands sink, as the water levels have risen. That is the kind of immediate threat that is impacting on those people who live so close to us. There are discussions now about what Australia can do in looking at refugee status for those people. Whilst we have not progressed those discussions as much as we ought to, I know the government has been involved in discussions. That immediate threat is just one of the pieces of evidence that are in front of us.

We cannot run away from this issue. We are looking now at issues around 2010, but as you look into the future and see the generational difference through 2020 to 2040, and see the impact on the world, that is a challenge to all of us. Again, no-one is pretending that the piece of legislation about which we are having the debate this afternoon will solve that. What we are saying is that we will engage in the debate by having a clear consideration of the issues and it could well be one step forward. It is a symbol.

The Kyoto protocol is a symbol that is of enormous value to Australian citizens and to people across the globe. Being part of an international agreement means that there is some acceptance by our government—whichever flavour it is—that we have a role to play. That is the step in this legislation which the government continue to reject. Whilst they list, quite rightly, the initiatives that have come forward and have been funded in the last few years—and there has been a flurry of activity around the issue of climate change in the last three to four years—before that time, people on the government benches were arguing that this issue was being beaten up and that people in this place and in the wider community who were talking about environmental threat had some
ideological bent that was not focused on effective economic development or progressive economic sustainability.

I think that we have made a real difference. I genuinely believe that now, in this place and in the wider community—with the exception of some people, like a particular person who insists on emailing me on an almost daily basis to tell me that it is some kind of scientific conspiracy and in fact there is no such thing as global warming—there has been a threshold change and that people accept that we face a genuine disastrous threat of global warming. Given that we have come this far, surely we should be able to take the extra move forward and cooperatively take on our role in the whole UN process. Kyoto is not an Australian treaty. The Kyoto protocol is a United Nations treaty. It has been put out to the nations of the world and we have been given the opportunity to take part in it.

One of my pet issues, as you know, Mr Acting Deputy President Watson, is that people throw phrases around without actually having read the basic documentation. I really do ask people who are involved in this debate to have a look at the website and see what is involved in the Kyoto protocol. Maybe, if they take that small step, they will see that it is not such a monumental commitment to make. When they read the protocol, they will see that it is about people working towards achieving a goal. There are a range of report-back mechanisms so that nations can actually report back and indicate what they have achieved and what they are doing to reach their goals; and, if they have not been able to achieve what they hoped, they can state the reasons why and what they are prepared to do about it.

Given that we have already heard government speakers list all the things that the government has been able to do to address our own responsibilities—and I am sure we will hear more—and given that the Minister for the Environment and Heritage comes in here consistently and claims that we have reduced our carbon emissions, why can we not accept the significant importance of being part of this international treaty? What we consistently get back from government members and ministers is: ‘If the other kids won’t sign, we won’t sign either.’

In her contribution, Senator Milne used an analogy of colouring pencils, and I have to admit that that attracted me a great deal. I have an image in my mind now of a whole range of people sitting around a very big desk with their various colouring pencils and a few people just picking up their pencils and leaving. I would hope that we have reached a maturity in our government that is beyond that image, but I worry that, on this particular issue—and some others, but we are focusing on this one this afternoon—that is almost the level that we have reached.

There is an understanding of the threat and there is great scientific study, research and practical achievement happening in our country, and we are engaging, in some ways, in coalitions internationally to look at the issues. We applaud success. Recently it seems we have been almost drowning in the range of media releases about government funding initiatives to do with solar energy, various attempts to look at alternative sources of energy and looking at ways to ensure an effective future for sustainable energy in our country. All that has been accepted but, when it comes down to this threshold difference, there seems to be a line right down the middle of this chamber, where members on one side see that engagement in the Kyoto protocol is a positive step with which we can all cooperate and members on the other side seem to think that it is somehow a sign of weakness to be engaged in this treaty. I do not accept that. I
believe that we are stronger, more aware and more mature than that.

There was some hope recently, with the release of the Stern report, when there was an international outbreak of people considering the devastating economic impact of the world not accepting that there are environmental threats and that there is no option but to change. There seemed to be a movement away from theory around environmental issues and towards a more acceptable range of argument which talked about economic figures and the impact on the gross national product. There was an engagement—a flurry of activity—on that issue. That was extremely positive, because it brought into the debate the kind of statistical analysis and research that we need to ensure that people see that there is no option on these issues. There must be coordinated change across every country on the globe. We all have a role to play. What Australia can achieve impacts not only on our citizens but also on all the other people on the globe, and vice versa.

It is not a sign of weakness to be part of an international treaty; it is a sign of positive leadership. So often in other areas, Australia has taken on a positive leadership role and has been seen as part of the progressive processes. It is devastating as an Australian citizen to see, in many parts of the world, Australia being labelled as regressive and negative on these issues. We should not deserve that. Our scientists, our academic community and our citizens generally have much more knowledge and awareness of environmental issues and do not need that label. Increasingly, they are saying that they want to see their government being much more active in this international response—and we can do that.

So what we will do in this place for the next hour or so, on this bill which will lead nowhere, is go round and round on this issue and then end up with the great divide down the centre of this chamber, with some people saying that we should be part of it and some people saying that we are doing really well without being party to it and that: ‘Until the other kids sign up, why should we?’ That is why I describe the whole process as extremely frustrating. There is an opportunity to be positive and to move forward if we ensure that we have policies that will protect our resources and ensure that we have strong sustainable energy sources in this country. As a Queenslander, I say that that must include coal. I know that there are differing views on that, but we do need to look at research aspects around having strong, clean coal processes in our country. We must work effectively together. We can do that. This bill provides the opportunity—a simple step forward so that we take what I think is our responsible position in the world, rather than packing up our energy and running away.

Senator ALLISON (Victoria—Leader of the Australian Democrats) (4.46 pm)—The Kyoto protocol entered into force last year in 165 countries. As the Avoiding Dangerous Climate Change (Kyoto Protocol Ratification) Bill 2006 [No. 2] tells us, Australia was not one of those countries. Australia stood back, despite having been an active participant in the early years of Kyoto and despite winning some very, some would say, embarrassing concessions—certainly very generous concessions—on the strength of arguments back when we were in the tent, when Senator Hill went to Kyoto negotiations and made sure that Australia’s interests were being looked after. Since that time, we have seen the hard heads in cabinet, those in the coalition, become nonbelievers in global action and we have seen a much more selfish approach to the way Australia views global warming and greenhouse emissions.

Why should we ratify Kyoto? For one thing, the government says that we will meet
the generous targets of 109 per cent of 1990 levels by 2012. The Minister for the Environment and Heritage confidently and consistently gets up and says, ‘Australia will have no difficulty meeting those targets; we will do it.’ So I would ask the question: why not ratify? When you think about it, we do not have a good reason not to ratify. If we are going to meet the targets, how can you then say, ‘This is not in our economic interests’? If we are heading down that path in any case, why not ratify?

Another reason that we should ratify Kyoto is that we are currently missing out on engagement in the international carbon trading market. We had the embarrassing spectacle of Australian officials and the minister himself going over to Nairobi last month, talking about engaging in dialogue, talking about long-term cooperative action, talking about the fact that Australia will not open any negotiations leading to new commitments, being the spoilers, trying to get in on the act and putting motions forward to say that Australia should have the ability to be part of the discussion. But the fact of the matter is that if you are not in you are not in and you are locked out of a whole range of benefits. The greatest benefit of all is being part of the decision-making process, but we are not. We can go off to Nairobi and pretend that we are part of the process, but we are outsiders.

It has been said many times in this place that what is needed for the passive reductions in greenhouse emissions that are going to be needed by 2050 if we are going to avoid even more serious climate change—60 per cent on current levels around the world—is great leadership. The prime ministers and governments of every country will have to put aside the petty bickering and put aside the sectional interests—like the coal industry—for future generations. I know that sounds a bit Pollyanna-ish, but that is how dire the situation is. If we do not take action now, we are going to leave a very much damaged environment for our children and grandchildren.

It is just not good enough for governments to be—as we and the United States have been—so dismissive of the process, so disdainful, so willing to write it off and so willing to say, as I think Senator Ian Campbell has said on a number of occasions: ‘Kyoto is not cool anymore; Kyoto was only ever the first step. Kyoto has had it. Kyoto is finished as a plausible way forward.’ Kyoto in Nairobi was a serious discussion about what happens after 2012, but we were not part of it. We had to sit on the sidelines and watch the discussion without being able to make a meaningful contribution.

But, of course, the elephant in the room is the United States. One of the reasons I think that Australia has been so willing to be part of the coalition of the unwilling—if I can put it that way—is that we are such great friends of the United States, and we could not bear to leave the United States out all on their own, so we joined them. Even though we are going to meet the targets, we joined the United States outside the process. Why? The United States emits 25 per cent—that is, a quarter—of global emissions. I do not know how many times we have heard the Prime Minister and Minister Campbell talk about China and the ‘huge, looming emission problem’ that China represents and the statement: ‘We can reduce our emissions.’ The statistics get trotted out all the time: ‘It’s one day’s worth of China’s emissions,’ and so forth. But no-one ever mentions the United States—the richest country on earth—which produces a quarter of global emissions, with far less than a quarter of the population of China.

We so often hear that we should not be worried about Australia’s emissions, that
they only represent one per cent of the total. It does not sound like a lot; however, Australia is the 10th largest emitter, close behind the United Kingdom, which of course has many more people than we do and far less by way of resources. Australia is No. 10 on the list of the biggest emitters in the world, and that is a reason why Australia must be part of the process. We cannot pretend that, at one per cent, we are down the bottom of the list. We are right up the top at No 10. That means we have a global responsibility to take part in global collaborative efforts to massively reduce emissions.

I can understand why the government does not want to go down this path. As I said, it is very keen to be part of the coalition of the unwilling with the United States. It values the Prime Minister’s friendship with George Bush far higher than the future of this country, quite frankly. If you look at who is going to be most impacted on by climate change, it is our farmers, the backbone of the country. They are already experiencing a drought which is ongoing and one of the worst known. We are also experiencing low rainfall across the country, which now scientists are saying has all the signs of being a direct response to the huge percentage of the atmosphere being made up of CO₂.

Another reason is the $26 million worth of coal that Australia exports every year. I can understand why the government would not want to see that coal market diminished. I can understand why we would want our coal exporters to continue to make lots of money and how the government benefits from that. I can see that our coffers are filled with coal export royalties and dollars and how that might seem to government to be important to our economy.

Senator Ian Macdonald—Well, it is.

Senator ALLISON—It is not. If you throw away the value of agriculture in this country—as we seem to be doing as a result of that—then coal is not going to be much use to us. Quite frankly, coal is not going to be much use to China and those other countries that will go way ahead of Australia in finding alternative ways of generating electricity for their needs.

But I think most of all it is because the government have an antipathy towards anything which is long term and sustainable. It is the old ‘dig it up, ship it out’ mentality, which does not look at the future of this country in any serious way. They cannot bear to countenance the idea of moving from coal to renewable energy. Instead of going from coal to renewable, we have to go to clean coal, which is expensive, not yet here, experimental and some say even dangerous. Then it is: ‘Okay, that’s proving difficult. Let’s go to nuclear.’ Again, it is expensive, dangerous and leaves terrible waste that will be radioactive for thousands of years. We cannot actually bear to look at geothermal—and when I say ‘we’ I mean the government. The government cannot bear to turn their mind to the most obvious solutions to climate change, and they are wind, solar, geothermal, biomass—alternative forms of energy production.

The government are somehow stuck in this mould saying: ‘We’re not going to go there. We’re not going to cross the line. We’ve got to stick with what we know: the fossil fuel industry.’ Of course, in doing that, in funding clean coal, in putting millions of dollars into those so-called clean coal initiatives, we can claim to be doing something. In talking about nuclear power, we can claim to be going down that path and putting off the inevitable problem of siting reactors. The attitude is: ‘Put it off for another day. We don’t need to worry about it. As long as we’re talking about it, people will think we’re doing something.’ That does not work.
The Stern report came out a couple of weeks ago. I thought the Prime Minister’s response was typical of this antipathetic attitude. He said that we should not be mesmerised by Stern. Why should we not be mesmerised by Stern? I think the whole country was moved by Stern—mind you, having said that, Stern did not in fact say anything terribly different. It was certainly up to date, but it did not say anything that was terribly different from the report of the inquiry that was conducted by the Senate six years ago. I chaired that inquiry. Government members were on that inquiry. We heard from the scientists. We heard from the climatologists. We heard from the people who said: ‘This is real. The threat to the globe from climate change is real.’ I think there were 106 recommendations from that committee report, and they still have not been implemented—none of them. I am not even sure that the government has responded to that very significant piece of work, that very substantial document, that very thorough, comprehensive working-over of the issues for Australia.

Sir Nicholas Stern said, in his typically polite way, that he would not dream of telling Australia or any country what to do. But then he said:

... I do think it would be good if all countries were involved in the Kyoto Protocol.

Al Gore’s film that we all saw, An Inconvenient Truth, was described by various ministers as entertainment. I found it anything but entertaining; in fact, it was frightening. It put in very simple terms the problem that has been described by scientists for some decades now but in a way that could be understood. It was clear; it was supported by very real examples and graphic images of melting icecaps and a range of clear demonstrations that climate change is with us. Al Gore described the United States and Australia as ‘the Bonnie and Clyde’ of the global climate crisis for failing to ratify the Kyoto protocol.

The government has even wound back earlier efforts made in the nineties. The Australian Greenhouse Office was lauded as a world first. We were the first country in the world to set up a whole department independent of other departments so that it answered only to the Prime Minister and the minister for the environment. It was to set the path for Australia. Since that time, the AGO has become a shadow of its former self. It has now been subsumed into other departments. Its CEO left in disgust and has since said that its work was nobbled by other departments and that it was not allowed to do what it was set up for.

The carbon accounting CRC was defunded. Again, it was lauded as a great step forward. ‘This is the way we will help the world in counting carbon, whether it is geosequestration, whether it is carbon tied up in forests. This will be a way forward to actually count the carbon that is out there.’ That CRC has been defunded. I do not know whether it is doing any work at all now, but my guess is that it is not.

I have a couple of other comments to make on Australia’s position. The chief economist of the British government backed Carbon Trust, Michael Grubb, said that the Howard government’s stance on climate change was:

... so clearly not a position which can lead to any credible solutions.

He said that coming to Australia:

... feels like going back in time because so little generally seems to have been done on the ground here.

Former CSIRO chief of atmospheric research, Graeme Pearman, said there were ‘great expectations a decade ago’ that Australia would lead the world in responding to climate change. Instead, he says it has taken a drought to persuade most politicians from the major parties and the public to take it
Former President of the USSR, Mikhail Gorbachev, has urged Australia and the United States to sign the Kyoto protocol, while cautioning the Australian government not to go down the path of nuclear power. So it seems that Australia has been isolated along with America in all of this, and it is not a good outcome for this country.

Mr Hockey said the other day that a billion dollars would be provided for drought assistance this year and that that was over and above the $1.2 billion that had already been committed, and no doubt there will be more money needed as this drought drags on through what is likely to be a hot summer with little rain.

The Climate Institute looked into the question of farmers, farming and the Kyoto protocol, and concluded that Australian farmers were missing out. They said that the Kyoto protocol and a national emissions trading system, if it was in place today, could:

...provide Australian farmers with an income of $1.8 billion over the period 2008-2012, due to the emissions saved by limited land clearing.

What we know is that our generous targets also included generous considerations for land clearing. The latest data shows that we got a credit of 73 per cent from 1990 levels on land clearing. So our farmers have in fact delivered the results that the government so commonly and loudly professes as being its great success story on climate change. Farmers have been responsible for virtually the entire share of the nation’s greenhouse gas emissions reductions. But their efforts, worth around $2 billion, have not been recognised or financially rewarded by the government, except in drought handouts. The Climate Institute states:

By reducing land clearing, farmers have already reduced greenhouse gas emissions by about 75 million tonnes since 1990. By 2010, the savings are projected to be about 83 million tonnes. This level of emissions reductions is equivalent to eliminating the total annual emissions of New Zealand or Ireland. Over the same period, emissions from energy and transport have and continue to sky rocket—

stationary energy by 43 per cent on 1990 levels—

... total energy sector to emissions are projected to be 45% above 1990 levels by 2010.

According to the Climate Institute:

In short, the farmers have been carrying the greenhouse reduction efforts in an inequitable relationship to other greenhouse gas polluting sectors in Australia.

So the federal government cannot claim any credit for those emissions savings. Regarding the area over which it has jurisdiction, the government has chosen not to exercise any influence and that has meant massive increases in emissions in the areas of transport, stationary energy and the like.

I want to finish by saying that this is nothing new for the Democrats. We have been on this issue for a long time. In fact, when we looked back at our records, we found that we kicked off the greenhouse debate in the Senate back in 1988 with a private senators’ bill on ozone protection. So my colleagues back then were already talking about greenhouse.

We also initiated and chaired two Senate reports on climate change: one that I mentioned earlier and another in 1991 called Rescue the future: Reducing the impact of the greenhouse effect. The one in 1999 was called The heat is on: Australia’s greenhouse future, which was tabled in 2001 with, as I said, recommendations—106 of which have yet to be put in place.

We also pushed for the environment committee to respond to the government’s energy white paper, which was supposed to set a strategy for Australia’s future energy development. It is interesting that within a couple of years of that strategy being put
forward the government suddenly did an about turn and decided we were heading down the nuclear power path—so much for a strategy for the future.

In 2005, we considered the white paper in a report entitled *Lurching forward, looking back* and found that the plan outline did not go far enough and lacked a viable time frame for success. The report found that the energy white paper did not contain effective planning for Australia’s future energy supply, greenhouse emissions reductions or alternative renewable energy development. It argued that energy related emissions were increasing at an alarming rate and yet there were no clear policies in the EWP that would rein in emissions. There are no clear policies within AP6 either. And there are no clear policies for Kyoto. *(Time expired)*

Senator IAN MACDONALD (Queensland) (5.06 pm)—I am delighted to take part in this debate this afternoon. I am a bit disappointed in the Labor Party though. They seem to have been concentrating on the workplace relations bill and ‘all’ the demonstrations today. I put all in inverted commas because I think only a very small percentage of Australian workers bothered to turn out today. In fact, as I understand it, the demonstrations were an absolute and abject failure today.

Senator Kemp—The MCG was almost empty.

Senator IAN MACDONALD—Yes. You would fill the stadium with people going along to see the singer. Perhaps even the fans of Jimmy Barnes were turned aside because of the workplace relations thing. I am a bit disappointed in the Labor Party. It was such a big issue today, so I thought their one afternoon of opposition business today would surely have been on workplace relations. Fortuitously—and fortunately for the rest of us in the Senate—they have picked the more serious topic of climate change, because nobody, most of all the workers in Australia, takes too seriously the ongoing dishonest campaign by the Labor Party and the few union bosses, who will suffer as a result of the Work Choices legislation.

I am disappointed in the arguments today from the Labor Party, because, as I understood it, the workplace relations bill was going to make the sky fall in. I felt absolutely certain that someone would have blamed climate change on the workplace relations bill, because all those dire warnings have been given for so very long. It is good to debate a serious subject which concerns, I think, everyone in the world. I really struggle to understand the approach of the Labor Party particularly. I struggle to understand the approach of the Democrats and I have never bothered to try and understand the approach of the Greens, because I know they are just in this for the few votes they can win from the Labor Party each election by taking a different approach or a left-wing approach. But it does surprise me that the Labor Party have adopted this approach.

Someone has to tell me; I cannot quite follow this. I think Senator Allison made the point that the United States emits 25 per cent of the world’s carbon emissions. I acknowledge that, Senator Allison. You said that for some reason the government does not seem to acknowledge it. We do. I have to say to Senator Allison: that is just the point about signing or not signing Kyoto. I will come back to that. But if the United States emits 25 per cent of the world’s greenhouse gases, what does China emit? I do not have those figures; I am sure they will be around the chamber. What does India emit? What does Europe emit—that great bastion of propriety when it comes to greenhouse emissions? Of course, they are pretty big emitters—not as big as they would be if they did not have all that nuclear power. It is because of the nu-
clear power in Britain and France in particular that Europe is not such a big emitter as they might otherwise be.

Australia emits less than one per cent of the world’s greenhouse emissions. So, if we signed up to Kyoto today, I would understand from the arguments of Senator Allison, the Greens and even the Labor Party that suddenly our farmers will not be in drought, just by Australia actually signing a bit of paper. Signing a bit of paper will not make one iota of difference to Australia’s farmers or changing climate in Australia. What will make a difference—and it will not make a difference for a few years, but it certainly requires urgent attention—is getting the big emitters involved. The big emitters in this particular instance are the United States, China and India. So having Australia sign or not sign a document that very few of the big emitters are involved in is just nonsensical. I have to get someone to try and explain to me the logic of their arguments. What Australia needs to do and what this government wants to do is engage with those big emitters—the USA, China and others—to try and bring them into some sort of meaningful arrangement that will stop greenhouse gas emissions and the change in climate.

We have had all the accusations, such as: because Australia has not signed a bit of paper, suddenly all the South Pacific countries will go underwater—it will be Australia’s fault because we have not signed a bit of paper. Where is the common sense and logic in all that? These island nations are in trouble because of the greenhouse gas emissions from the big emitters. What do you do about that? You do not have a country that emits less than one per cent sign a bit of paper; you try to get into the tent and into some meaningful arrangement with the people who are the big emitters, and that is Australia’s goal.

All that Australia would do if it signed this bit of paper is destroy, in a competitive way, its very lucrative coal industry. Again, the Labor Party speaks with a pretty forked tongue, I might say, when it comes to this particular argument, because, when they are around the cafe latte set in Sydney and Melbourne, where most of our Labor senators come from, with respect to them—

Senator Sherry—Devonport, actually.

Senator IAN MACDONALD—The cafe latte set in Devonport—all right, Senator Sherry. Senator Sherry, when or if you ever talk to the coalminers in the Bowen Basin, you will not adopt quite the same approach to greenhouse gas emissions, because the miners where I come from, and in an area where I travel regularly, understand that the Labor Party policy on this and in so many other areas would cost them their jobs. Most of them earn far more than anyone in this chamber earns at the present time—and good luck to them. I appreciate and applaud people who get out and do the hard work—at times the dirty work—but share in the rewards, and they certainly do in the Bowen coalfields, Dysart, Moranbah, Emerald, Moura and all those places.

If the Labor policy were introduced without any trade-offs, then the people who the unions are supposed to be representing and supporting would find themselves in very dire straits. I find the Labor Party’s approach to all of this quite illogical and difficult to understand. Perhaps I should not say ‘the Labor Party’; I should say ‘the Labor Party in its federal connotation’, because the Labor Party in Queensland, with Peter Perfect—Premier Pete—understands—

The ACTING DEPUTY PRESIDENT (Senator Marshall)—Order! Senator, you must refer to the Premier of Queensland in appropriate language. I ask you to withdraw that and refer to the Premier properly.
Senator IAN MACDONALD—Certainly: the Hon. Peter Beattie MP, Premier of Queensland—great guy. Some describe his winning approach to elections as the Luna Park smile: ‘Trust me; this is a problem.’ In fact, you should talk to Premier Beattie about how to fix climate change, because he would fix that in the same way he has allegedly fixed everything else: he would give everyone the Luna Park smile and say, ‘Yes, this is terrible. We’ve got to do something about that. Trust me and I’ll fix it.’ He did that with the health system. Regrettably, my fellow Queenslanders fell for the line.

Gee, if they had a go today they would not fall for it, as they carry their buckets of water around between five and six in the morning to water their most precious prized plants. They would not be so forgiving these days. But again the Hon. Peter Beattie MP smiled at them, gave them that very famous smile: ‘Gee, this water’s a problem. The fact that I’ve been here for eight years and should’ve done something about these dams in those eight years, don’t you worry about that. I understand now it’s a great problem. The smile on my face and the sincerity of my promises will tell you that we’re going to fix the water problem in Queensland.’

Perhaps the Labor lot over on the other side of the chamber should have got Premier Pete—I am sorry; the Hon. Peter Beattie—to come onboard and smile and tell everyone he is going to fix climate change. He seems to think that he can do all those things, even though it has nothing to do with him. But on a more serious note, he understands that by signing Kyoto all you do is put a lot of Queenslanders out of work, and he is not very keen on doing that. He is, after all, a politician. He, as a Queenslander, would like to see his state do as well as it could. I suspect there are a few other Labor premiers in the same position. They are not quite so gung-ho on this Kyoto agreement, because they realise as well that by simply signing a bit of paper you are not going to cure climate change. All you are going to do is put Queensland and Australian industries at a disadvantage. So it is not the Labor Party, it is the federal Labor Party that sees in this approach some votes from the cafe latte set around the capital cities.

As opposed to that, what the coalition government wants to do is to seriously address climate change and try to bring onboard the big emitters so that we can reduce greenhouse gas emissions from the United States, China and India, and in that way do something serious about climate change. The ridiculousness of the idea that Australia, with less than one per cent of emissions, signing a bit of paper is going to cure the drought, cure the water shortage and fix the Australian farm industry is just so nonsensical I cannot believe allegedly clever people that live opposite in the chamber could be promulgating that argument.

But then you get onto the Greens and, I regret to say, even the Democrats with some of their solutions for fixing climate change. Senator Allison spoke, and I think Senator Milne spoke—I only half heard her. One of their solutions to fix greenhouse gas emissions was to stop logging of old-growth forests. How illogical! How contrary to the facts can you be with that argument from Senator Milne? She should know that growing forests—and I do not mean old-growth forests that grow a very small amount each year—are really greenhouse gas sinks. What Senator Milne would have us do is stop all logging of old-growth forests in Australia. It would mean that our annual trade deficit of $2 billion in forest and wood products would escalate much higher, which would have a bad impact on Australia’s balance of payments and our general economy. But it would also mean that Australia would still have the need for those forest and wood
products. So if we ban it from Australia, where do we get it from? We get it from places like the Solomons, New Guinea, Malaysia and, I understand, parts of China, where there is large-scale slaughter and clearing of native forests—rainforests that are growing and sucking in a lot of carbon emissions. But Senator Milne would have us stop it in Australia where it is so very well controlled.

In Australia, if you clear some forest land—if you harvest some forests—it is immediately replanted with new trees. The trees grow, and during their growing cycle they actually consume a lot of greenhouse gases and help with that. But the Greens’ approach is to stop that in Australia where it is very carefully controlled and sustainably managed, and let all the forest and wood product collections for Australia come from forests around the world which are not at all well managed and which do have an impact with their clearing arrangements.

How does that help the climate change issue in the world? I ask Senator Milne: when you stop Australia’s sustainable and very carefully managed harvesting of old-growth forests in Australia and push that onto the uncontrolled clearing of land in places like the Solomons and Malaysia, how does that conceivably help climate change in the world? Doesn’t Senator Milne understand that we are in a global situation here? It is not so much what happens just in Australia. That seems to be all Senator Milne is interested in: ‘Stop sustainable managed forestry in Australia but let it go unchecked elsewhere in the world.’ She does not seem to realise that the impact in Australia is only infinitesimal compared to the impact that these uncontrolled clearings have in other parts of the world.

That is the sort of stupidity we continue to get from the Greens. This week I think the Greens are all in favour of wind power, but I can remember the times when the suggestion of putting up wind farms anywhere in Australia was totally opposed by the Greens. Wind farms created visual pollution or noise pollution or perhaps they even caused some damage to wildlife—perhaps even orange-bellied parrots—and the Greens were then totally opposed to them. Now they have had some sort of a conversion.

They also cannot seem to understand, as many of their counterparts in the rest of the world can, that if greenhouse gas emissions and climate change is the real issue for the world at the present time—and many of us think that perhaps it is the greatest confrontation that the globe faces—then they would have to concede that nuclear power should at least be looked at. Certainly in Australia we have to have the debate on nuclear power and we have to get the facts and figures together. I agree with respected commentators, I think, who say that perhaps today nuclear power is not economically feasible for Australia, but that does not mean to say, as the Labor Party and the Greens do, that we should not even think about it.

Again I have to correct myself, Mr Acting Deputy President Marshall: it is not the whole of the Labor Party that thinks like this. I know that there is a huge division of opinion in the Labor Party. Martin Ferguson, one of the more sensible policy frontbenchers for the other side, agrees with the government that there needs to be debate on the nuclear option. For Australia we need to look at all of these avenues, and of course the Australian government is doing that. The Australian government has put so much money into development of low-emissions technology, renewable energy development, solar cities program, advanced electricity storage technologies, wind energy generation, the greenhouse gas challenge—the list goes on of the initiatives that the Australian government has
taken to address our energy needs in a greenhouse gas sensitive way and we have a very good record on that. But it does need Australia to look at all options, including nuclear.

I also think that we have to look again at hydropower. I accept that I am a bit simple when it comes to these sorts of things. I, like most other Australians, cannot quite understand the arguments of the Greens that hydropower is not really much good for you. They will not allow any more hydroplants to come on stream and yet there you have a source of energy that really is harmless. It provides very good power and does it, I would have thought, in a very environmentally sensitive way. I think the argument must be that some parts of our vast country would go underwater for the dams that would be needed for hydropower. But we have got a big country and surely we can give up an infinitesimal part of that land mass for water storage to allow for hydropower that would really help with this climate change problem.

So I find this bill the Australian Labor Party introduced before the parliament today a bit difficult to understand. I think that it is a bit disingenuous. It is an attempt to garner a few votes in the capital cities by those who are attracted by these sorts of superficial arguments. I would certainly hope that the Senate has the good sense to reject the bill and endorse the government’s approach to this difficult problem. (Time expired)

Senator CROSSIN (Northern Territory) (5.26 pm)—I rise to provide a contribution to the debate on the Avoiding Dangerous Climate Change (Kyoto Protocol Ratification) Bill 2006 [No. 2]. Coming from the Northern Territory, I am only too well aware of the debate we have had in the House of Representatives, and of the Senate committee report tabled today on the Commonwealth waste management strategy that has highlighted much of the angst for people in the Northern Territory when it comes to what we do with the offshoot and the waste product emanating from nuclear power.

Before I get to that, let me provide some introductory remarks about where we are in this country in respect of dealing with climate change and the impact of that. We have had over 10 very long years of the Howard government and we now know that they have spent their time totally ignoring scientists and the warning bells when it comes to climate change. They have ignored economists who have repeatedly warned this government and the Australian community about what economic impacts it will have for this country if we do not take action not tomorrow, not now, but even yesterday—and it is too late for yesterday, of course. Climate change is a very serious threat, and I wonder to what extent it has to become such a threat that this government will finally decide to take action and do something about it.

This year we had the Stern report provided to this government in early November. That highlights the potential impact of climate change on our economy—another signpost, another warning for this government that it needs to take action now before it will cost much more money to deal with in future years. Back in June 2005 this government also received a report: Climate change: risk and vulnerability. That report back then outlined the consequences for Australia if we do not do anything to take appropriate action in tackling climate change. We know that during this time there has been a 30 per cent drop in rainfall and, while we are certainly not experiencing that so much in the Northern Territory and in the Top End, other parts of this country are seriously affected. It saddens me to see photos and pictures on the television of communities struggling with serious drought and the lack of water. Finally, at some stage, the penny must drop that this is related in some way to this 30 per
cent drop in rainfall—that it is due to our inability to take action on climate change.

We know there are more extreme weather events happening in northern Australia. Even this year in April, when I was out in north-east Arnhem Land—in fact, I got stuck in the floods in Katherine—people were saying to us: ‘How can this be? We had a massive flood in Katherine in 1998 that people said was a one-in-a-hundred-year tragedy. But here we are again in 2006, only eight years later, with the Katherine River at its maximum height.’ The day I was there I would say that another half a metre of water in the Katherine River would have seen it flood the main part of the Katherine community, and that would have emulated the massive floods we had back in 1998. So there are people in parts of this country who are experiencing this sort of thing now—from droughts in the eastern areas to floods in the north: we have had severe flooding twice in eight years.

This year we also experienced, the day before Anzac Day, Cyclone Monica. That threatened to pass over Darwin. Unfortunately, the eye of that cyclone went over Maningrida and there was serious damage there. But, I tell you, if the eye of that cyclone had gone through Darwin, I am not entirely sure how that city would have withstood a cyclone of that capacity. I have to say to you, at three o’clock on that Monday afternoon, Darwin was as black as it gets at midnight anywhere else in this world and it was pretty scary and eerie. Again, what we are noticing more and more is the threat of not only more cyclones but also increased severity of cyclones in the Top End—and of course the disappearance of iconic areas of our country, like the Great Barrier Reef, and massive changes at Kakadu National Park.

So the signs are there. This government that is in power should be recognising that and taking some action. But what we have seen is that the government will not sign up to the Kyoto protocol. I listened to Senator Lyn Allison’s contribution to this debate and I think she is right on the money when she says that the government’s inaction on climate change, in not signing the Kyoto protocol, is about nothing other than the politics of supporting the United States. It is about trying to back up their mate, President Bush. It is about John Howard making sure that his best friend is not out there on an island by himself, and that is not the way to manage climate change in this country.

We have not signed up for the protocol’s first commitment period, which is to operate between 2008 and 2012. That period has the commitment of the whole world, I might add, including China and India. Fancy that—China and India but not us. It is hard to believe, really. Those countries are putting in place practical measures for clean energy development, implementing systems and looking at opportunities to expand industries in areas that would address all of these climate change issues.

The Prime Minister was talking about some kind of new Kyoto protocol. I think he referred to it as ‘new Kyoto’ some weeks ago. Well, it is not in fact a new protocol that is going to be out and about; it is actually the second commitment period of the current and original Kyoto protocol. Perhaps that shows just how off course the Prime Minister is if he cannot even get the words right. The second commitment period of the Kyoto protocol is post 2012, from 2013 onwards. Of course, we heard Senator Milne’s contribution on the activities in Nairobi, where we could not even vote. As I said, there are countries like China and India sitting at the table because they have signed on the dotted line. At least they are going to try to do what they can in this period. We can go to the talkfest but we do not have any power or influ-
ence because our signature is not on the bottom of the page.

Quite frankly, it is a joke, when over 10 years ago Australia used to move around the world stage as a leader in a range of areas, not just in the United Nations and signing protocols but also in a whole range of other activities. It is surely an international embarrassment to us now. Just this week we had a New Zealand delegation come to this parliament—their local government and environment committee—and the chair of that committee was saying to me over a luncheon: 'I can’t believe your country hasn’t signed the Kyoto protocol. You’re one of only two countries in the world that hasn’t and it’s still not happening.' Yet this week, while they have been in the country, all they have heard on the television and in newspaper articles, she was saying, are comments about the drought, about the climate and about how we need to take action.

But this government has not stepped up to the plate. So other countries are talking about us, but not in a positive way—in very critical and damning way, and in a very embarrassing way, I have to say. As a member of the federal parliament, to sit with a New Zealand delegation and try to defend—well, I was not going to defend this government’s lack of action, but it was embarrassing. So countries around the world are watching and they are taking notice, and what they notice is that we are on a go-slow here. In fact, my House of Representatives colleague Anthony Albanese said that we have the handbrake on for climate change. So we have not even decided to put it into first gear.

Figures released by the United Nations Framework Convention on Climate Change show that Australian greenhouse gas emissions rose between 1990 and 2004 by 25.1 per cent. Energy emissions increased by 34.7 per cent over the same period, 1990 to 2004. Australian emissions, according to the Australian Greenhouse Office report that was released last year in November, are projected to rise by 22 per cent by 2020. So our emissions are on the increase; they are not on the decline. You have to ask yourself why that is. It is because the Howard government are doing nothing to try to turn these figures around. They are simply not with the program and they do not want to be with the program. They are too busy supporting their best mate across the Pacific Ocean.

Despite the warnings for years and years, we have a government in charge of this country that is only just coming to recognise climate change. Today’s latest warning in the media, I notice, is on Antarctica’s Ross Ice Shelf. We have all seen the pictures of the icebergs floating up past the New Zealand coast. The Ross Ice Shelf in Antarctica—which is about the size of France, I have to say—could break off without warning. Surely those sorts of things do not happen without a reason. We could see a rapid rise in sea levels if that occurs, bringing climate change home to every coastline around the world.

What is the government’s quick fix for climate change, having ducked and weaved about Kyoto and now Kyoto 2, as Mr Howard might want to call it—but, in fact, it is the second commitment? Their answer now is to actually divert everyone’s attention to a possible nuclear power industry in the country—a nuclear power plant for everybody’s local community. Not only will you be able to go down to your local swimming pool, gym and high school but also you might be able to skip off and do your five-kilometre walk in the morning around your local power plant if this government has its way—and every one financed by a whopping government subsidy. As we have seen, we are no longer going to be able to have a nuclear power industry in this country—it will be
massively expensive—and it will not be able to operate unless it is highly subsidised. Where is that going to come from? That is going to come out of my and your taxpayer funds, no doubt.

On the government’s current strategy, nuclear power will also need the government to be able to bully the Northern Territory—once again. And even Aboriginal traditional owners, under the latest radioactive waste dump bill, are to take the industry’s waste. If we are going to move down the path of having a nuclear power industry then, as I think I said in this place earlier this week, tell us where the reactors are going to go. Tell the people in the Northern Territory where the waste is going to go. Australia has had 50 years to sort out storage of radioactive waste, yet even the government’s latest plan for the intermediate waste we have been generating for years is still not a permanent solution.

When I talk about the dump that is going to be put in the Northern Territory, it gives me a great opportunity to refer to the outburst on Monday evening from my Senate colleague from the Northern Territory. He is getting a bit touchy, isn’t he, about the use of the word ‘dump’! But people in the Territory, and certainly I, will continue to use that word. We do not see this as a facility; we do see it as a dump. When the country railroads legislation in the Northern Territory, when a government refuses to consult with the communities that are affected, and when a government seeks to overturn and disregard the outcomes and legislation passed by a democratically elected government in the Northern Territory and picks three sites that are actually disused defence sites in order to house nuclear waste from this country, we have every right to call that a dump—absolutely, we do! You are simply taking your waste from Lucas Heights and plopping it down somewhere in the Northern Territory without due process or due consultation. So, if my colleague Senator Scullion wants to get a little bit upset and emotional about the word ‘dump’, he had better get used to it because we will continue to use that word. We are not convinced that this will be a ‘facility’. This is anything other than a facility. This will be a nuclear waste dump.

That brings me to a report that I have been reading which was commissioned by the parliament in the United Kingdom. They are, in fact, so much on the program in the UK that they actually have a Committee on Radioactive Waste Management. That would probably be a little bit too transparent, open and honest for this government. The UK parliament actually commissioned this independent committee. It is headed up by Professor Gordon Mackerron. Recommendation 10 of this committee’s report says this:

Community involvement in any proposals for the siting of long-term radioactive waste facilities should be based on the principle of voluntarism—

that is a novel idea!—

that is, an expressed willingness to participate.

He goes on to say, in recommendation 12:

Community involvement should be achieved through the development of a partnership approach—

now we are getting fairly unique, are we not!—

based on an open—

oh my goodness!—

and equal relationship between potential host communities and those responsible for implementation.

What a novel idea that would be! And it is not only that. As I read further in this report, I want to also make reference to something else my colleague happened to say on Monday night. He tried in explicit detail to explain to us exactly what was high-level waste and what was not high-level waste. In fact, he seems so eminently attuned to these defi-
nitions that one would have thought that per-

haps he had some kind of postgraduate de-

gree in nuclear physics. But, in fact, if you

read all of the literature that is around from
countries that have been dealing with this
stuff for 50 years or more, you will find that,
in fact, there is no internationally agreed
definition of nuclear waste.

Lo and behold—what do I find on page 14 of this report from the UK committee? At dot

point 5 on page 14 of the report—and I

might say that this report is entitled Managing our radioactive waste safely—it says:

There is no internationally agreed method of clas-
sifying radioactive wastes.

Let me just read that again. I must have got it

wrong if Senator Scullion is the expert in this

all of a sudden. It says:

There is no internationally agreed method of clas-
sifying radioactive wastes. Historically, in the UK
they have been categorised in terms of their na-
ture and activity and this has generally been used
to determine the approach to waste management.

It goes on to say:

The classification has taken account of quantity
of radioactivity the wastes contain and their heat
generating capacity and has resulted in four basic
categories ...

We have asked ANSTO and DEST officials
time and time again what the waste is that is

going to be dumped in the Territory. But, of
course, we keep getting told that it is only

low-level and intermediate-level waste; that it is not high-level waste. How do we know

that? If there is no internationally agreed definition on what waste can be classified as,

how do we know that we are not getting

high-level waste?

Minister Marion Scrymgour from the

Northern Territory went off to France in June

or July of this year, and what did she find?
The French told her that we are not going to

get back anything other than high-level

waste, that there is no waste that has been
generated in France and Scotland going back
to Australia on ships other than high-level

waste. The French are absolutely convinced

that we will be getting back high-level waste.
We had better have a damn good place to
dump it because it is going to be there for at

least 200,000 years.

I also want to say that, when I raised this

report in estimates, DEST officials informed

me that it does not apply to Australia because
the UK has mainly high-level waste. I see.
They are saying: ‘If we were going to get

back high-level waste, we would consult

with the community where we are going to
dump it. But, because this is not high-level

waste, we do not have to consult anyone.’

That is logical. But the UK, Scotland and

France are telling us that it is high-level

waste we are going to get back. In the last
few preceding weeks when I had a chance to

read this report from cover to cover, what did

I find? Most of the waste that the UK wants

stored for a period of many long years is in-
termediate-level waste. How about that? The
dump in the Territory is going to have low-

and intermediate-level waste. If it was good

enough for the UK to consult communities

and have a specific committee on radioactive

waste management, why can we not do that

in this country?

What I am coming to in talking about the

bill is this: if this government is going to do

nothing about climate change and is going to
take us down the path of nuclear energy, it

should tell us where the waste is going to go.
If the waste is going to be dumped in the

Territory, the government should scrap the
current plan, start again and start consulting

the community. If the government wants to

use international best practice, it should start

with waste management 101, consult and

have volunteer communities that are well-

informed and would welcome the waste

rather than dumping it on a community that
does not want it. (Time expired)
Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (5.46 pm)—As Senator Milne has said, we will support the Avoiding Dangerous Climate Change (Kyoto Protocol Ratification) Bill 2006 [No. 2], but it is in fact the same bill that Senator Lundy and I put to the chamber two or three years ago. It passed then because there was not a government majority in the Senate. The bill simply called for ratification of the Kyoto protocol. This bill will no doubt be blocked, if it gets to a vote on this occasion, by the combined numbers of the government in majority in the Senate. This just shows that, instead of advancing to tackle climate change, because of the Howard government’s failure on this matter—failure of thinking, failure of strategy, failure of planning and failure in having a long-term view—this parliament is going backwards so that a proposal like this will now not get through the Senate, even though it did a couple of years ago.

That having been said, I am very pleased that today Senator Milne brought a comprehensive climate change strategy bill—the Climate Change Action Bill 2006—into the chamber, because a strategy is required that really does grapple with Australia’s appalling performance under the Howard government as one of the world’s biggest per capita polluters and the intention of the Howard government to stay right in line with the coal industry and, as Senator Crossin just indicated, the nuclear industry, to the detriment of the best options, by far, for this nation to be taking. The first option is energy efficiency, which the unlearned brains of the senators opposite seem unable to grapple with, which could provide up to 30 per cent of the electricity required by this nation in the future. Energy efficiency simply means everything from turning lights off when you leave a room to properly cladding hot water pipes, making sure that heavy industry is not wasting power and that heat from heavy industry is converted into energy use and is not simply wasted into the atmosphere.

The second option is of course renewable energy—solar energy. I have just taken delivery of a new round of ‘solar, not nuclear’ stickers which sum up the options. The Greens say solar energy, the government says nuclear energy and there is an enormous gap between the two. I resisted the temptation in deference to President Bush to run the sticker saying, ‘solular, not nucular’. I have kept it to the proper pronunciation so that it would not confuse people further. I know President Bush is very easily confused on these matters.

The problem with the bill is that it does not tackle the need to reduce the greenhouse gas emissions from this country with targets and dates. I heard Senator Milne flag an amendment for the committee stage, if we ever get to it—and that is unlikely in the week or so of parliamentary sittings we have left—to tackle the most expeditious way of reversing the huge amount of greenhouse gases being produced unnecessarily in this country, and that is to end old-growth logging.

In his report a couple of weeks ago, Sir Nicholas Stern, the former Chief Economist of the World Bank, created a new wave of alarm about the catastrophic social, environmental and economic problems that climate change is bringing ever closer to the whole planet. He made it clear that the first thing we should be doing is ending the destruction of forests around the planet. In doing so, we could cause a reduction in greenhouse gases greater than if we stopped all the transport systems in the world. It can be done in a wealthy country like this one simply by the government motivating itself to do so. We have enough wood available in our wonderful nation from the 1.5 million hectares of...
plantations to supply all the wood needs of this country—paper, building materials and so on. We simply do not have to keep destroying native forests, which causes a massive loss of biosphere and is to the extraordinary detriment of the atmosphere.

For me it is criminal behaviour. It is a crime against nature for Labor and Liberal governments in this country to be continuing to authorise the destruction of native forests. Not only is it an assault on the water catchments, leading to the new plantations taking up prodigious amounts of water and therefore depriving downstream users of that water, but it releases enormous amounts of greenhouse gases into the atmosphere. Let me explain that a little because the science is not known to members of government, including the two, only, who are opposite in the chamber at the moment. An old-growth forest continues to absorb——

Senator Kemp—I rise on a point of order. Senators are entitled to range far and wide but the rather cheap shot that was made that there were only two senators in the chamber was from a man who refuses to come, often, into the chamber for question time. This is a man who refuses to come to Senate committees. To reflect on the attendance of other senators in the chamber is quite outrageous.

Senator BOB BROWN—Yes, a very correct ruling—it is not a point of order and the minister should wait his turn to get up and try to defend his indefensible position.

Senator Sherry—It is his last week as a minister.

Senator BOB BROWN—Is that it, Senator? It is his last week as a minister, I am informed.

The ACTING DEPUTY PRESIDENT—Senator Brown, you could resume on what you were speaking on.

Senator BOB BROWN—Because you have made such good ruling, Mr Acting Deputy President, I will take notice of what you say and get back to where I was before the unfortunate senator broke standing orders. I was talking about the detriment that occurs when old-growth forests are destroyed as they are being destroyed in southern New South Wales, Victoria and Tasmania, for example, at the moment. The same applies to native woodlands right across the country, I might add. Just this week we got the news that, under the authority of the Howard government and its regional forest agreement, which the Prime Minister personally signed, and the Lennon Labor government in Tasmania, giant trees in the World Heritage value Upper Florentine forests are being dynamited.

This is not Afghanistan under the Taliban, but it echoes the destruction of Bamiyan during that period. The difference between the great Buddha statues of Afghanistan, which are now lost to human heritage for all time, and the giant trees of the Upper Florentine forests, is that the latter are living entities full of wildlife. Under the authority of the Prime Minister, these great trees—amongst the greatest living things ever on the face of the planet—are being dynamited.

What happens in the wake of that is that Gunns Ltd will come in and take the majority of the forest that is taken out. In fact, it is very likely that a vast amount of the forest will remain there on the forest floor, including the dynamited trees. They will take other trees out as woodchips, which go to Japan, get recycled as paper and end up on the rubbish dumps of the northern hemisphere and emitted as greenhouse gases. Those that remain are, except for some clumps, destined
to be burnt. When they are burnt, hundreds, thousands, millions of tonnes of greenhouse gases are emitted into the atmosphere, over a period.

So we go from a vast forest which is absorbing greenhouse gases and transmitting them into the ecosystem—and half or more of the greenhouse gases are actually underground in micro-organisms and the root systems—to a devastated environment in which there has been a massive greenhouse gas assault on the already polluted environment. That is under the authority of our Prime Minister, John Winston Howard, and the Labor premiers of Tasmania, Victoria and New South Wales. Very recently we have seen the reiteration of the determination of Premier Bracks in Victoria to keep logging the water catchments of that state. In a statement he said he would not protect future old-growth forests but that they would go to logging. This is reprehensible.

We have just heard Senator Crossin and others before her speak about the fear now that the massive Ross ice sheet in Antarctica is dangerously capable of being let loose and melting into the oceans, creating a sea level rise of between five and 17 metres. Is the government really thinking about what that means for this nation, let alone the whole world? Senator Parry, opposite, thinks that that is amusing. I do not. I think it is an appalling prospect and it must be taken seriously. I would have thought a new and younger member of the Senate would be working very hard to wake up the old warhorses of the government about that matter.

I will be supporting the motion to end old-growth logging. I will be supporting the much more comprehensive and strategically effective legislation that Senator Milne introduced to this place earlier in the day. Of course the Greens will be continuing to argue for the much better alternatives like renewable energy, which has effectively been defunded and put 10 years back by the failed policies of the Howard government in the last 10 years.

The ACTING DEPUTY PRESIDENT—Order! The time allowed for the consideration of general business, including the consideration of government documents has expired.

COMMITTEES
Community Affairs References Committee Report
Debate resumed from 9 November, on motion by Senator Moore:

That the Senate take note of the report.

Senator MOORE (Queensland) (6.00 pm)—In light of some of the comments that we have seen in the Alice Springs media over the last few weeks, which have caused a degree of concern for many of us—and, I am sure, for most people in the community—I feel it is important to remind people in this place of the recommendations of the Community Affairs References Committee in its report entitled Beyond petrol sniffing: renewing hope for Indigenous communities. This was an extremely confronting report process for members of the Community Affairs References Committee. It involved several months of community consultation, during which time we heard from a range of people. The inquiry resulted from a motion that was brought into this place originally by Senator Brown and was later enhanced by Northern Territory senators from both sides of the chamber. We focused in this report on issues that were positive for communities that were struggling with the scourge of petrol sniffing.

One particular focus of this report was the potential and actual use of Opal fuel. It is on that particular point that I bring to this place tonight a strong sense of frustration and anger over what appears to be occurring in Al-
ice Springs. It is very difficult to know, because it is a sensitive issue and a very dynamic community, but the local press in the Alice Springs area has been running quite sensational articles about concerns regarding the actual effectiveness of Opal fuel. This beat-up campaign, which has promulgated a lack of respect for and a lack of confidence in the use of Opal fuel, has resulted in fear about using that fuel by members of the community, both the local community and the very strong tourism community that travels through Alice Springs.

In a response given yesterday by Minister Santoro, we heard that, whilst there have been some problems with fuel in Alice Springs, research shows that these problems cannot be traced back to Opal—and that is the key issue. This is a time when we should be promoting the use of Opal fuel. A specific recommendation of our report was that we assess the usage of this fuel and work with its producers. Opal is a wonderful Western Australian BP product. I want to put on record the great support and information we received from BP Australia at its Western Australian plant—of which you would be aware, Mr Acting Deputy President Lightfoot—where we looked at the scientific advances that had occurred to create this particular fuel. This fuel is effective, does not harm engines and, importantly, does not have the ability to create whatever it is in fuel that gives people the high they get when they sniff petrol. I see that Senator Polley has come into the chamber; she was also part of the quite wonderful experience of being on this committee.

Through this process, one of the things we learned was that, naturally, you need to engage your local community when looking for a solution. In our report, a quote by the Alice Springs Town Council reads as follows:

There is a consciousness in Alice Springs that we can be either part of the problem or part of the solution. I am 100 per cent sure that most people would prefer to be part of the latter and would have no problem with converting to Opal fuel if their vehicles permit that. The other fuel, as I say, is not an issue for the community.

So there is a real sense in the local area that, if it were widely publicised and understood that this alternative option was safe and effective for usage, with a community campaign—and there always must be effective campaigning—there would be an openness and a willingness to transfer to that fuel in the Alice Springs region, which is a key central area where so many people travel; there would be a sense of confidence in moving to the supply of Opal.

This report was brought down in June 2006. Here we are in December 2006, moving into the wet season—people who have experienced that process in that part of Central Australia know of the particular isolation and social issues that arise in that part of the world at that time. All of us who were involved in this committee had great hope and expectation that by this time we would be moving to the next stage of this debate. We hoped and expected that by this Christmas period, when the kids were not in school, there would be a reduction in the option of having sniffable fuel in the community. A particular aspect of this addiction is that people tend to drift in and out of the scourge of petrol sniffing. The really sad thing is when people are no longer able to move out of petrol sniffing and are caught up in almost a lifelong process.

We had a real opportunity to allow people to make a conscious choice to no longer access cheap petrol to get that high and they would have no access to it in the community, because the major petrol retailers would be supplying Opal. The motorists in the area would know that Opal was there and would be able to use it at a reasonable cost, because we were encouraging the government to
keep rolling out the subsidies for the process. All those bricks in the campaign would have been in place. However, to our absolute frustration, we have found that in December 2006 a fear process is being widely promoted in the Alice Springs community and it has put some scare into whether Opal fuel can be effectively used. Quite rightly, if you have a vehicle that is your livelihood or into which you have put a lot of money, you will not risk it by using petrol about which there are allegations that it may harm the engine—and this is what is running through the community.

Therefore, there is not the same availability of Opal in Alice Springs that we as a community group had hoped in June that there would be by December 2006. We hoped that we would have moved that step forward so that, as said by the Alice Springs Town Council, the community would be part of the solution, not part of the problem. No one on our committee and none of the witnesses who came before us felt that the availability of Opal fuel by itself was going to stop petrol sniffing. What we did believe, what we were confident about and what we gave our commitment to the community about, was that we would as a government and as a parliament do our bit to ensure that the fear aspect would be removed.

We hoped to work effectively with the petrol wholesalers and work through a program of education with the wholesalers locally and the people who sell the fuel. We hoped that this would extend to an education campaign targeting the local community, the schools, the families and the town council so that we would work together to ensure that this particular element—access to a non-sniffable fuel—would be achieved. On top of that, we could then build that extended process. People would be able to rebuild their lives. As we said in our committee report, we would be moving beyond petrol sniffing. It would be part of a solution.

We hope that by bringing these issues to the awareness of our parliament and to the awareness of the public sector—which is working to implement the policy which we have already been told is in place—we will have some action and no more excuses or promises about what is going to happen next. What should be happening now is what we were told was going to happen six months ago, which was that education component—that first step. We were told that that would be in place and that it would not be waiting until next year after another group of kids have been caught up in using petrol as something that gives them the ability to move beyond the other things that cause them to take up addiction. As I have said, there are many parts of this campaign. We need to look at the basic causes of why people choose to sniff petrol, but if we as a community can at least limit the access to the fuel, that will be a step. And we should have been able to achieve that step before this year’s school holidays.

I hope that the government can at least now have a public campaign in Alice Springs through the same local media that has been spreading the story that Opal may be of danger to the vehicles and engines. There should be some sort of public awareness campaign to reassure the community that Opal fuel is not unsafe. The vehicles that can use Opal should be widely publicised; we should do the same for Opal that we do for leaded and unleaded fuel. I will not go any further technically, because I will get lost there. We should be able to have confidence that the kinds of commitments that we on the community affairs committee all made are kept. It was a wonderful experience. But what we told the people who were brave enough to come to us and give us their stories and their hopes was that we were not going to just
move away and forget them. We told them that this committee was going to have action. Let us get the education right and ensure that Opal is used in Central Australia. I seek leave to continue my remarks.

Leave granted; debate adjourned.

Mental Health Committee Report

Debate resumed from 19 October, on motion by Senator Allison:

That the Senate take note of the report.

Senator BARTLETT (Queensland) (6.11 pm)—I want to speak briefly to the first report from the Senate Select Committee on Mental Health, *A national approach to mental health: from crisis to community*. It is widely acknowledged across the political spectrum that this report is a very valuable one. It has helped to move things further along the continuum away from crisis, but I do not think that any of us can say that we have got there yet. There is still a crisis in mental health around Australia and we need to do more in regard to that.

Occasionally, there is besmirching afoot in regard to Senate committees by some in the community, by some in the media and—may I suggest—by some in the government. It is said that Senate committees are all a waste of time, that they are politicised and that they chew up money, and so the process is discredited. Not every committee inquiry is worthwhile and valuable but I suggest that the evidence shows that the vast majority are. I should also say that a significant number of them, this one included, are non-partisan and genuine inquiries in the proper sense of the word. They get evidence, get the facts, get different views from the community and pull together ideas about how to move things forward in a positive direction in regards to an issue of public importance.

I am pleased to see what, in my view anyway, is starting to become a genuine recognition of the importance of mental health as an issue within the broader health portfolio and a slow removing—there is a long way to go—of some of the stigma attached to mental health issues. We need to do a lot more in that respect. It is an issue that was addressed to some extent in the committee inquiry. In some ways, how we deal with the stigma that arises from mental health issues and being seen to be afflicted by a mental health problem is a very fraught issue. It is a very difficult issue, but it is one that we need to confront a lot more honestly and openly. I support moves to do that. I support those bodies in the community—and there are quite a number of them—that work tirelessly to try and reduce stigma. A key part of that is increasing awareness and understanding and reducing fear. Mental illness is something that is hard to put your finger on, mysterious, hard to understand, difficult to measure and difficult to define precisely, and all these things add to the fear and apprehension people have about it.

Certainly there are things about mental illness worth being apprehensive about, but—as with many disabilities—these things are not 100 per cent bad. As with many disabilities, having a mental health disability can actually bring other characteristics to light. It can provide opportunities for people to get different experiences in life and different perspectives on life. I am not suggesting that we should all just grin and bear it—or frown and bear it—and see suffering from a mental illness as a character-building experience, but we need to recognise that, as with many disabilities, dealing with mental illness should not be a matter of looking ceaselessly for a 100 per cent cure and assuming things are terrible if it cannot be found. What I am trying to say is that part of the struggle is looking for ways for people to be able to live
more fully and effectively even when they do not have 100 per cent perfect mental health.

I want to note in speaking to this report that this was a Senate select committee; it was initiated by the Democrats and chaired by my colleague Senator Allison. It is worth noting—indeed, it is a bit of an anomaly at the moment—that there is not a single Senate select committee in operation and, as far as I understand it, this was the last one. I do not think we have had a Senate select committee since this committee wound up, and it only operated for a year or so. I have not looked at the statistics, but I suspect it would be some time since we have had the Senate operating without any select committee at all—certainly for this length of time. At many times in the past we have had two, three or four on the boil at any one time, in addition to the standing committees and the joint parliamentary committees.

For those who are not fully aware, under the Senate committee system we have a range of committees that are there all the time—they are called ‘standing committees’. They look at areas like the environment and legal issues. The Senate Standing Committee on Community Affairs would normally deal with health issues, but the Senate also has the ability and has made it the practice for a long time to form select committees specifically to examine in depth a particular matter so as not to be distracted by the myriad issues that a standing committee can cover. It is very valuable to have a committee established that does nothing but look at the one issue and is not distracted by a whole range of other items of business. I am not saying we should form committees for the sake of them, but it is of concern to me that we have this gap at the moment in the Senate, where there are not any select committees operating. I know there are many opportunities for more forensically examining issues of significance to the community: important public policy matters. It is another sign—perhaps a small sign, but nonetheless another example—of the consequences of the government having the majority in the Senate.

I think the inquiry of the Senate Select Committee on Mental Health was established just after the government got control of the Senate, so in that sense it is a tick for the government, as it supported this inquiry going ahead and the committee being established. But it is also important to note that there is now a gap there. There are ongoing issues flowing out of the work of this select committee into mental health issues that still need addressing. A lot of the findings of the select committee’s work have flowed through and been picked up by governments at the state and federal levels, as well as contributed to community understanding and maintained momentum among community service organisations. That is very welcome and is an important part of the wider value of Senate committees, but I think there is more to be done and, frankly, we need to look at ensuring that the taxpayer is getting maximum value out of the Senate, with all the opportunities and resources we have for conducting valuable, constructive, non-partisan, unanimous Senate committee inquiries. This report is a perfect example of how valuable that process can be and it is a reminder that we should always look for more opportunities to continue to do the same.

Senator MOORE (Queensland) (6.19 pm)—I seek leave to continue my remarks later.

Leave granted; debate adjourned.

Consideration

The following orders of the day relating to committee reports and government responses were considered:

Australian Crime Commission—Joint Statutory Committee—Report—Trafficking of women for sexual servi-
tude—Government response. Motion of Senator Bartlett to take note of document called on. On the motion of Senator Moore debate was adjourned till the next day of sitting.

Community Affairs—Standing Committee—Report—Breaking the silence: A national voice for gynaecological cancers. Motion of Senator Scullion to take note of report called on. On the motion of Senator Moore debate was adjourned till the next day of sitting.

Migration—Joint Standing Committee—Report—Negotiating the maze: Review of arrangements for overseas skills recognition, upgrading and licensing. Motion of Senator Kirk to take note of report called on. On the motion of Senator Moore debate was adjourned till the next day of sitting.

Community Affairs Legislation Committee—Report—Transparent Advertising and Notification of Pregnancy Counselling Services Bill 2005. Motion of the chair of the committee (Senator Humphries) to take note of report called on. On the motion of Senator Moore debate was adjourned till the next day of sitting.

Foreign Affairs, Defence and Trade Legislation Committee—First progress report—Reforms to Australia’s military justice system. Motion of the chair of the committee (Senator Johnston) to take note of report called on. On the motion of Senator Moore debate was adjourned till the next day of sitting.

Community Affairs References Committee—Reports—Forgotten Australians: A report on Australians who experienced institutional or out-of-home care as children—Protecting vulnerable children: A national challenge: Inquiry into Australians who experienced institutional or out-of-home care—Government responses. Motion of Senator Murray to take note of document called on. On the motion of Senator Moore debate was adjourned till the next day of sitting.

AUDITOR-GENERAL’S REPORTS

Consideration

The following orders of the day relating to reports of the Auditor-General were considered:

Auditor-General—Audit report no. 3 of 2006-07—Performance audit—Management of Army minor capital equipment procurement projects: Department of Defence; Defence Materiel Organisation. Motion of Senator Bishop to take note of document agreed to.

Auditor-General—Audit report no. 7 of 2006-07—Performance audit—Visa management—Working holiday makers: Department of Immigration and Multicultural Affairs. Motion of Senator Carol Brown to take note of document called on. On the motion of Senator Bartlett debate was adjourned till the next day of sitting.

Auditor-General—Audit report no. 8 of 2006-07—Performance audit—Airservices Australia’s upper airspace management contracts with the Solomon Islands Government: Airservices Australia. Motion of Senator O’Brien to take note of document called on. Debate adjourned till the next day of sitting, Senator O’Brien in continuation.

Auditor-General—Audit report no. 10 of 2006-07—Performance audit—Management of the Standard Defence Supply System Remediation Programme:
Thursday, 30 November 2006

Department of Defence; Defence Material Organisation. Motion of Senator Faulkner to take note of document agreed to.


Orders of the day nos 4 and 7 relating to reports of the Auditor-General were called on but no motion was moved.

**Sitting suspended from 6.21 pm to 7.30 pm**

**COPYRIGHT AMENDMENT BILL 2006**

Consideration resumed from 29 November.

**In Committee**

Bill—by leave—taken as a whole.

**Senator ELLISON** (Western Australia—Minister for Justice and Customs) (7.30 pm)—I table two supplementary explanatory memoranda relating to the government amendments to be moved to the Copyright Amendment Bill 2006. The memoranda was circulated in the chamber on 28 and 30 November 2006. I seek leave to move the following government amendments together:

1. Schedule 1, item 6, page 18 (line 17), omit “offences”, substitute “offence”.
2. Schedule 1, item 6, page 18 (line 28) to page 19 (line 3), omit subsection 132AI(8).
3. Schedule 1, item 6, page 19 (line 4), omit “Subsections (7) and (8) are offences”, substitute “Subsection (7) is an offence”.
4. Schedule 1, item 6, page 27 (line 1), omit subparagraph 132AO(5)(a)(i).
5. Schedule 1, item 8, page 36 (lines 20 to 23), substitute:
   1. The regulations may make provision enabling a person who is alleged to have committed an offence of strict liability against this Division to do both of the following as an alternative to prosecution:
      a. pay a penalty to the Commonwealth;
      b. forfeit to the Commonwealth:
         i. each article (if any) that is alleged to be an infringing copy of a work or other subject-matter and that is alleged to have been involved in the commission of the offence; and
         ii. each device (if any) that is alleged to have been made to be used for making an infringing
copy of a work or other subject-matter and that is alleged to have been involved in the commission of the offence.

Note: Regulations made for this purpose will make provision to the effect that a prosecution of an alleged offender will be avoided if the alleged offender both pays a penalty to the Commonwealth and forfeits to the Commonwealth all relevant articles and devices (if any).

(6) Schedule 1, item 33, page 50 (line 22) to page 51 (line 1), omit subsections 248PC(5) and (6).

(7) Schedule 1, item 33, page 51 (line 3), omit “, (3) and (5)”, substitute “and (3)”.

(8) Schedule 1, item 33, page 52 (lines 3 to 12), omit subsections 248PD(5) and (6).

(9) Schedule 1, item 33, page 61 (line 8), omit “offences”, substitute “offence”.

(10) Schedule 1, item 33, page 61 (lines 16 to 23), omit subsection 248PJ(8).

(11) Schedule 1, item 33, page 61 (line 24), omit “Subsections (7) and (8) are offences”, substitute “Subsection (7) is an offence”.

(12) Schedule 1, item 33, page 63 (lines 13 to 15), omit “either for trade or to an extent that will affect prejudicially the financial interests of the performer in the performance”, substitute “for trade”.

(13) Schedule 1, item 33, page 71 (line 27), omit “offences”, substitute “offence”.

(14) Schedule 1, item 33, page 72 (lines 2 to 10), omit subsection 248QE(8).

(15) Schedule 1, item 33, page 72 (line 11), omit “Subsections (7) and (8) are offences”, substitute “Subsection (7) is an offence”.

(16) Schedule 1, item 33, page 73 (lines 29 to 31), omit “either for trade or to an extent that will affect prejudicially the financial interests of the performer in the performance”, substitute “for trade”.

(17) Schedule 6, item 1, page 94 (lines 10 to 15), omit subsection 111(1), substitute:

(1) This section applies if a person makes a cinematograph film or sound recording of a broadcast solely for private and domestic use by watching or listening to the material broadcast at a time more convenient than the time when the broadcast is made.

Note: Subsection 10(1) defines broadcast as a communication to the public delivered by a broadcasting service within the meaning of the Broadcasting Services Act 1992.

(18) Schedule 6, Part 2, page 103 (after line 6), at the end of the Part, add:

9AA Review of new sections 47J and 110AA

(1) The Minister must cause to be carried out by the end of 31 March 2008 a review of the operation of sections 47J and 110AA of the Copyright Act 1968.

Note: Those sections are inserted in that Act by this Part.

(2) The Minister must cause a copy of the report of the review to be laid before each House of the Parliament within 15 sitting days of that House after the report is completed.

(19) Schedule 8, item 1, page 117 (lines 7 to 33), omit the item, substitute:

1 Subsection 28(2)
Omit “the last preceding subsection”, substitute “this section”.

1A Subsection 28(3)
Omit “subsection (1)”, substitute “this section”.

1B At the end of section 28
Add:

(5) A communication of a literary, dramatic or musical work, a sound recording or a cinematograph film is taken for the purposes of this Act not to be a communication to the public if the communication is made merely to facilitate:
(a) a performance of the work that, because of this section, is not a performance in public; or

(b) an act of causing sounds forming part of the recording to be heard that, because of this section, is not an act of causing the sound recording to be heard in public; or

(c) an act of causing visual images or sounds forming part of the cinematograph film to be seen or heard that, because of this section, is not an act of causing the film to be seen or heard in public.

(6) A communication of a television broadcast or sound broadcast is taken for the purposes of this Act not to be a communication of the broadcast, or of a work or other subject-matter included in the broadcast, to the public if:

(a) the communication is made merely to facilitate the television broadcast being seen and heard, or the sound broadcast being heard, in class or otherwise in the presence of an audience, in the course of educational instruction that:

(i) is given by a teacher; and

(ii) is not given for profit; and

(b) the audience is limited to persons who are taking part in the instruction or are otherwise directly connected with the place where the instruction is given.

(7) A communication of an artistic work is taken for the purposes of this Act not to be a communication of the work to the public if:

(a) the communication is made merely to facilitate the work being seen in class or otherwise in the presence of an audience, in the course of educational instruction that:

(i) is given by a teacher; and

(ii) is not given for profit; and

(b) the audience is limited to persons who are taking part in the instruction or are otherwise directly connected with the place where the instruction is given.

Note: The heading to section 28 is altered by inserting “and communication” after “Performance”.

I also move the following amendments on sheet QE275:

(1) Schedule 1, item 6, page 23 (line 20), omit “offences”, substitute “offence”.

(2) Schedule 1, item 6, page 23 (line 29) to page 24 (line 3), omit subsection 132AL(9).

(3) Schedule 1, item 6, page 24 (line 4), omit “Subsections (8) and (9) are offences”, substitute “Subsection (8) is an offence”.

(4) Schedule 1, item 6, page 25 (lines 22 to 31), omit subsections 132AN(5) and (6).

(5) Schedule 1, item 33, page 48 (lines 4 to 12), omit subsections 248PA(5) and (6).

(6) Schedule 1, item 33, page 53 (line 23) to page 54 (line 5), omit subsections 248PE(6) and (7).

(7) Schedule 1, item 33, page 67 (lines 21 to 32), omit subsections 248QB(6) and (7).

(8) Schedule 3, page 87 (after line 3), after item 8, insert:

8A Before subsection 54(1)

Insert:

(1A) In this Division:

record means a disc, tape, paper or other device in which sounds are embodied.

(9) Schedule 6, page 94 (before line 7), before item 1, insert:

1A Subsection 10(1)

Insert:

private and domestic use means private and domestic use on or off domestic premises.

(11) Schedule 6, item 1, page 94 (line 29), at the end of subsection 111(3), add:

; or (e) used for causing the film or recording to be seen or heard in public; or
(f) used for broadcasting the film or recording.

(12) Schedule 6, item 8, page 100 (line 1) to page 101 (line 23), omit section 109A, substitute:

**109A Copying sound recordings for private and domestic use**

(1) This section applies if:

(a) the owner of a copy (the *earlier copy*) of a sound recording makes another copy (the *later copy*) of the sound recording using the earlier copy; and

(b) the sole purpose of making the later copy is the owner’s private and domestic use of the later copy with a device that:

(i) is a device that can be used to cause sound recordings to be heard; and

(ii) he or she owns; and

(c) the earlier copy was not made by downloading over the Internet a digital recording of a radio broadcast or similar program; and

(d) the earlier copy is not an infringing copy of the sound recording, a broadcast or a literary, dramatic or musical work included in the sound recording.

(2) The making of the later copy does not infringe copyright in the sound recording, or in a literary, dramatic or musical work or other subject-matter included in the sound recording.

(3) Subsection (2) is taken never to have applied if the earlier copy or the later copy is:

(a) sold; or

(b) let for hire; or

(c) by way of trade offered or exposed for sale or hire; or

(d) distributed for the purpose of trade or otherwise; or

(e) used for causing the sound recording to be heard in public; or

(f) used for broadcasting the sound recording.

Note: If the earlier or later copy is dealt with as described in subsection (3), then copyright may be infringed not only by the making of the later copy but also by a dealing with the later copy.

(4) To avoid doubt, paragraph (3)(d) does not apply to a loan of the earlier copy or the later copy by the lender to a member of the lender’s family or household for the member’s private and domestic use.

(13) Schedule 6, page 104 (before line 5), before item 10, insert:

**9A After section 41**

Insert:

**41A Fair dealing for purpose of parody or satire**

A fair dealing with a literary, dramatic, musical or artistic work, or with an adaptation of a literary, dramatic or musical work, does not constitute an infringement of the copyright in the work if it is for the purpose of parody or satire.

**9B After section 103A**

Insert:

**103AA Fair dealing for purpose of parody or satire**

A fair dealing with an audio-visual item does not constitute an infringement of the copyright in the item or in any work or other audio-visual item included in the item if it is for the purpose of parody or satire.

(14) Schedule 6, item 10, page 104 (line 13), omit “(4) or (5)”, substitute “(4)”.

(15) Schedule 6, item 10, page 104 (lines 17 and 18), omit “or a person licensed by the owner of the copyright”.

(16) Schedule 6, item 10, page 104 (line 28), at the end of paragraph 200AB(2)(c), add “or profit”.
(17) Schedule 6, item 10, page 105 (line 3), at the end of paragraph 200AB(3)(c), add “or profit”.

(18) Schedule 6, item 10, page 105 (line 16), at the end of paragraph 200AB(4)(c), add “or profit”.

(19) Schedule 6, item 10, page 105 (lines 17 and 18), omit subsection 200AB(5).

(20) Schedule 6, item 10, page 105 (after line 37), after subsection 200AB(6), insert:

Cost recovery not commercial advantage or profit

(6A) The use does not fail to meet the condition in paragraph (2)(c), (3)(c) or (4)(c) merely because of the charging of a fee that:

(a) is connected with the use; and

(b) does not exceed the costs of the use to the charger of the fee.

(21) Schedule 6, item 11, page 107 (lines 14 to 36), omit subsection 40(5), substitute:

(5) Despite subsection (2), a reproduction, for the purpose of research or study, of not more than a reasonable portion of a work or adaptation that is described in an item of the table and is not contained in an article in a periodical publication is taken to be a fair dealing with the work or adaptation for the purpose of research or study. For this purpose, reasonable portion means the amount described in the item.

<table>
<thead>
<tr>
<th>Item</th>
<th>Work or adaptation</th>
<th>Amount that is reasonable portion</th>
</tr>
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<td>1</td>
<td>A literary, dramatic or musical work (except a computer program), or an adaptation of such a work, that is contained in a published edition of at least 10 pages</td>
<td>(a) 10% of the number of pages in the edition; or (b) if the work or adaptation is divided into chapters—a single chapter</td>
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(22) Schedule 6, item 26, page 111 (lines 24 and 25), omit the heading to section 51B, substitute:

51B Making preservation copies of significant works in key cultural institutions’ collections
(23) Schedule 6, item 26, page 111 (lines 28 to 30), omit paragraph 51B(1)(a), substitute:

(a) the body administering the library or archives:

(i) has, under a law of the Commonwealth or a State or Territory, the function of developing and maintaining the collection; or

(ii) is prescribed by the regulations for the purposes of this subpara-
graph; and

(24) Schedule 6, item 26, page 112 (lines 4 and 5), omit “a single reproduction of the work from the manuscript”, substitute “up to 3 re-
productions of the work from the manuscript for the purpose of preserving it against loss or deterioration”.

(25) Schedule 6, item 26, page 112 (lines 9 and 10), omit “a comprehensive photographic reproduction of the work from the original artistic work”, substitute “up to 3 com-prehensive photographic reproductions of the work from the original artistic work for the purpose of preserving it against loss or deteriora-
tion”.

(26) Schedule 6, item 26, page 112 (lines 17 and 18), omit “a single reproduction of the work from the copy held in the collection”, sub-
stitute “up to 3 reproductions of the work from the copy held in the collection, for the pur-
pose of preserving the work against loss or deterioration.”.

(27) Schedule 6, item 26, page 113 (lines 6 and 7), omit the heading to section 110BA, sub-
stitute:

**110BA Making preservation copies of significant recordings and films in key cultural institutions’ collections**

(28) Schedule 6, item 27, page 113 (lines 10 to 12), omit paragraph 110BA(1)(a), substitute:

(a) the body administering the library or archives:

(i) has, under a law of the Commonwealth or a State or Territory, the function of developing and maintaining the collection; or

(ii) is prescribed by the regulations for the purposes of this subpara-
graph; and

(29) Schedule 6, item 27, page 113 (line 20), omit “a single copy of the recording from the record”, substitute “up to 3 copies of the recording from the record for the purpose of preserving the recording against loss or deteriora-
tion”.

(30) Schedule 6, item 27, page 113 (lines 24 and 25), omit “a single copy of the recording from the published record”, substitute “up to 3 copies of the recording from the published record for the purpose of preserving the re-
cord against loss or deterioration”.

(31) Schedule 6, item 27, page 113 (lines 31 and 32), omit “a single copy of the film from the first copy or unpublished copy”, substitute “up to 3 copies of the film from the first copy or unpublished copy for the purpose of preserving the film against loss or deteriora-
tion”.

(32) Schedule 6, item 27, page 114 (lines 4 and 5), omit “a single copy of the film from the published copy held in the collection”, sub-
stitute “up to 3 copies of the film from the published copy held in the collection, for the purpose of preserving the film against loss or deterioration.”.

(33) Schedule 6, item 29, page 114 (lines 28 and 29), omit the heading to section 112AA, substi-
tute:

**112AA Making preservation copies of significant published editions in key cultural institutions’ collections**

(34) Schedule 6, item 29, page 115 (lines 1 to 3), omit paragraph 112AA(1)(a), substitute:

(a) the body administering the library or archives:

(i) has, under a law of the Commonwealth or a State or Territory, the function of developing and maintaining the collection; or

(ii) is prescribed by the regulations for the purposes of this subpara-
graph; and
(35) Schedule 6, item 29, page 115 (lines 9 and 10), omit “a single facsimile copy of the edition from the copy held in the collection”; substitute “up to 3 facsimile copies of the edition from the copy held in the collection, for the purpose of preserving the edition against loss or deterioration.”

(37) Schedule 8, item 10, page 122 (lines 6 to 27), omit section 200AAA, substitute:

200AAA Proxy web caching by educational institutions

(1) This section applies if:

(a) a computer system is operated by or on behalf of a body administering an educational institution; and

(b) the system is operated primarily to enable staff and students of the institution to use the system to gain online access for educational purposes to works and other subject-matter (whether they are made available online using the Internet or merely the system); and

(c) the system automatically makes:

(i) temporary electronic reproductions of works made available online through the system to users of the system in response to action by the users; and

(ii) temporary electronic copies of other subject-matter made available online through the system to users of the system in response to action by the users; and

(d) those reproductions and copies are made by the system merely to facilitate efficient later access to the works and other subject-matter by users of the system.

(2) Copyright in a work or other subject-matter reproduced or copied by the system as described in paragraphs (1)(c) and (d) is not infringed by:

(a) that reproduction or copying; or

(b) the later communication of the work or other subject-matter, using that reproduction or copy, to a user of the system.

(3) This section does not limit section 28, 43A, 43B, 111A or 111B.

(4) Disregard this section in determining whether copyright in a work or other subject-matter is infringed by an act that:

(a) involves a system like one described in subsection (1) except that the system is not operated as described in paragraphs (1)(a) and (b); and

(b) corresponds to an act described in paragraph (2)(a) or (b).

(5) In this section:

system includes network.

(38) Schedule 9, item 1, page 123 (line 15), omit the definition of broadcaster in section 135AL, substitute:

broadcaster means a person licensed under the Broadcasting Services Act 1992 to provide a broadcasting service (as defined in that Act) by which an encoded broadcast is delivered.

(39) Schedule 11, item 2, page 157 (lines 14 to 19), omit the definition of licensor in subsection 136(1), substitute:

licensor means a body corporate for which both the following conditions are met:

(a) the body is incorporated under a law in force in a State or Territory relating to companies;

(b) the body’s constitution:

(i) entitles any owner of copyright, or any owner of copyright of a specified kind, to become a member of the body; and

(ii) requires the body to protect the interests of its members connected with copyright; and

(iii) provides that the main business of the body is granting licences; and

(iv) requires the body to distribute to its members the proceeds (after
(40) Schedule 11, item 27, page 163 (lines 19 to 23), omit section 157A, substitute:

157A Tribunal must have regard to ACCC guidelines on request

(1) In making a decision on a reference or application under this Subdivision, the Tribunal must, if requested by a party to the reference or application, have regard to relevant guidelines (if any) made by the Australian Competition and Consumer Commission.

(2) To avoid doubt, subsection (1) does not prevent the Tribunal from having regard to other relevant matters in making a decision on a reference or application under this Subdivision.

(41) Schedule 11, item 28, page 164 (line 15), at the end of subsection 135SA(2), add “, but does not affect a distribution started before the order was made”.

(42) Schedule 11, item 29, page 164 (line 27), at the end of subsection 135ZZEA(2), add “, but does not affect a distribution started before the order was made”.

(43) Schedule 11, item 30, page 165 (line 10), at the end of subsection 135ZZWA(2), add “, but does not affect a distribution started before the order was made”.

(44) Schedule 11, item 35, page 169 (line 4), at the end of subsection 135F(2), add “, but does not affect a distribution started before the order was made”.

(45) Schedule 11, Part 4, page 171 (line 2) to page 174 (line 28), omit the Part, substitute:

Part 4—Records notices

Copyright Act 1968

39 After subsection 135K(2)

Insert:

(2A) A matter that:

(a) relates to an activity required by paragraph (1)(b), (c) or (d); and

(b) needs, or is convenient, to be determined; and

(c) is not determined by subsection (1) or (2) or regulations made for the purposes of paragraph (1)(b), (c) or (d) or (2)(a) or (b);

is to be determined by agreement between the administering body and the collecting society or, failing such agreement, the Copyright Tribunal on the application of either of them.

(2B) Sections 135E and 135F do not apply to a copy of a broadcast, or a communication of a copy of a broadcast, made by or on behalf of the administering body during a period in which:

(a) an agreement, or an order of the Copyright Tribunal, determining a matter described in subsection (2A) is in force; and

(b) the body does not comply with the agreement or order.

Note 1: The following heading to subsection 135K(1) is inserted “If records notice is given”.

Note 2: The following heading to subsection 135K(3) is inserted “If sampling notice is given”.

40 Application

(1) The amendment of section 135K of the Copyright Act 1968 made by this Part applies in relation to a records notice given on or after the commencement of the amendment.

(2) The amendment also applies in relation to a records notice given by or on behalf of an administering body before that commencement, if the body and the collecting society make an agreement determining a matter described in subsection 135K(2A) of the Copyright Act 1968. In that case, the amendment applies at and after the time the agreement comes into force.

Note: While the amendment does not apply, section 135K of the Copyright Act 1968, as in
force before the commencement of the amendment, applies.

(3) In this item:

administering body has the meaning given by section 135A of the Copyright Act 1968.

collecting society has the meaning given by section 135A of the Copyright Act 1968.

records notice has the meaning given by section 135A of the Copyright Act 1968.

41 After subsection 135ZX(2)

Insert:

(2A) A matter that:

(a) relates to an activity required by paragraph (1)(b), (c) or (d); and

(b) needs, or is convenient, to be determined; and

(c) is not determined by subsection (1) or (2) or regulations made for the purposes of paragraph (1)(b), (c) or (d) or (2)(a) or (b);

is to be determined by agreement between the administering body and the collecting society or, failing such agreement, the Copyright Tribunal on the application of either of them.

(2B) Sections 135ZJ, 135ZK, 135ZL, 135ZMC, 135ZMD, 135ZMDA, 135ZP and 135ZS do not apply to a reproduction or copy of a work or other subject-matter made in hardcopy form or analog form by or on behalf of the administering body during a period in which:

(a) an agreement, or an order of the Copyright Tribunal, determining a matter described in subsection (2A) is in force; and

(b) the body does not comply with the agreement or order.

Note 1: The following heading to subsection 135ZX(1) is inserted “If records notice is given”.

Note 2: The following heading to subsection 135ZX(3) is inserted “If sampling notice is given”.

Note 3: The following heading to subsection 135ZX(4) is inserted “Regulations relevant to records notices and sampling notices”.

42 Application

(1) The amendment of section 135ZX of the Copyright Act 1968 made by this Part applies in relation to a records notice given on or after the commencement of the amendment.

(2) The amendment also applies in relation to a records notice given by or on behalf of an administering body before that commencement, if the body and the relevant collecting society make an agreement determining a matter described in subsection 135ZX(2A) of the Copyright Act 1968. In that case, the amendment applies at and after the time the agreement comes into force.

Note: While the amendment does not apply, section 135ZX of the Copyright Act 1968, as in force before the commencement of the amendment, applies.

(3) In this item:

administering body has the meaning given by section 135ZB of the Copyright Act 1968.

records notice has the meaning given by section 135ZB of the Copyright Act 1968.

relevant collecting society has the meaning given by section 135ZB of the Copyright Act 1968.

43 After section 153BA

Insert:

153BAA Application to the Tribunal under subsection 135K(2A)

(1) The parties to an application to the Tribunal under subsection 135K(2A) for the determination of a matter are
the collecting society and the administering body concerned.

(2) If an application is made to the Tribunal under subsection 135K(2A) for the determination of a matter, the Tribunal must consider the application and, after giving the parties to the application an opportunity of presenting their cases, must make an order determining the matter.

(3) In determining a matter described in subsection 135K(2A), the Tribunal must have regard to such matters (if any) as are prescribed.

(4) In this section:

administering body has the same meaning as in Part VA.

collecting society has the same meaning as in Part VA.

44 After section 153DA

Insert:

153DB Application to the Tribunal under subsection 135ZX(2A)

(1) The parties to an application to the Tribunal under subsection 135ZX(2A) for the determination of a matter are the relevant collecting society and the administering body concerned.

(2) If an application is made to the Tribunal under subsection 135ZX(2A) for the determination of a matter, the Tribunal must consider the application and, after giving the parties to the application an opportunity of presenting their cases, must make an order determining the matter.

(3) In determining a matter described in subsection 135ZX(2A), the Tribunal must have regard to such matters (if any) as are prescribed.

(4) In this section:

administering body has the same meaning as in Part VB.

relevant collecting society has the same meaning as in Part VB.

(46) Schedule 12, item 9, page 188 (after line 16), after subparagraph 116AN(3)(b)(ii), insert:

(iiia) relates to elements of the original program that will not be readily available to the person when the circumvention occurs; and

(47) Schedule 12, item 9, page 188 (line 20), omit “;” and “.”.

(48) Schedule 12, item 9, page 188 (lines 21 and 22), omit paragraph 116AN(3)(c).

(49) Schedule 12, item 9, page 192 (after line 23), after subparagraph 116AO(3)(b)(ii), insert:

(iiia) relates to elements of the original program that will not be readily available to the person doing the act when the circumvention occurs; and

(50) Schedule 12, item 9, page 192 (line 27), omit “;” and “.”.

(51) Schedule 12, item 9, page 192 (lines 28 and 29), omit paragraph 116AO(3)(c).

(52) Schedule 12, item 9, page 195 (after line 16), after subparagraph 116AP(3)(b)(ii), insert:

(iiia) relates to elements of the original program that will not be readily available to the person doing the act when the circumvention occurs; and

(53) Schedule 12, item 9, page 195 (line 20), omit “;” and “.”.

(54) Schedule 12, item 9, page 195 (lines 21 and 22), omit paragraph 116AP(3)(c).

(55) Schedule 12, item 11, page 199 (after line 17), after subparagraph 132APC(3)(b)(ii), insert:

(iiia) relates to elements of the original program that will not be readily available to the person when the circumvention occurs; and

(56) Schedule 12, item 11, page 199 (line 21), omit “;” and “.”.

(57) Schedule 12, item 11, page 199 (lines 22 and 23), omit paragraph 132APC(3)(c).
Firstly, I will deal with amendments (1) to (7) on sheet QE275. These amendments remove five of the strict liability offences from the bill. Namely, possessing a device to be used for copying a work or other subject matter where the copy will be an infringing copy—subsection 132AL(9); causing a literary, dramatic or musical work to be performed in public at a place of public entertainment where the performance infringes copyright and the work—subsection 132AN(5); making a direct recording of a performance during the protection period of the performance and without the authority of the performer—subsection 248PA(5); possessing a plate or recording equipment to be used for making an unauthorised recording of a performance or a copy of an unauthorised recording where the possession occurs during the protection period of the performance—subsection 248PE(6); and possessing a plate or recording equipment to be used for making an unauthorised recording of a performance—subsection 248QB(6).

These amendments are in response to a recommendation of the Senate Standing Committee on Legal and Constitutional Affairs that the strict liability offences in the bill be re-examined for amendment to reduce the possible widespread impact of their application on the legitimate activities of ordinary Australians and businesses. The government has decided to remove these five strict liability offences because they could arguably capture some legitimate activities of individuals and businesses and thereby extend criminal liability more widely than intended. The removal of these offences was a more feasible and sensible course of action than introducing a defence. The removal of these strict liability offences does not affect the equivalent fault based indictable or summary offences. Law enforcement officers and prosecutors will be able to rely on these offences which have higher penalties, and this will deter genuine copyright pirates.

The strict liability offences that are retained in the bill will not operate adversely against ordinary Australians and legitimate businesses. They will be a vital part of a strong and effective copyright enforcement regime and will act as a deterrent to copyright piracy.

I also refer to amendments (1) and (3) on sheet ZA204. These are consequential amendments to the bill that are required because of the amendments that I have just referred to that remove five of the strict liability offences. That is the first group of that package of amendments.

Amendments (2), (4), (6), (8), (10), (12), (14) and (16) on sheet ZA204 remove an additional eight strict liability offences from the bill. They are as follows. Amendment (2): distributing an infringing copy of a work...
or other subject matter where the extent of the distribution affects prejudicially the owner of the copyright—subsection 132AI(8); amendment (4): causing a sound recording to be heard in public at a place of public entertainment where it infringes copyright in the recording or film—subsection 132AO(5)(a)(i); amendment (6): communicating a performance to the public during the 20-year protection period of the performance without the authority of the performer—subsection 248PC(5); amendment (8): causing a recording of a performance to be heard or seen in public during the 20-year protection period of the performance—subsection 248PD(5); amendment (10): distributing an unauthorised recording of a performance during the protection period of the performance where it will affect prejudicially the financial interests of the performer in the performance—subsection 248PJ(8); amendment (12): possession of an unauthorised recording of a performance in preparation for or in the course of distributing the recording to an extent that will affect prejudicially the financial interests of the performer in the performance—subsection 248PK(5)(a)(iv); amendment (14): distributing an unauthorised sound recording of a performance during the 50-year protection period where it will affect prejudicially the financial interests of the performer in the performance—subsection 248QE(8); and amendment (16): possessing an unauthorised sound recording of a performance during the 50-year protection period where it will affect prejudicially the financial interests of the performer in the performance—subsection 248QF(5)(a)(iv).

These amendments are in response to a recommendation of the Senate Standing Committee on Legal and Constitutional Affairs and further stakeholder representations that strict liability offences in the bill should be amended to reduce the possible widespread impact of their application on the reasonable activities of ordinary Australians and businesses. The government has decided to add these to the list of strict liability offences to be removed to allay concerns that they would extend criminal liability more widely than intended. The removal of these strict liability offences does not affect the equivalent fault based indictable or summary offences. Law enforcement officers and prosecutors will be able to rely on these offences, which have higher penalties and which would, of course, deter copyright pirates. The strict liability offences that are retained in the bill will not operate adversely against ordinary Australians and legitimate businesses. As I said earlier, they will be a vital part of a strong and effective copyright enforcement regime and will, of course, act as a deterrent to copyright piracy.

I now refer to amendments (1), (3), (7), (9), (11), (13) and (15) on sheet ZA204. These are consequential to the amendments that I have just outlined and are much in the fashion that I described the earlier batch of amendments. They are required as a consequence of the amendments that I have previously spoken to.

I now refer to amendment (5) on sheet ZA204, which deals with infringement notices. This amends new subsection 133B, inserted by the bill, to provide that a recipient of an infringement notice will be required to do two things as an alternative to prosecution for an alleged strict liability offence. First, they will be required to pay the infringement notice penalty. One infringement notice penalty equals 12 penalty points, which is $1,320. Second, they will be required to forfeit infringing copies made or other devices that have been made to be used for making infringing copies as part of the alleged commission of the offence. This amendment will encourage an infringement
notice recipient to cooperate with police by divesting themselves of material that they could use for further criminal activity.

I now refer to amendment (8) on sheet QE275. This amendment amends the bill to insert a new subparagraph 54(1A) to provide a localised definition of ‘record’ for division 6, part III, of the Copyright Act. The amendment retains the existing definition of ‘record’ in the act for that part. This amendment is necessary because the new definition of ‘record’ inserted by schedule 3 of the bill includes references to ‘electronic file’. Using this definition in division 6, part III, would have the unintended effect of extending the operation of the statutory licence for recording all musical works—for example, digital downloads and ringtone sales. The amendment ensures that the bill makes no change to the existing operation of division 6, part III.

I now refer to amendment (9) on sheet QE275. This relates to private and domestic use. This amends the bill to add a new definition of ‘private and domestic use’ in subsection 10(1) of the act. This amendment is in response to Senate committee recommendation 4. The bill adds new copyright exceptions that permit the recording or copying of copyright material for private and domestic use in some circumstances. This amendment makes it clear that private and domestic use can occur outside a person’s home as well as inside. The amendment ensures that it is clear that, for example, a person who under new section 109A copies music to an iPod can listen to that music in a public place or on public transport.

I refer to amendment (11) on sheet QE275. This amends item 1 of schedule 6 in the bill. It inserts paragraphs (e) and (f) in new subsection 11(3). This subsection contains a number of restrictions preventing sales and other dealings with an article or thing embodying a film or sound recording of a broadcast. Paragraph (e) also prohibits causing a recording made of a broadcast to be performed in public, while paragraph (f) prohibits the broadcasting of a recording made under subsection 111. This amendment prevents potential misuse of subsection 111 in conjunction with compulsory licences that allow the public performance and broadcasting of sound recordings.

I refer to amendment (17) on sheet ZA204. This relates to time shifting. This amends item 1 of schedule 6 in the bill. This amendment substitutes a new section 111(1), which removes the requirement that a recording of a broadcast under section 111 must be made in domestic premises. This amendment provides greater flexibility in the conditions that apply to time-shift recording. The development of digital technologies is likely to result in increasing use of personal consumer devices and other means which enable individuals to record television and radio broadcasts on or off domestic premises. The revised wording of section 111 by this amendment enables an individual to record broadcasts as well as view and listen to the recording outside their homes as well as inside for private and domestic use.

I refer to amendment (18) on sheet ZA204. This inserts a new item 9AA at the end of part 2 of schedule 6 of the bill. The effect of this amendment is to require the review of the operation of new section 47J and section 110AA be carried out by the end of March 2008. It also requires the report of the review to be subsequently tabled in each house of parliament within 15 sitting days after the report is completed. So that provides some rigour, if you like, to the report being concluded and tabled. This review will enable consideration to be given to whether these new copyright exceptions should be expanded with respect to digital audiovisual material in a way which complies with our
international treaty obligations. This review will consider how to achieve an appropriate balance between the legitimate interests of rights holders and users of copyright material.

I refer now to amendment (12) on sheet QE275. This deals with format shifting. This amends item 8 of schedule 6 of the bill by omitting the proposed section 109A and substituting a new section 109A. The amendments will better recognise and render legitimate the ordinary use by consumers of digital musical players such as iPods and MP3 players. In particular, new section 109A responds to concerns that, as originally introduced, this provision was too restrictive. This amendment responds to recommendation 5 of the Senate committee. New section 109A permits the owner of a copy of a sound recording to make another copy for private and domestic use. The new exception will allow the owner of a sound recording to make copies for the purpose of using a playing device that he or she owns.

The new section 109 lists the conditions necessary for the new provision to operate. It requires that the sole purpose of making a copy must be the owner’s private and domestic use with a device that can cause sound recordings to be heard and is owned by the owner of the earlier copy. The term ‘device’ envisages that a copy might be stored in the memory of a personal computer or portable playing device or that a copy might be embodied in a physical article such as a compact disc or storage medium. Copying may also occur sequentially. The revised drafting approach will allow for digital playing devices such as the Apple iPod to function where more than one copy of a sound recording is maintained in the device and a personal computer. This of course responds to rapidly changing technology. These amendments demonstrate that the government has listened carefully to comments by the stakeholders on the exposure draft to ensure the bill achieves the government’s objectives. There are other amendments on which I will comment further shortly. (Time expired)

The TEMPORARY CHAIRMAN (Senator Moore)—Is everyone clear on that series of amendments?

Senator Bartlett—Clear as mud.

Senator NETTLE (New South Wales) (7.48 pm)—The Australian Greens oppose this legislation. We want an Australia with a diverse and productive use of information and cultural generation. We support a balanced regulation of copyright, one which protects the capacity of owners and, in particular, producers of intellectual property and cultural products to benefit, but also where users and consumers have a right to fair use. Copyright law in Australia is currently unbalanced, and this will not be addressed by the Copyright Amendment Bill 2006. Indeed, it will be made worse. This bill, as we all know, is the result of the commitments made by the Australian government as part of the US free trade agreement. Allan Fels, the former head of the ACCC, and Fred Brenchley, the former editor of the Australian Financial Review, described the process this way:

Australia is obliged to change its Copyright Act to accommodate stricter controls on technology prevention measures (TPMs), which circumvent copyright required under the US free-trade agreement (USFTA). But Cabinet is using this window to roll in a host of other changes. The result, however, is a shocker for ordinary consumers, who do not deserve to be treated like the real criminals, the copyright pirates.

So the free trade agreement with the United States has meant that the worst aspects of the American copyright system are being imported into Australian law with none of the consumer safeguards such as open-ended fair use rights that exist in the United States. The
Greens opposed the free trade agreement with the US and the legislation that implemented it, and today we oppose this legislation also.

Like many in the community, we warned that the free trade agreement with the US would lead to further erosion of the rights of ordinary users in relation to copyright issues. This bill is further evidence of what we were saying then. Peter Moon, a Melbourne IT lawyer, was spot-on when he said in Tuesday’s Australian Financial Review that the bill is ‘an Australian-US love child spawned by the free trade agreement’. Big users of copyright have got everything they want and more, and the users and consumers are faced with a big stick whenever they step outside the narrow and restrictive framework set by copyright owners. This bill will introduce new rights of time shifting and format shifting of various media, but those rights are so narrowly conceived that they allow the criminalisation of many common practices that are even allowed under the US laws.

Whilst the government has just moved to remove some of the worst aspects of this bill—the criminalisation of everyday practices through the strict liability for some offences such as recording a concert on your mobile phone—the essential problems remain. The target and the enormous effect of the bill can be summed up in this excerpt from a submission to the Senate inquiry by the Australian Federation Against Copyright Theft. The federation represent big owners of copyright—in particular, the media and movie moguls of the US, such as Rupert Murdoch. In their submission they said:

The reality is more than 1/5 of Australians are currently involved in the types of infringing behaviour the Government expressly intends and needs to deter. This means ordinary everyday Australians from all walks of life and of varying ages. Ordinary people who make illegal copies of film and television programs for work colleagues and friends. Doctors, lawyers, factory workers, mothers, students using ordinary equipment engaged in pirate movie uploading, copying, swap clubs ...

These are not appropriate or acceptable ‘consumer’ or ‘small business’ behaviours but they are growing rapidly.

In other words 20 per cent of Australians are threatened by the penalties that are put forward in this legislation. They are not copying material to mass-produce or sell on the black market. They are doing what people have done for thousands of years: enthusiastically sharing knowledge, stories, music and artistic creation. The movie moguls may hate it but it is the way that life is. People cooperate and share ideas. That is what makes us human. This bill seeks to quash that capacity in this area.

As Fels and Benchley pointed out in the Australian Financial Review:

Copyright is an intangible. Complying with it in the digital age with its host of new technologies will require widespread public acceptance. Draconian personal fines and laughable restrictions are not the way to achieve it.

Once again we have the alleged needs of big business, in particular US media corporations, triumphing over common sense. This is why the proposed changes have been almost universally condemned and that the amendments the government claims address these concerns do little to change the substantive problems. The government should understand the modern world of digital media, but the recent changes to media laws and the failure to get a handle on the broadband needs of the country suggest that they do not. The government should listen to the concerns of the community and to industry users, who are saying clearly that they do not want to go down this path. In the Age this week Mark Pearce wrote:

These laws must be junked. We need to start afresh. There are more media technologies com-
ing down the pipeline every day. Each one will present new threats, and new opportunities. If we overreact, in response to a bogus threat, we’ll box ourselves in and consign Australia to second-rate status in the global creative economy.

He is absolutely right. This bill should be scrapped. The Greens will not be supporting this bill and hope that others in the Senate will do likewise.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (7.54 pm)—I will just continue with the amendments that I am moving and I refer to sheet QE275, amendments (13), (14) and (19), dealing with parody and satire. These amendments remove the new exception for parody and satire from the proposed new section 200AB in the Copyright Amendment Bill 2006 and instead create new exceptions for parody and satire in provisions of parts 3 and 4 of the act, which already provide for fair dealings. The amended parody and satire exceptions will apply where a person or organisation can demonstrate that the use for the purpose of parody or satire is a fair dealing. Amendment (13) amends schedule 6 of the bill by inserting new items 9A and 9B. These insert into the act new exceptions for fair dealings with works into a proposed new section 41A and fair dealings with audiovisual items of a proposed new section 103AA for the purposes of parody or satire.

These exceptions are consistent with the present structure of the act, which already contains fair dealing exceptions for criticism and review and reporting of the news. Case law suggests that use of copyright material for parody and satire is likely to overlap or be closely connected to uses for these other fair dealing purposes. It is appropriate to require that a use for the purpose of parody satire should be fair. Parody by its nature is likely to involve holding up a creator or performance to scorn or ridicule. Satire does not involve such direct comment on the original material, but in using material for a general point it should also not be unfair in its effects on the copyright owner. Amendment (14) amends item 10 of schedule 6 of the bill by substituting ‘(4) or (5)’ in paragraph 200AB(1)(b). This change is a consequence of a previous omission of a subparagraph. Item 19 amends item 10 of schedule 6 of the bill by omitting subsection 200AB(5), which is removed by the amendments.

I refer to amendments (15) to (18) and (20), which relate to fair use. These are to be found on sheet QE275. These amendments make a number of technical changes to new section 200AB inserted by item 10 of schedule 6 of the bill. New section 200AB is a significant innovative new exception to ensure copyright law does not unduly block the use of copyright material for socially useful purposes where an exception to copyright does not conflict with Australia’s obligations under international treaties. Amendment (15) amends item 10 of schedule 6 by omitting the words ‘or a person licensed by the owner of the copyright’ from paragraph 200AB(1)(d). The omitting paragraph more closely follows the wording of article 13 of the TRIPS agreement.

Amendment (16) amends item 10 of schedule 6 of the bill by adding ‘or profit’ at the end of paragraph 200AB(2)(c). This amendment requires that a use by a body administering a library or archives must be made partly for the purpose of obtaining a commercial advantage or profit. The present paragraph 200AB(2)(c) in the bill imposes a condition that it not be for the purpose of obtaining a commercial advantage. The intention was that an eligible body should not obtain an exception to copyright if the body administering a library or archives was making use of copyright material partly for the purpose of gaining an advantage, benefit or gain from being engaged in commerce. The addition of the words ‘or profit’ is to make...
clear that this condition includes that the use by a body administering a library or archives is not to be partly for the purpose of making a profit. Amendments (17) and (18) ensure the term ‘or profit’ is also used with paragraphs 200AB(3)(c) and (4)(c).

Amendment (20) amends item 10 of schedule 6 of the bill by inserting a new subsection. It provides that a use does not fail to meet the conditions in paragraph 200AB(2)(c), (3)(c) or (4)(c) merely because of the charging of a fee that is connected with the use and that fee does not exceed the costs of the use to the charger of the fee—much like a cost recovery mechanism. It is common for bodies such as libraries and archives or educational institutions to impose a fee to recover costs associated with the uses of the kind referred to in section 200AB(2), (3) and (4). The amendment makes clear that the mere fact of adopting a user-pays system of recovering costs connected with the use does not constitute a purpose partly for obtaining a commercial advantage or profit. I think we will leave amendment (21) on sheet QE275 for the moment. We will come back to that one.

Amendments (22) to (35), on sheet QE275, respond to the Senate committee’s recommendations 7 and 8 concerning the operation of schedule 6, part 5. This concerns the official copying of library and archive material. The scope of the exception for key cultural institutions in schedule 6 will be broadened to confer on the minister a power to prescribe by regulation particular institutions as being key cultural institutions for the purposes of the provisions. The government considers this to be a more appropriate approach than listing some new bodies, such as the ABC or SBS, but not others that may have important cultural collections. This provides a degree of flexibility to keep up with events of the day. These amendments will provide scope to consider the merits of claims of institutions other than those who have a statutory function of developing and maintaining a collection but who nonetheless develop and maintain collections that are of historical and cultural significance to Australia.

These amendments will provide that up to three copies of any material—for example, works, sound recordings and films—can be made. However, this can only be done for the purposes of preservation. These provisions complement the other library and archive copying provisions already in the act. The commercial availability test has been retained, as it is appropriate in these circumstances. Free copying of materials should only occur where a copy can no longer be purchased. The commercial availability test does not apply to manuscripts, first records or unpublished records embodying sound recording or first copies, or unpublished copies of films.

The policy for these amendments is to ensure that key cultural institutions are able to fulfil their mandate to preserve items of historical or cultural significance to Australia in their collections. The provisions are consistent with international best-practice guidelines produced by UNESCO for preservation.

I now move to amendment (19), on sheet ZA204, which deals with communication for educational instruction. This amendment is in response to recommendation 9 of the Senate committee. It omits from the bill proposed new section 28A inserted by item 1 of schedule 8 of the bill and substitutes, at the end of existing section 28, new subsections (5), (6) and (7). The amendment is narrower in scope than proposed section 28A in the bill and has been inserted to avoid the unintended consequence that communications made to enable performances in the classroom could also be used for other purposes.
Existing section 28 provides an exception to copyright whereby literary, dramatic and musical works, films and sound recordings may be performed in the classroom without infringing copyright and with no remuneration payable. The section was initially drafted to provide for copyright materials to be performed electronically in the classroom by playing a sound or video recording on a TV video recorder or tape player. Technological developments have led to copyright materials now being communicated from a central source player—for example, located in the library—to remote classrooms.

The new section 28(5) has been drafted to better reflect the government’s policy intention that communications made merely to facilitate performances in classrooms, where those performances are exempt from any remuneration or the need for a licence, should not infringe copyright. The new section 28(5) does not apply to artistic works or broadcasts; these are dealt with separately in sections 28(6) and 28(7) respectively. The effect of these two new subsections is to extend the operation of section 28 to the communication of artistic works, live broadcasts or recordings of broadcasts by educational institutions so that they can be screened or played in the classroom without infringing copyright. The provisions bring the communication of artistic works in line with the treatment of other works under section 28(5) and implement the government’s intention that schools should not be paying broadcasters when they distribute or communicate either live broadcast programs or recordings of broadcast programs for use in the classroom. These amendments do not undermine the operation of part VA. They have been endorsed by both Screenrights and the educational sector as an appropriate compromise.

I now refer to amendment (37), on sheet QE275, which deals with caching by educational institutions. This responds to recommendation 10 of the Senate committee. The amendment replaces proposed new section 200AAA inserted by item 10 of schedule 8 of the bill with a new section 200AAA. The amendment clarifies that caching of online material by educational institutions for efficiency purposes does not infringe copyright. The provision has been redrafted to better reflect the government’s intention that schools should not be liable to pay remuneration when materials are automatically saved in their computers’ own systems cache, particularly when this is done only for the efficient operating of the computer system.

New subsection (2) of the new section 200AAA provides that, where certain conditions are met, copyright of a work or other subject matter is not infringed by reproducing the work or communicating the work to a user of the system. This new section is not intended to allow an educational institution to retain permanent copies of online material, nor to deliberately create an archive of online material under the guise of caching. It is not intended, for example, that the provision would allow the downloading of a computer program onto a server for purposes other than the efficiency of the educational institution’s internet access. The policy intention of the provision is to allow educational institutions to provide efficient internet access.

New subsection (4) of the new section 200AAA requires the new section to be disregarded in circumstances of caching by persons other than educational institutions. This subsection has been included to avoid the risk that the creation of an exception for educational bodies as outlined in the new section creates by inference or statutory interpretation a situation whereby it becomes a copyright-infringing act for other non-educational bodies to proxy cache.
I now refer to amendment (38) on sheet QE275, dealing with encoded broadcasts. This replaces the definition of ‘broadcaster’ with a new definition. The amendment corrects an unintended consequence of the original definition which may, in effect, have excluded parties who were intended to fall within its scope. The definition of ‘broadcaster’ is central to part 5AA because it is the broadcaster who can authorise or refuse to authorise acts under the provisions. In practice, the person who holds a broadcasting licence under the Broadcasting Services Act 1992 and, in the case of subscription services, who contracts with subscribers to provide a broadcasting service is the appropriate person to provide that authorisation.

In relation to subscription broadcasts, the amended definition reflects industry arrangements where the technical role of making encoded broadcasts is not necessarily undertaken by the licence holders. A person, for example, may be the subscription television broadcast or narrowcast licensee for a certain area or group, but, due to commercial arrangements which provide for the sharing of technical broadcast infrastructure with other broadcasters, that person may not necessarily be the person who makes the encoded broadcast.

I refer to amendment (39) on sheet QE275 dealing with voluntary licences. This substitutes a new definition of ‘licensor’ in the act relating to the jurisdiction of the Copyright Tribunal in place of the proposed definition inserted by the bill. The definition has been revised to restrict ‘licensor’ more clearly to collecting societies, as intended by the government, because the definition in the bill arguably could include substantial copyright owners who are not collecting societies. (Extension of time granted)

I now refer to amendment (40) on sheet QE275, dealing with the ACCC guidelines. This amendment makes a minor change to specify more precisely the circumstances in which the Copyright Tribunal is to have regard to relevant guidelines to be issued by the Australian Competition and Consumer Commission.

Amendments (41) to (44) on sheet QE275 deal with the review of a collecting society’s distribution arrangement. These amendments affirm that an order made by the Copyright Tribunal varying or replacing the distribution arrangement of a declared collecting society does not affect a distribution begun by the society before the tribunal’s order is made.

Amendment (45) on sheet QE275 deals with records notices. This amendment amends schedule 11 of the bill to retain the existing record-keeping requirements applying to educational and other institutions which have chosen to pay for copying under licence on the basis of full recording of copying. This change is being made to the bill, which would have displaced those requirements, at the strong urging of educational representatives. Matters, however, relating to record keeping that are not prescribed by those existing arrangements will be subject to the jurisdiction of the Copyright Tribunal if the parties cannot agree on them. To this extent, the effect of the relevant provisions of the bill will be continued by the amendment.

Finally, I deal with amendments (46) to (63) on sheet QE275. These deal with technical corrections and interoperability. They amend the exceptions for interoperability in schedule 12 of the bill, ‘Technological protection measures’, to make a technical correction. The interoperability exceptions apply to each provision that provides civil or criminal liability for the act of circumvention or for dealings in circumvention devices or services. The effect of these amendments is to clarify that the exception for interoperabil-
ity applies only where the elements of the computer program that is the subject of circumvention are not or will not be readily available to the persons exercising the exception at the time of circumvention. For example, if the owner of copyright in a computer program has made or will make elements of that computer program that are necessary to create an interoperable program readily available in an unprotected format, the exception will not apply.

That deals with the government amendments which I have moved, by leave, together. I have left out, of course, government amendment (21), which Senator Ludwig has indicated he wishes to deal with separately. I will leave that for separate comment.

Senator LUDWIG (Queensland) (8.12 pm)—It seems to me that we have taken 45 minutes for the government to get its position all out on the table. For those who are following the debate, the government brought forward the Copyright Amendment Bill 2006, and they then brought forward a number of supplementary amendments to that and then another group of amendments. Some of those amendments then amended the first lot as well. The government has now taken the opportunity of explaining its position and the number of amendments that it is now seeking to move to amend the Copyright Amendment Bill 2006 to accord with the various recommendations and submissions of the parties to the Senate Standing Committee on Legal and Constitutional Affairs.

I can say at the outset that, from Labor’s perspective, the process seems a little untidy, quite frankly. It would have been far more helpful for the government in this instance to have taken a leaf out of its own book—when it did the Anti-Money Laundering and Counter-Terrorism Financing Bill, it withdrew the exposure bill and then had another go and brought forward an exposure bill to leave it on the table a little bit longer to ensure that all of those interested parties had been able to have their say. What it looks like is that we have amendment piled upon amendment piled upon an amending bill. To try to find a position through all of that is no easy task. I can say, though, that the government did pick up many of the recommendations of the Senate legal and constitutional committee, so I cannot be too hard on the government in that respect. But I suspect I will be as the night progresses—it is more than likely.

The government now has a more reasonable bill, and I suspect it could have easily got there without having gone through this tortuous process. However, there can still be some unintended consequences, as some of the consultation process appears to have been truncated and some of it, quite frankly, took too long. From my memory, back in 2001, when I was a parliamentary secretary to Mr McClelland, who was then the shadow Attorney-General, Phillips Fox was undertaking the digital review. The fair use issue was truncated by two years before we got to that review, and now we have this Copyright Amendment Bill.

Most of the submitters complained, and those who did not complain appeared to at least recognise that the process seemed short towards the end. By the time we got to an exposure draft, to a bill and then to the committee, it appeared to be a very truncated process, and it would appear that this can be confirmed by the number of submissions to the committee even after the closing date. Submissions continued to be made to various parties, and to me, even after the committee report had been presented. I am sure submissions were also being made to the government, which would seem to be evidenced by the amendments to the legislation. The submitters were successful in some parts and not
in others in persuading the government of the merit of their arguments.

In all, that leaves me concerned that this matter will have to be revisited—that there still may be unintended consequences, and some areas may be unclear, for various stakeholders within the industry. But when you look at the basic premise—that we are trying to achieve some consumer benefit—that does allay some of my concerns. It is well past the time for issues such as time shifting and format shifting to be dealt with. It is unfortunate that the government has dealt with it in the way it has but, be that as it may, it is well overdue. Consumers need some certainty about what they can do, and copyright owners want to maintain their protections and their rights.

It is pleasing that the government has moved significantly away from many of the strict liability offences. The government might be able to reflect on whether the report is still accurate, but it would seem that the issues around criminal liability and the number of strict liability offences that were put forward were extreme to say the least. They covered the whole gamut of the area—they certainly drafted diligently to ensure that no one, from consumers to business, would escape a strict liability offence.

The submission indicated that we do understand the need to ensure copyright holders’ rights are protected, but a lot of water has flowed under the bridge. Many common-law countries do not have strict liability offences in respect of copyright on their statute books, and they certainly have not found their way into patent or trademark law in Australia. I always hate saying things like that, because sometimes I am surprised the following year when I see trademark law or patent law changed to accommodate those statements I made. But let us hope that that does not happen.

The committee highlighted a range of deficiencies, and I think Ms Weatherall summarised that point. She pointed to many deficiencies with the proposed criminal liability provisions, both from a policy level and in relation to the likely practical impact. In her view, the reach of the provisions is overly broad and most problematic where they apply to acts not made for a commercial purpose or in a commercial context but as a necessary part of conducting ordinary legitimate business by ordinary Australians. That encapsulates the entire area.

The position is that strict liability provisions remain, and I urge caution here. I am not convinced. In the short space of time we have had since the government proposed very strenuous strict liability provisions, many of them covering a range of circumstances, the government’s first position was to take away five of them. Their next position was to take a few more away, perhaps when they understood the effect of Ms Weatherall’s submission. So we have the government backsliding on strict liability. But the concern is that there are still strict liability provisions left. At what point do you stop? Do you stop at a point that is easily and clearly definable, to give certainty to industry and consumers, where strict liability offences apply and where that will be supported by public and business education campaigns so they are aware of what the impact will be?

If you have done that, that is helpful. However, I am not sure that you have or that you have been able to articulate it here with any great certainty. I can foreshadow that we will not move amendments that go to this area, because it is much easier in a sense to mention all the concerns that we have. We note that you moved some way at first. We note that you then slid a lot further. However, we do not know the complete effect of what
is left. We have to take it, by and large, on a kiss and a promise that you have got it right.

What also worries me is how the infringement notice scheme will work. But I will come back to that when I get an ALRC report. I am sure you have read it; it is the principled regulations. Hopefully, if my staff member is listening to me, he will bring it down so I will be able to refer to it. Perhaps I can deal with some of it from memory. That ALRC report deals with what would be regarded as model clauses that you would find in an infringement notice scheme. It is important to understand that, if you are going to have an infringement notice scheme, you then require strict liability offences.

To ensure that they sit together well you need to have followed those model provisions in the ALRC report so that all of those issues are covered off. I suspect, Madam Temporary Chair, you will give the government the opportunity to tell me whether they have followed those model provisions. The other position we have come to is that we have now removed 12 strict liability offences—those that the government believe ‘average’ consumers, if there is such a thing, may be susceptible to—and then we have left the commercial type of strict liability offences. But, as I have indicated, if they are to be coupled with an infringement notice scheme then the infringement notice scheme should be at least efficient to the extent that it is compatible with other infringement notice schemes.

If you look at the operation of it, it seems to suggest (a) that you pay a penalty to the Commonwealth—that would be a normal outcome of an infringement notice scheme—and (b) forfeit to the Commonwealth each article, if any, that is alleged ‘to be an infringing copy of a work or other subject matter that is alleged’. Then in (ii) it mentions ‘each device that is alleged’. So it seems to be that there are two provisos. It says:

*The regulations may make provision enabling a person who has alleged to have committed an offence of strict liability against this Division to do both of the following ...*

So it would seem that both (a) and (b) have to be satisfied. And in (i) and (ii) of (b) there is an ‘and’, so both of those have to be satisfied. I am not sure what happens if you only have one and not the other. I am not sure whether it would create a problem if, for each article, you only had the article and not the device. I am not a perfect enough drafter of these things to understand that. It would probably not be a problem, but I raise it as one of the subsidiary issues. A person might have the device and no article. It may be that the alternates or an ‘or’ might have been a little bit more helpful in relation to ‘each article that is alleged’. But I suspect the regulations may go some way to sorting that question out.

The other issue is the regulations and that, when you do those, you do undertake to at least look at the principled regulations of the ALRC and use the model in constructing them so that there is some uniformity across the Commonwealth. Wearing another hat, I note that in the Customs area you use infringement notice schemes, and I am sure they exist in other areas of the Commonwealth. In implementing them it is helpful to ensure that there is some consistency in approach.

The concept of forfeiture to the Commonwealth is another matter that I would raise. It is a case of whether it is permissible to forfeit, on having paid a penalty. The other question is whether, if the penalty has been paid but then you are asking for a forfeiture to the Commonwealth, you would then have to reward by just means. In other words, is it constitutionally valid to have both provisions
of paying a penalty and forfeiting? I understand the Commonwealth does have the power to seize, but in this instance you are asking the citizen to forfeit to the Commonwealth each article and each device, if any. The ‘if any’ might survive the ‘and’, but I think that is a difficult way of drafting these provisions.

I see that I am going to be challenged in being able to finish but I am sure if I sit down I will get another opportunity. I will stop at this point and let someone else have a reasonable attempt.

Senator BARTLETT (Queensland) (8.27 pm)—To allow some degree of coherent continuity, I will allow Senator Ludwig to finish most of his strand, but I think this process highlights the problem we have. I can understand from a government management point of view that it is easier for them to move all their amendments as one big blob, but it is less than ideal to do so. I guess it is in keeping with the less than ideal process that we have had, including the fact that it took the minister 35 or 40 minutes to go through explaining all of the 80 different amendments, which range across numerous schedules within the bill and quite different topics.

Senator Ludwig, having used up 15 minutes, still needs more time to make his response because there are so many different topics that are being addressed within these bulk amendments. As I said, I think that is a less than ideal process. I might let Senator Ludwig finish his stream of consciousness before I ask one or two questions about one or two of the specific amendments within the government blob before I sit down.

I note for the record that I put a contingent notice on the Notice Paper, which, fairly obviously, I did not proceed with. It arose from when the second reading question was to be put and sought to split the bill into those sections that related specifically to the Australia-US Free Trade Agreement and separate those out from the rest. It is still my view that, from the point of view of the eminently desirable principle of getting things right rather than just getting things through, we would benefit from more time scrutinising the many and varied issues raised in this legislation, including the many and varied amendments and amendments to amendments that have been put forward in the last day or two.

I did not proceed with that contingent motion because it did not have support, and it is a little bit messy separating out some of the amendments to do with the free trade agreement, but I put on the record that it is my view and the Democrats view that that would be the preferable way to go. If there is a sudden uprising of agreement from the government on that, we would certainly embrace it. We do think that this area of law is going to have major consequences for many different stakeholders and, flowing on from that, indirect consequences for pretty much everybody in the Australian community.

You cannot envisage every aspect of how it is going to operate, but I do think one group that will win out of all these changes, at least for a while, is the lawyers, as there will be a lot of work being done to clarify the impact, the meaning and the operation of a number of these changes. To some extent, that is unavoidable. Any time you make a change in this area, people will test the law—I acknowledge that—but I do think that, whilst there have clearly been significant steps forward from where the bill was originally at, with the various amendments that are in it, the process is still less than ideal. This sort of unnecessarily hasty approach, which has been compounded by unnecessarily compacted debate at the moment—with a range of amendments dealing with a lot of different issues all being put together as one congealed wobbling blob—is
less than perfect. But, anyway, that is what we have got, so we may as well get on with it.

Senator LUDWIG (Queensland) (8.31 pm)—This is really a question, so I will keep it open-ended. I have not come to any conclusive view. The ALRC report *Principled regulation* under ‘Use at federal level: Constitution limits’ says at 12.19:

In the federal sphere in Australia, constitutional considerations prevent non-judicial officers from considering, deciding on and imposing penalties. In this context non-judicial officers can only perform purely administrative tasks; they simply put into effect a process of issuing penalty notices that is triggered automatically by a particular set of facts. For this reason, it is critical to determine whether the amount payable under an infringement notice is truly to be regarded as a penalty, as under the Constitution only a court may exercise judicial power.

I will not go on any further. The first part of it would be (a) paying a penalty to the Commonwealth, but it is the (b) part—that is, forfeiture to the Commonwealth—that I am seeking a view from you on. I am seeking from you a view that it is within the constitutional limits and it does not offend the ALRC—and, if you say that, why it is that you say it does not.

When you look at the other examples they have given of recent schemes, they all appear to have it down pat—for example under ‘Customs infringement notice requirements’, under section 243X, there is an infringement notice scheme and it does not go any further than that. In terms of seizure, for example, it is a matter that they can undertake separately and distinct from the scheme. But what you have done in this instance is tie those together. I was really looking to see whether it was permissible. If you tell me it is, I will accept that I have got that wrong—though I am not sure whether I am even right about it. But, with all of these things, it is better to sort it out now and get it on the record so that we have a lot of certainty here; otherwise someone else will simply challenge it along the way and we will back here again with it. But I am sure you have the right answer and you will be able to help me on that issue.

In terms of Labor’s position, it is pleasing to see that, because of the committee report and Labor’s pushing, these provisions have at least been confined. If you are going to use the infringement notice scheme, in the ALRC report there are a range of guidelines as to how you would bring that scheme into effect. If you have not already, I would encourage you to use those guidelines to ensure that there is some uniformity in your approach.

In relation to time shifting, which makes it legal for people to tape TV or radio programs at home—that is the shorthand way of saying it—for their private and domestic use in order to play them at a more convenient time, the committee did recommend that proposed subsection 111 be redrafted to make it absolutely clear that individual consumers are not restricted to watching and listening to broadcasting recordings in their home. I think I recall at a committee hearing that I was wrong about that, but it now appears that we have shifted a little bit to make it plainer. I do appreciate that the government has provided some certainty on that. Although I must have been wrong at the outset, I have now been persuaded that I was right after all—and that is pleasing to see sometimes. In any event, I think it a case of the more certainty you can provide to the consumer, the better. Labor’s push here is to ensure that that is in fact the case. In Labor’s additional report, it says at recommendation 3:

Labor Senators recommend that the time-shifting and format-shifting provisions of Schedule 6 of the Bill be amended to enable copying for personal and domestic use to occur in places other than domestic premises ...
The other area that comes to mind with amendment (12) on sheet QE275 is format shifting. A submission came to me, and I suspect it went to the government as well, on a matter to do with this and I want to get a bit of clarity on it. The format-shifting position is now certainly better, and I appreciate the government backsliding—after Labor’s pushing—on this to get to a position which gives consumers a lot more certainty. But there is still one outstanding issue that keeps popping up. We seem to keep getting tied up with technology, whether it be an iPod or an MP3 player. Let us talk about technology for a moment.

One way that people distribute information or music now is with an attached video clip. Microsoft is in the future going to use a new device—and I do not want to give them a plug, so I will not use the name of their device—to compete with iPod video, and I guess I have to give the name of that device. You can buy CDs of particular singles which, when you put them into your computer, provide a video clip of the music. That certainly did not exist in my era of vinyl records, but you can now put CDs into your computer and they will play the record and show you the video clip. People can choose to download the video clip, or the music which includes a video clip, to their particular device, which can then replay it.

There is a question in my mind as to whether that is permissible under format shifting or whether a person somewhere along the line has to take only the music and not the video clip which is provided on the CD. It would seem to me that you would have to leave the video clip behind. That may or may not be easy in terms of how these things work and how the software interacts with the particular CD when you are downloading or ripping it—I think that is the word that they use; I should qualify that by saying legitimately ripping it—from the CD and putting it on your video MP3 player. You would then have to try to work out how to leave the video clip behind without breaching copyright. If I have that wrong, then I am sure that you can tell me. If I have got that right, you can tell me what you are going to do about it.

I will not go to the detail of amendment (9) on sheet QE275. In the absence of a broader fair use provision, between amendment (9) and amendment (12) a fair approach has been found. But I will make the point that I have made previously about the technology limits of the bill. The different types of CDs that you can buy, which include ones with video clips, and the different types of downloads available, which can also include video clips, demonstrate that. Our second reading amendment pointed out that one of the concerns that Labor has is that the exceptions regime you have adopted keeps this bill technologically caught in 2006. Technologies change. Music in my era went from 78 LPs to 33s—all vinyl—and then to 8-track, which people quickly forgot and which some people may not recall, to cassettes to CDs to now digital downloads. And even those went through a couple of different formats within all of that, with there now being video clips and YouTube. That is in the space of—and I will not say how long—not a very long time, really. What worries me is that by not adopting a fair use approach you have in part caused the bill to be written for technology which exists in 2006 and therefore have left little room for development, notwithstanding that there is the issue of the protection of the copyright owners and holders as well.

There is an amendment on fair dealing exceptions for research and study on sheet QE275, but I will not deal with that one now because we can come back to that issue. Going to the removal of the commercial availability test, I see that the government have come around to the position recommended
by Labor senators. In recommendation 6 of Labor’s additional report, Labor senators recommended that schedule 6 of the bill be amended to remove the commercial availability test. You have not gone that far as yet. I still hope to persuade you later on in respect of that one.

Amendments (22) to (35) on sheet QE275 deal with the cultural institutions. You are dealing with them by regulation. The committee recommended that schedule 6 of the bill be clarified to make it absolutely clear that libraries, archives and cultural institutions are able to make sufficient copies for the purposes of preservation. After a few amendments, you have managed to get to a position which is at least acceptable. When you look at the main committee report, what we find is that you have moved to accept those recommendations, but when you look at the next part, which is about the key cultural institutions, you are doing that by regulation.

One of the difficulties is that we have to rely on the government including all the relevant institutions in the regulations and not simply getting cute by putting some in and leaving others out. That is why in truth I always prefer legislation to be dealt with in the substantive bill. But I understand why you are doing it by regulation. What I seek from you, if you can comment on it to that extent, is a guarantee that you will not leave out what are in effect key cultural institutions, you are doing that by regulation.

I am going to run out of time again, which belies the range of amendments that have been put forward. I will talk in the available time and wrap up my comments on some of these amendments—I can come back to some of them later. Looking at the range of amendments that have been sought to be moved, I am still concerned that some of those provisions have not been fixed up. What happened to amendment (19) was particularly interesting, as you came to an agreement, as I understand it—or at least an acceptance—between the screenwriters and CAG. By the time you had gone to the drafters, it had fallen apart again. They read it and they have come back to you again, and you have fixed the work ‘broadcast’. I have to say it was a tortuous process to follow for all concerned. It is amazing that now it is fixed—we hope. I have not heard anything different to that from those two august bodies. I will leave my comments, and I might come back with some more comments shortly.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (8.46 pm)—I will deal with some of the issues that Senator Ludwig has raised. In dealing with the strict liability and, in particular, the forfeiture that Senator Ludwig noted, we are saying that the bill has a cost-effective remedy to deal with that offending activity that is at the low end of the scale—minor infringements, if you like. That provides for there to be a voluntary forfeiture by the person concerned, so that, if they pay the fine and forfeit the article, they can avoid any further action. If they do not, then there can be a
full-scale prosecution and that is the penalty they will suffer. That does not conflict with our understanding of section 51 of the Constitution, which deals with the acquisition of property. We do not believe that position arises at all. We are confident that this regime does not offend that provision of the Constitution.

The general question of the relationship of the regulations with the ALRC report was another matter that Senator Ludwig raised. In preparing the regulations for the infringement notice scheme, the government has followed the Commonwealth guidelines on penalties, issued in 2004, which followed the ALRC report of 2002. We have here a consistent approach. Our approach to the guidelines was as a result of guidelines formulated from the ALRC report, so that is also taken care of.

I can give an undertaking to the Senate that there will be a reasonable approach to the listing of these cultural bodies. Senator Ludwig has mentioned some to which we certainly would have a reasonable approach, and I can give that undertaking. But we do not want to specify them in the legislation, because it is too cumbersome, and we think regulations give you that flexibility.

There was a question about downloading a video coupled with a song, such as what one gets from iTunes. The advice I have is that people who are providing that product have obtained a general licence for the video and song to be downloaded several times. A licence would have already been obtained, which means that you can access or download the song with the video without copyright infringement—that is how I understand it. That was another issue that Senator Ludwig raised. I stress that we are going to have a review, which must be completed by March 2008. The review is going to look at the technical aspects of all of this. I think there is rigour in that, as I said earlier. The report will go to parliament. I think that will be a wide review. I am not so sure we will take up Senator Ludwig’s offer, but of course it will be a wide and transparent process.

Senator Bartlett mentioned that we should go for a broader fair use right and that we have narrowed it too much. I think, as Senator Ludwig says, we need to have certainty for consumers. Our specific exceptions, which we have set out in the bill, provide that clarity and certainty for consumers. If we simply had a broad definition and left it at that, I think it would give lawyers a field day when trying to work out what it all meant. I think it is better to have it the way that we have structured it. I think that deals with Senator Ludwig’s issues.

Senator LUNDY (Australian Capital Territory) (8.51 pm)—I would like to direct some questions to the minister. In my speech in the second reading debate yesterday I raised the process of lip-syncing a song and then placing it on YouTube or MySpace. I want to ask the minister specifically whether that circumstance, which I think relates to strict liability—distributing material online to an extent that it prejudices a copyright owner—is still a strict liability offence, because my understanding is that that is the provision that catches the scenario of a 14-year-old lip-syncing a song. This provision alone, according to notes by Kim Weatherall from, I think, her blog, would make our criminal law significantly harsher than US law, since in the US you have to at least distribute $1,000 worth of retail value of infringing copies before you get pinged under criminal law. I have another question, but if the minister is able to respond to that now, I will come back to it.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (8.52 pm)—I can give a straightforward answer to
that. The answer is no; that strict liability applies for the purpose of trade.

Senator LUNDY (Australian Capital Territory) (8.53 pm)—Another scenario that I think has been quite popular in the debate is that of causing a film to be seen or a sound recording to be heard in public at a place of public entertainment—scenarios like playing your radio or CD player too loud or showing kids a film on a wet day on a school camp. They were technically criminal offences attracting strict liability. Can you provide an explanation to the Senate of the status of those examples, please?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (8.53 pm)—Both those examples would not attract the strict liability regime, so the answer would be no.

Senator LUNDY (Australian Capital Territory) (8.53 pm)—Thank you. One more scenario is the process of breaching copyright. If someone did breach copyright, and they copied and then sold a CD, so a commercial activity was involved, how many offences would that constitute? With each offence, would that compound the strict liability penalty involved or would that constitute one offence and therefore attract the $6,600 fine as opposed to a $60,000 fine? Can you explain how those strict liability penalty infringements would apply in a scenario where one CD was sold that someone had ripped and breached copyright?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (8.54 pm)—The advice I have is that that will be dealt with by guidelines. Unfortunately, I cannot provide the detail here, so I will take that question on notice and get back to Senator Lundy.

Senator LUNDY (Australian Capital Territory) (8.55 pm)—I think it is important, particularly because it was noted during the Senate inquiry that the AFP had not done the work necessary to be able to give the committee full information about the application of the strict liability regime in any of its capacities. I would like to know the detail about how these fines would apply, given that there are still some consumers out there who might breach copyright. There might be something commercial tied up in that, but it does not make them any more of a criminal in doing that activity. I am still concerned about those inadvertent copyright breaches that might technically have a commercial element to them and the magnitude and application of the fine as a result of the strict liability offence.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (8.56 pm)—As I said, the principle is: one item copied many times or many items copie once. Those are the two conflicting scenarios you have. I might add that it is certainly a very different scenario when someone has a lot of copies and they are for their own use. But if someone has a lot of copies and they are selling them for financial gain, that is a different story as well. We recently had some experience in markets where we had quite organised groups selling copies that had been made many times of the one thing and sold for gain. I will take that on notice and get back to you, Senator Lundy.

Senator LUNDY (Australian Capital Territory) (8.56 pm)—Just to sum up the concerns, it really is about the sort of scenario where innocent people who are not motivated to make a profit or do a bulk load get pinged through maybe doing something for a friend or something like that. It could not be seen as criminal activity. I guess where the concern about strict liability comes in is that those circumstances are not able to be taken into account in the eyes of the law. I know you have taken it on notice, so I will look
forward to your response later in the evening.

Senator LUDWIG (Queensland) (8.57 pm)—Senator Lundy raised an issue that is important in that, when the AFP made their submission, they had not had an opportunity to look at all the strict liability offences. However, we will get to the AFP again, if not through estimates. But it would be helpful if we understood how the AFP intends to operate in this field now that at least the amendments upon the amendments upon the amendments are now finalised, because they have what is called a case categorisation and prioritisation model. They rate things as high, medium and low, and it depends on whether they accept a case as to how these matters will be enforced so that the consumers, during the education campaign, understand where the AFP will intrude and where they may or may not. I understand that you cannot direct the AFP as easily as that, but I think it is helpful that some of the guidelines between the Attorney-General’s Department and the AFP make it clear as to where and when they are more likely to act, depending on whether it meets the case categorisation and prioritisation model, the CCPM, where it will not, what happens to those where it does not meet the CCPM—where it is not accepted—where it goes to next and whether you intend to use an infringement notice scheme issued by Customs officials or by clerks in Attorney-General’s, as the case may be. How will that regime work?

We came across this in another bill—and I think the Attorney-General’s Department might be aware of it—which dealt with search and seizure powers for Centrelink. I might be talking about them out of school, but I understood that they had a range of minor fraud matters which did not meet the CCPM but which they were still vitally interested in—matters that they regarded as serious but not serious enough to warrant the Australian Federal Police to pick up. Centrelink were trying to pick up that workload themselves. In this area, they were seeking information from the government as to how to structure their enforcement regime, whether all the matters would be referred to the AFP for investigation, whether they would meet the CCPM or whether it was intended to use another law enforcement agency to enforce those less serious areas. I am seeking certainty so that the public understand how these matters will work.

There are a couple of other matters that I have not gone to in any detail. I will refer to them briefly. Firstly, the caching matter. Recommendation 10 states:

The committee recommends that proposed section 200AAA in 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 the reproduction must be removed ...

It seems that the government has adopted the substance of the compromise recommendation from schools and screenwriters which I think I briefly referred to earlier.

In terms of record keeping for educational institutions, the bill contained a repeal of the provisions which give effect to a prescribed record-keeping system. If implemented, the Australian Vice-Chancellors Committee submitted that:

... 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 Tribunal for determination …

This would involve enormous cost. In Labor’s supplementary report—and I am pleased to say that it looks like Labor has again been at the fore in trying to effect a reasonable outcome for all—recommendation 7 states:

Labor Senators recommend that Schedule 11 of the Bill be amended to remove proposed para-
graphs 135K(1)(b)(c) and (d), and proposed paragraphs 135ZX(1)(b)(c) and (d) in relation to records notices.

This recommendation attempts to ameliorate the effects submitted by the Australian Vice-Chancellors Committee. The government of course has introduced a new regime for records notices—existing sections are retained and new provisions added so that where there is a dispute that cannot be resolved between the parties the Copyright Tribunal shall have jurisdiction. Again that seems okay, if I can use that colloquial language. The concern is whether in practice it does not have the effect the AVCC is concerned about, that it does create enormous cost through unintended consequences. In that instance, it appears to have satisfied the concerns. Again, without more information, I am unable to come to a conclusive view, but I will take it on the government’s say-so that in fact it does meet those requirements that were raised and that the parties will not unnecessarily be burdened by cost when they try to fairly resolve the issues between them.

Some of the other broader issues I will not go to in detail given the time. However, there were a range of additional amendments which went to definition of ‘record’ in section 51(1) and the removal of parody or satire provisions from section 200AB and the insertion of a new provision—sections 41A and 103AA. Certainly all the submissions we heard from indicated that that needed rectification of some type.

Amendments (15) to (18) have expanded commercial advantage to include profit—one wonders whether you need to include loss as well sometime, but I will not go there if you do not need to. Amendment (20) inserts a new subsection 200AB, which clarifies cost recovery for not commercial advantage or profit. I will not go through all the amendments, but it seems that we have got to a much better position than when we started this process.

In conclusion, I want to touch on strict liability again. There is still some concern from those who want to protect their copyright—copyright owners and copyright holders—to ensure that the regime is fair and that they can rely on the government to effectively implement a scheme that adequately polices this area. They are also concerned to ensure that the Australian Federal Police have sufficient resources and are clear about what their duties will be under this regime so that they can assist in combating copyright abuse—in fact, I think they prefer to refer to it as theft. I am seeking some assurances from the government that they have worked out the details of what I referred to earlier and that they can provide some assurance to copyright owners that the Australian Federal Police have sufficient resources to assist with enforcement in this area.

The last matters I want to go to—and, really, it was a late run—are a number of concerns raised by the ISPs, the internet service providers. They had some disquiet, as it was conveyed to me, about how this bill would operate. It seems that a major concern for the ICT sector relates to the proposed distribution of strict liability offences. As I understand it, some of those have been dealt with. But if the government could turn their minds to how the ISP concerns have been met, we could at least have it in the transcript that we have raised it and that the government have provided some answers.

Regarding the definition of the term ‘distribution’ in section 132AI, given that there is no scope for a court to interpret, it seems that an ISP could be subject to criminal sanctions. What they are trying to understand is what sort of criminal liability might attach to an ISP in this area and whether there is scope for the ISP to be found liable for authorising
copyright infringement in situations where an ISP could be held criminally liable for the actions of others, under the strict liability provisions that still remain. Will the distribution offence in the bill capture an ISP or another person, such as a subscriber of the ISP, who has used the ISP’s network to communicate infringing copies? I can understand their concern. I make no value judgement about it, provided that the minister can provide some certainty as to how it would apply. That would go some way to mitigating the concern I have.

I go to the interrelationship between the new strict liability criminal offences created by this bill and the safe harbour provision that could limit the ISPs in certain circumstances—whether or not that regime provides a shield to criminal action. Of course, it is one of those matters that should be on the table for continual review. I note that the government has provided a review mechanism in the bill. Perhaps I worry unnecessarily, but, given that we started back in 2001 with the digital agenda review, the other fair use review, we do not want to end up with a process such as this again. In government, Labor would not undertake this messy approach, I have to say. In opposition, we had no choice but to work with the government to try to improve the legislation. With that, I will take my leave.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.10 pm)—Firstly, in relation to the ISPs, I understand that the concern that Senator Ludwig has is that an internet service provider may be criminally liable for actions of third parties who use an ISP’s network to communicate infringing copies. Certainly, the government is satisfied that this does not alter the current position of ISPs under the Copyright Act, that no further clarifying amendments are necessary and that to commit an offence a person or entity must directly commit all the elements of the offence themselves. In the case that I have described, an ISP would not be liable.

In relation to the enforcement of all this, it has been raised at the Police Ministers Council with not much success. I think that there is an avenue for state and territory police to have a role in the enforcement of this because, with regard to groups that are involved in a more organised criminal way, we have found that other things are involved, such as drugs or other illegal behaviour. It is clearly in the interest of states to take part in this. We would want to see not only the Australian Federal Police but also state and territory police involved. Of course, case prioritisation would apply to this, as with anything else, and that is a matter for the AFP. Certainly, I would leave that to the AFP. I would imagine that the AFP would be more preoccupied with the organised aspects of this, where we see, as we have seen recently, organised syndicates involved in infringing copyright in a systematic way and doing so for the purposes of financial gain.

In relation to a more general approach to this, Senator Ludwig, you and I have discussed the role of the Australian Crime Commission. There could well be a role for the Australian Crime Commission in carrying out a determination in relation to assessing how large the problem is, where it is situated and what form and shape it takes. That is something that is best left until after we deal with the passage of this legislation. Certainly, the AFP will be looking at this legislation and working out how it can apply the law and enforce it. But, importantly, we would envisage the state and territory police services having a role in this as well, and that is something that I intend to pursue at the Police Ministers Council. As to how they would prioritise a particular infringement, I think it would be the same as with any other matter: it would go to the extent of criminal-
ity, the effect it is having and the seriousness of it—all the usual criteria that would be looked at in assessing a case for investigation. I think that deals with the major issues that Senator Ludwig raised.

Senator LUNDY (Australian Capital Territory) (9.14 pm)—On the earlier issue about fines, I have some more information that might help the minister resolve my question. For every commercial copy of a CD that is made—again, working on the scenario that it was not done for commercial profit—each song has three copyright protections on it and each CD has, say, 10 songs on it. So that could be technically 33 individual copyright infringements for one CD copied and sold. The act currently talks about a fine for a copyright infringement of $6,600. Extrapolating that, 33 times $6,600 is $217,800 for that one technical sale of one CD. That really goes to the heart of the point I was making earlier. It also goes to the heart of the issue that Senator Ludwig raised about the fact that we do not know how these fines are going to be applied, we do not know whether there is a limit on how a fine could be applied to one individual in what circumstances and we do not know whether the on-the-spot fine has any potential restrictions on it. You can appreciate that even in the sale of 10 CDs inadvertently to mates you could be looking at, quite absurdly, fines of over a million dollars. I do not think that would be the intention of the bill, but I am looking forward to the clarification from the minister in that regard.

I would also like to follow up some questions about ISPs. In particular, further to Senator Ludwig’s questions, I would like to follow up whether there is any potential for ancillary liability—for an ISP to be pulled into having some liability for distribution. Could the minister outline the interrelationship between the new strict liability criminal offences created by this bill and the safe harbour provisions that could limit the liability of ISPs in certain circumstances and whether or not that safe harbour regime provides any shield to criminal liabilities under this bill.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.17 pm)—I might just reiterate that to commit an offence, a person or entity must directly commit all the elements of the offence themselves. There is no ancillary liability; there is no vicarious liability. You must commit the offence yourself, all the elements thereof, so that an unwary or unwitting ISP cannot just be snared in the way that Senator Ludwig has indicated. I want to be quite clear about that. The fine which Senator Ludwig refers to is $1,320 for an individual and $6,600 for a company. In the scenario that Senator Lundy has portrayed, the liability would attach to the article that is being copied—the article which is the DVD. It does not matter how many songs are on there; it is the article for which you are fined. It would not be a case of being fined 13 times, for each different song on the article.

The other scenario was that of a person who has made some CDs and sells a couple to his mates for, say, $10 or whatever. This is a discretionary system as to whether to issue an infringement notice. Certainly it is one which is based on the facts. Throughout my remarks in support of these amendments I have mentioned that the aim of the legislation is to target those pirates who are the ‘genuine pirates’, if I can call them that—if a pirate can be genuine—and not the unwitting user or the person who is a consumer. The area that Senator Ludwig is describing is one which is not in that domain of a genuine pirate. Certainly, from my knowledge of the AFP and the people they have been targeting, it would not be the person that Senator Ludwig has described. It would be those people down at the markets who are selling...
CDs in a very organised fashion. They are the ones who are doing all the damage.

**Senator LUNDY** (Australian Capital Territory) (9.19 pm)—I want to pursue the question about the interrelationship with the new provisions. Notwithstanding your assurances about the ISPs attracting no liability, has there been an analysis done about the interrelationship between those offences and the safe harbour provisions that affect ISPs? I would like you to reconcile how much discretion is associated with the strict liability regime.

**Senator ELLISON** (Western Australia—Minister for Justice and Customs) (9.20 pm)—It is a very broad discretion because, as much as any police officer exercising his or her duty when they come across someone who may have infringed the law, they enforce the law but they do so on a very common-sense basis. So it is hard to really describe how a person such as an AFP officer would exercise that discretion. It would be according to normal policing work, I would suggest.

In relation to the analysis, there has been no analysis that I am aware of, but we have certainly examined the interrelationship with safe harbour provisions. If you are talking about a formal review—and that is an independent assessment—then certainly the department and the government have examined the interrelationship with safe harbour provisions. As with the existing offences, the new criminal offence regime will not have any effect on the operation of the safe harbour provisions in part V, division 2AA. I think that that spells it out as clearly as it could be. I think that does address that concern quite squarely.

**Senator BARTLETT** (Queensland) (9.21 pm)—I just want to ask the minister a couple of questions about some of the amendments, firstly, the very final—amendment, (19), on sheet ZA204, dealing with communication for educational institutions. I just want to clarify a point. I think it was when he was talking to that amendment—he spoke to a lot amendments—he said that this amendment has been endorsed by the educational sector as an appropriate compromise. I have still been receiving representations from a range of people, as I am sure we all have right up until now—in fact I still have emails coming through right in front of me. I did get one on this area about the same time as this amendment was tabled. I just want to check: when you say the educational sector, does that mean the universities, for example, or schools or libraries or are you able to reassure the Senate that that solution you have got there, which I think is an amendment to what was originally amendment (36) on the other sheet, is now one that, broadly speaking, the universities and others—vice-chancellors, schools et cetera—have, as you said, endorsed as satisfactory?

**Senator ELLISON** (Western Australia—Minister for Justice and Customs) (9.23 pm)—I can confirm that it is amendment (19) on sheet ZA204 where I state that the amendments do not undermine the operation of part (5)(a). They have been endorsed by both screenwriters and the educational sector as an appropriate compromise. The educational sector comprised both schools and universities and representative bodies for them, and I think that addresses Senator Bartlett’s concern that it was a broad representation of the educational sector.

**Senator BARTLETT** (Queensland) (9.24 pm)—I also had a question about amendment (18), which requires a review to be carried out by the end of March 2008 of the operation of sections 47J and 110AA of the Copyright Act and for it to be tabled in parliament. I note that recommendation 15 from the majority report recommends that the government undertakes a public review of
the impact of the changes made to the Copyright Act by this bill, a review of all of the changes rather than just those two sections. Is there some broader intent? What is the government’s response to that recommendation? Are you making any commitment to undertake a review of the totality of the impact of all of these changes or just to those two sections? Secondly, whilst I recognise that it is not appropriate to detail in legislation the full nature of the type of review that is foreshadowed or will be required by the amendment, is the minister able to give a commitment that the review will be a public one that will enable public input rather than an internal departmental one?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.25 pm)—To have a review at that time of the whole act would be too broad and too soon. What we have chosen here with sections 47J and 110AA are the most innovative aspects of the bill. They are the ones where you are actually breaking new ground with format shifting and other things, and I think it is important that we look at that area. That is where the new frontier is, if you like. Certainly, we will pick up things as we move along. The process has demonstrated this. The very reason we have these amendments here tonight is as a result of the Senate Legal and Constitutional Legislation Committee making recommendations, and others as well. In fact some of these have been the result of stakeholders making further representations. It would be very foolish to stand still with copyright law and with emerging technologies. As the Attorney-General and I have said several times: it is an issue which we have to keep abreast of. But initially to have the outcomes that we need, I think that we need to make that review targeted and rigorous and according to a strict time line, and that is what we have done. But to have a broad one at that stage would be too early, and I think the breadth of it would defeat the purpose. I can understand what Senator Bartlett is saying but I think that the government’s position is that we have had a period of exposure drafts, a thorough period of consultation and we need to get this legislation bedded down and see how it runs. If amendments need to be made we will make them, but in relation to those innovative ones we definitely will have a very targeted review.

The TEMPORARY CHAIRMAN (Senator Watson)—The question is that government amendments (1) to (19) on sheet ZA204, and (1) to (20) and (22) to (63) on sheet QE275 be agreed to.

Question agreed to.

The TEMPORARY CHAIRMAN—The question now is that amendment (21) on sheet QE275 be agreed to.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.28 pm)—As I indicated earlier, I reserved my remarks on this one. This replaces proposed 40(5) in the bill with a new subsection and inserts new subsections 40(6), (7) and (8). This amendment is being made in response to recommendation 6 of the Senate committee and submissions by stakeholders. The new 40(5) makes the same change to existing section 40(3) as was intended by proposed section 40(5) in the bill. Many stakeholders, commenting on the proposed section 40(5) in the bill, expressed the understanding that it had a different effect from what was intended. Section 40(5) in the amendment has been drafted to express the original intention in a different and clearer way. It does so by incorporating a definition of ‘reasonable portion’ instead of referring to the definition in subsections 10(2) and (2A) and also indicates the works of which such amount may be reproduced.

It is also intended to make it clear that, as is the case under section 40 of the act now,
reproduction of more than a reasonable portion of the works referred to in section 40(5) or of other works may still be considered a fair dealing for research or study under sections 40(1) and 40(2). The new subsections that are inserted by way of amendment are consequential on the redrafting of section 40(5). This is a matter which relates to fair dealing for research or study, and I commend the amendment to the Senate.

Senator LUDWIG (Queensland) (9.30 pm)—As I foreshadowed, we do not agree with amendment (21). We think the original provision in the act should stand. It really is one of those areas where I think caution is warranted. Amendment (21) has also significantly changed from the earlier amendment, and you have then formatted it. The concern is whether or not it really achieves the purpose that you set out for it, or at least that you hope it will achieve. The amendment reads:

Despite subsection (2), a reproduction, for the purpose of research or study, of not more than a reasonable portion of a work or adaptation that is described in an item of the table and is not contained in an article in a periodical publication is taken to be a fair dealing with the work or adaptation for the purpose of research or study.

And then the table sets out two items under ‘work or adaptation’ and the amount that is a reasonable portion, which is, under item 1:

(a) 10% of the number of pages in the edition; or
(b) if the work or adaptation is divided into chapters—a single chapter

Item 2 differentiates between that type of work and ‘a published literary work in electronic form’ and considers a reasonable portion as being:

(a) 10% of the number of words in the work or adaptation; or
(b) if the work or adaptation is divided into chapters—a single chapter

One of the concerns raised is that, because of the way the online environment works, people are retailing, or at least putting online, chapters for sale, and the argument is that this would reduce a business case for the future. I am not going to run with that particular argument; I will simply say that the difficulty in moving this way is that you will put in place a regime that I do not think has the support of the whole industry. It certainly has not been discussed enough at this point to provide certainty, although you might disagree with that, Minister. ‘Reasonable portion’ is now based on 10 per cent of the words in an electronic work and 10 per cent of the number of pages of a non-electronic work, as the two main criteria.

We are urging that you maintain the current position of the existing provision in the Copyright Act 1968 until such time as you can at least consult with all the relevant parties to come to a much better position than the one you have arrived at now. It is not so much about the provision as drafted if it works the way you hope it will work—but I doubt that it will in fact achieve that and I think the parties will end up litigating to try to achieve some certainty. I always find it disappointing when we end up there, having to work out what the provision should or should not say and what copyright holders’ rights are. I will not spend any more time on this area. I have made the point that I need to make. Given the time, I will leave it at that.

Senator BARTLETT (Queensland) (9.34 pm)—I wanted to ask the minister about the new version of section 40(5) that will be put in place by government amendment (21), perhaps following through a bit further on the scenario or the reality that Senator Ludwig described, where in the online environment a work that is a ‘published literary work in electronic form’ is sometimes retailed in single chapters—people can purchase individual chapters. In the table under
amendment (21), it says that if the work or adaptation is divided into chapters then a single chapter is a ‘reasonable portion’. I wanted to clarify that, when you talk about an adaptation, you do not mean a work that is being adapted for the online environment per se. Also, I am sure that the minister is aware of the argument that Senator Ludwig put about the potential impact of this proposed section on work that is retailed in single chapters, and I wanted to know if the minister had a response to that concern and its potential impact on publishers and copyright owners.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.36 am)—In relation to the effect of amendment (21) on section 40 of the act, the amendment defines with certainty what works can be so copied. It also defines with certainty how much of such works is a reasonable portion that can be copied. The existing section 40 does not provide anyone with the certainty that we think it should, and we believe that this amendment makes it even clearer. You heard Senator Ludwig say that the 10 per cent relates to words for electronic works and to pages for hard-copy works. We believe that this amendment does improve section 40 for those reasons, and I think that it is highly desirable that we have a clearer understanding of how that section 40 works for both the copyright holder and the user. They know exactly where they stand with this amendment.

Question agreed to.

Senator LUDWIG (Queensland) (9.37 pm)—I can gladly say that I am not going to move amendments (1) to (26) on sheet 5133 revised. I think I made the point and forecasted that I would not be moving those amendments in relation to strict liability. We have had, of course, the shocking position where the government backslid on five strict liability offences, with significant pushing by Labor, and then they backslid again because of the nonsensical position they got to. So, rather than try to complicate it any further, I indicated then that I thought they were wrong the first time and they were still wrong the second time. I think I have made that point three or four times now, so I will not continue to make the point. We can move on to the Democrat amendments.

Senator BARTLETT (Queensland) (9.38 pm)—by leave—I move Democrat amendments (1), (2) and (3) on sheet 5132 revised:

(1) Schedule 1, page 37 (after line 12), after item 12, insert:

12A Subsection 152(1) (after the definition of broadcasting)

Insert:

community radio broadcasting licence means a community broadcasting licence allocated by the Australian Broadcasting Authority under the Broadcasting Services Act 1992 that authorises the holder of the licence to broadcast radio programs.

(2) Schedule 1, page 37 (after line 12), after item 12, insert:

12B Subsection 152(8)

Repeal the subsection, substitute:

(8) The Tribunal must not make an order that would require a broadcaster who is the holder of a community radio broadcasting licence to pay, in respect of the broadcasting of published sound recordings during the period covered by the order, an amount exceeding 1% of the amount determined by the Tribunal to be the gross earnings of the broadcaster during the period covered by the order that ended on the last 30 June that occurred before the period covered by the order.

(3) Schedule 1, page 37 (after line 12), after item 12, insert:
12C Subsection 152(9)
Repeal the subsection, substitute:

(9) If a broadcaster that is the holder of a licence referred to in subsection (8) has, with the permission of the Australian Broadcasting Authority, adopted an accounting period ending on a day other than 30 June, the reference in subsection (8) to 30 June is, in relation to the broadcaster, a reference to that other day.

These amendments deal with something that should be in the bill but is not. As I mentioned in my speech in the second reading debate, the whole bill before us—and let us not forget that it has 12 schedules and 213 pages—deals with a huge range of issues, particularly areas like fair use provisions, the digital agenda review and technological protection measures. Whilst the very final stage of the process—the extremely rushed consideration of the legislation—has been unsatisfactory, the procedures leading up to that did involve a lot of public consultation and a lot of different reviews and exposure drafts of legislation. That is certainly welcomed.

Alongside of all those reviews there was also a review announced nearly two years ago by the Attorney-General, Mr Ruddock, on the current circumstance surrounding the cap on the licence fee for playing sound recordings on radio—usually known by the terms ‘music’ and ‘songs’. This review relates to an issue that has been around for a long time. The debate has been around for a long time. But it was conducted alongside all of the other ones, with a range of public consultation and stakeholder input.

Many of the changes that we are dealing with tonight in the legislation were announced by the Attorney-General in a very long media release on 14 May 2006. It was headed ‘Major copyright reforms strike balance’. All those reforms, in areas like legislative reform to tackle piracy, strengthening of copyright enforcement, new flexible dealing exceptions, reforms arising from the digital agenda review and new exceptions for private use, are contained in the legislation—even the amendments to do with pirate goods coming into the country and the activities of Customs. All of these changes were announced on 14 May 2006. All of them, in varying forms and amended in some ways following further consultation, are contained in this legislation, except for the Attorney-General’s commitment to removing the licence fee cap for playing sound recordings on radio. I will read the Attorney-General’s comments from that time into the record, because it puts the argument quite well. He says:

After an open public consultation process, 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 intervention. If they can’t agree on fees, they can put their case to the independent Copyright Tribunal, like any other copyright owners and users.

That is what Mr Ruddock said on 14 May 2006, as I said, as part of a media release headed ‘Major copyright reforms strike balance’. One of the concerns I have is that, by not having this in this package of reform measures, it actually distorts the balance, as was made clear quite specifically in evidence given to the Senate committee hearing into this legislation.

Some of these other changes will directly lead to lower income streams for copyright holders, particularly for performers—that is, lower royalties, particularly with some of the changes to copying. I am not saying I therefore oppose those changes; I am simply say-
ing that it is quite clear, almost by definition, that that will be the case. It will now be opened up for people to be more easily able to copy as part of fair use changes. It is reasonable to say, as Mr Ruddock’s headline implies, that it is part of a balance that you should also make the change which opens up to a market rate the income available and the income stream for performers, artists and musicians in Australia. It therefore harms that balance not to have this measure in the legislation.

In his summary remarks on closing the second reading stage of the debate, the minister responded to my comments in the second reading stage. When I asked why the removal of the one per cent cap on licence fees involving the broadcast of sound recordings was not contained in the bill, the minister said:

The government agrees that this is an important issue and it has consulted and come to a decision on it ... 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 must say that I do not think that satisfactorily answers the concerns I expressed and the arguments I put, with all due respect to the minister. This is not a complex amendment; it is very straightforward. Unlike a lot of this legislation, it is a very simple, discrete amendment and a very simple, discrete issue. As always, there are arguments on both sides; however, it is pretty clear what the arguments are and it is very clear what the effects will be one way or the other. Unlike a lot of more complex areas we have been dealing with in respect of this legislation, where you are balancing a range of different competing interests and uncertainty about definitions and legal consequences, there is simply no question about the broadcast licence fee.

This is the only group in the community that are not able to have access to a fair market basis without any statutory restrictions on earning an income from their copyright. While I would not make the argument about why it is appropriate for the cap to be removed—as Minister Ruddock said, it was put in place in 1968 on the basis of special economic difficulties at that time—I do not quite remember the special economic circumstances that were faced by the commercial radio industry in 1968. I’m fibbing; I do remember those 78s, just before the LPs came in that Senator Ludwig referred to, so perhaps I’m about as old as he is but, whatever they were, they are certainly not present now. After the recent media reforms that were passed a few weeks ago, I do not think anybody would suggest that the commercial radio industry is facing economic hard times and that there is some reason why they should get special treatment, that there are some circumstances of the moment that would suggest they need to have this little reduction in costs—a reduction in costs, I might say, at the expense of Australian musicians.

The argument for removing the cap is very strong and very clear. It is a bit hard to make the argument, because the government itself has accepted it. Minister Ellison said that the cabinet has come to a decision on it. There is no indication, unless the minister wants to correct me, that the government has changed its decision, so why are we not doing it now? We all know the reality that this major package of copyright reform measures is a one-off. We know that it will be much more difficult to get a single, discrete, small piece of Copyright Act amendment legislation up before the next election. Indeed, the very argument that the department put at the Senate committee hearing as to why we had to
deal with all of these measures now, rather
than just deal with the ones to do with the
free trade agreement that had to be through
before the end of the year, was that the gov-
ernment wanted to make all of these changes
as part of one total reform package. Well,
you cannot have it both ways. If you want a
total reform package, then let us have the
total package. Why is this one element not in
the package?

The minister said a number of submis-
sions from affected stakeholders meant that
further work was required. What is it that is
required? What is the further work that is
being done that could not be completed in
time for the introduction of this legislation?
Is the government changing its decision? If
the cabinet decision stands, why are we not
proceeding now with this change? I simply
say that, whilst there is competing interest
here, this is a clear-cut situation of who the
interests are—it is that part of the commer-
cial radio industry that relies a lot on playing
music versus Australian musicians, per-
formers and their record companies. They are the
winners and losers here.

The simple fact is that, if the cap is re-
moved, artists and performers and their re-
cord companies and representatives will be
able to negotiate a licence fee with com-
cercial radio as every other copyright user can
do in all other areas of the Copyright Act. If
no agreement can be reached, they can go to
the Copyright Tribunal and determine a fair
market rate, just as everybody else does.
What possible reason can there be for this
group within the Australian community, mu-
sicians and performers in particular, to have
their incomes capped? Nobody is suggesting
that talk-back hosts, who are another part of
commercial radio expenses, have their in-
comes capped. Some people might like the
idea of it, but nobody is going to suggest it.
In effect, it means a subsidy, but commer-
cial radio stations that play music are able to get
their product at below market rates compared
with that part of the commercial radio indus-
try that does not generate that product pre-
dominantly from music. That in itself is a
market distortion that I think is unfair.

So there are any number of arguments as
to why the cap should be removed. It is a bit
of extra special treatment for the commercial
radio industry and is not one that I can see
has any justification, particularly given that
this legislatively imposed cap on the earning
stream of copyright owners, musicians, per-
formers and their record companies are the
only groups in the community that this ap-
plies to. I really need to get some indication
from the government. As everybody in this
chamber would know, this remains an ongo-
ing issue and one that has a lot of interest
from a lot of people in the community. I
think the least I can get is a clear idea of
what is going on. The government said they
made a decision six months ago. The minis-
ter said yesterday they have come to a deci-
sion. The decision has not changed. They
need to get all the reforms through in one
package. Here is the package. It is all before
us. What is the problem?

Senator LUDWIG (Queensland) (9.52
pm)—I will not be very long. Unfortunately,
I am not in a position to support the Democ-
rat amendments. I understand the principled
position Senator Bartlett has put in respect of
it. In fact, I would pick up on one part and
say to the government that it is not part of
this amendment package. I think that is plain.
It seems to be a matter that falls generally in
the area but is certainly not part of the legis-
lative package, even as amended, that this
government is pursuing.

But the government did put out a discus-
sion paper on this issue and it appears to me
that the government intends to take some
action in this area. It would be helpful if the
government could advise as to when it in-
tends to take some action in this area, so that we can have a look at what the government intends to bring forward in a real and concrete way. Otherwise, I will start using the language again that the government is ‘dragging its heels’ in respect of this area.

I guess in this instance it would apply to Mr Ruddock and not you, Senator Ellison, so you can at least duck that one. But I think it is important that the government addresses this area. I do not want to see four years go by, or five—as was the case of the digital agenda review—and then suddenly have a rush to bundle it in at the end together with the fair use review and those matters that had to be dealt with under the Australia-US FTA, which you have done, but that it should be dealt with in this way for the one per cent cap on licensing fees for commercial play Australia. It is an important area that should be addressed and the government should be encouraged—perhaps Minister Ellison could encourage Mr Ruddock—to address it in such a way that it comes back here in a concrete form.

Senator BARTLETT (Queensland) (9.54 pm)—In response to Senator Ludwig’s comments, it has been said that the government put out a discussion paper. They did not just put out a discussion paper; they put out a decision. They announced a cabinet decision. Why is it that after having made the cabinet decision more than six months ago there now needs to be work done with affected stakeholders?

With respect to the minister, this is not a complex issue; it is a very clear-cut issue. It is far less complex than a lot of the matters that are in other schedules in this legislation. It is just as relevant to the matters before us as all of the other 12 schedules in this legislation. Many of the schedules in this legislation could have been stand-alone schedules. The 12 schedules do not interrelate; they do not interconnect in some sort of intrinsically interwoven package. This is totally validly part of what is before us today. That is why Minister Ruddock announced the government’s decision at the same time as he announced all the other changes and decisions that are reflected in the legislation.

For the minister to simply say, ‘We’re still talking with affected stakeholders,’ frankly does not answer the simple question: if further work is required, does this mean that the government have changed their decision? Does the cabinet decision and the decision announced by Minister Ruddock still stand? We could at least get that on the record.

In implementing this change there is obviously a prospect of some sort of financial impact down the track. Nobody knows how much, because if it went to the Copyright Tribunal nobody knows what market value they would determine. So it seems to me that you could not do some sort of adjustment package until you knew what sort of adjustment would be needed—assuming there is

Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.54 pm)—This is an amendment which does not necessarily relate to the others that we have been talking about today. It is not essential that it be dealt with at the same time. In any event, the government has been seeking submissions from key affected stakeholders in recent months, and has not made a decision on the timing of this change. The matter is still under consideration. It is not in any way disadvantageous to this bill or the other provisions if it is not there.

It may be a simple amendment that the Democrats are proposing but it is a complex issue that needs to be carefully considered, and that is what the government is doing. For those reasons the government cannot support the Democrat amendments.
any adjustment assistance needed, which is another issue.

I appreciate that Minister Ellison is not Minister Ruddock and he is not in a position to be persuaded by my arguments. Well, I am sure he can be persuaded by my arguments but he is not in a position to vote in accordance with the persuasiveness of my arguments even if he was persuaded, which he probably is! But he could at least clarify for the record whether the cabinet decision to remove this cap still stands as part 1.

Some of the most obviously affected stakeholders are those who continue to be affected by having their income constrained artificially—which are performers and record companies. Are they amongst the stakeholders that work is being done with?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.58 pm)—It is no secret that the government announced on 14 May 2006 that it had agreed to remove the one per cent legislative cap. That is a matter of record. That decision stands but, as I said, it is a question of considering further submissions from key stakeholders. Six months is not a particularly long time in the scheme of things when looking at this sort of area. I cannot take it any further than that.

Senator LUDWIG (Queensland) (9.58 pm)—Senator Bartlett, let me clarify that it is the case that it was a discussion paper, and I accept that it was also a cabinet decision. I might have left that out of my chronology. The point I ended up with was that it is a government decision that should be acted upon. They should bring forward legislation; you are right about that. It is not a part of this package. It is disappointing that the government is dragging its heels but, be that as it may, we do not have it before us, and it does not change the Labor Party’s position.

Senator BARTLETT (Queensland) (9.59 pm)—In conclusion, I recognise that it is not part of this package, but the point is that it was part of the government’s package. It was part of the whole package that was announced back in May, and it should have stayed in the package. And it is completely appropriate for the Senate, as a legislative body, to put it back in the package.

The minister says that six months is not that long to consult with stakeholders. That was what the whole discussion paper was about. I recall being at Waterfront Place in Brisbane when Minister Ruddock gave the speech when he launched the discussion paper—along with, I think, one or two other discussion papers—back around, I think, the start of 2005. It is something that has been going for a lot longer than six months. In fact, for quite a period prior to that discussion paper being launched, nearly two years ago, it was a matter for debate. So the statement, ‘It has only recently been decided and we’ve still got to work through some of the detail,’ is pretty flimsy, quite frankly. There has been plenty of time to work through the detail. And, as I said, it is far less complex and much more clear in its consequences than a lot of what we have been dealing with and will continue to deal with with other aspects of the legislation.

Be that as it may, I am obviously not going to get satisfaction this evening. I simply put on the record that the Democrats certainly will not let the matter rest. I note the minister’s comment that the government’s decision has not changed. We will continue to use the Senate’s role as a law-making body to keep this issue on the record, whether through a private senator’s bill or something else. It is simply a matter of a fair go. Nobody else in the community would accept having their income constrained with some sort of salary cap on what they are allowed to earn.
Particularly when it is about earnings through an industry that is clearly profitable, like the commercial radio industry is, one has to wonder what other deals, agreements or swaps might be going on around in the backroom somewhere, given the inability to have any more clarity from the government about what is going on. As to whether this was part of some other agreement that has been sacrificed to allow the broader media reforms through, I guess people can always speculate about those things. But the problem is that, unless the government can be more clear and open about what on earth is going on, people obviously will speculate about what the real agendas and motivations are and why the heels are dragging on this. Frankly, that is a less than ideal situation.

Question put:
That the amendments (Senator Bartlett’s) be agreed to.

The committee divided. [10.06 pm]
(The Chairman—Senator JJ Hogg)

Ayes…………… 5
Noes…………… 49
Majority……… 44

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

NOES
Adams, J. Barnett, G.
Bernardi, C. Bishop, T.M.
Brandis, G.H. Brown, C.L.
Calvert, P.H. Carr, K.J.
Chapman, H.G.P. Colbeck, R.
Crossin, P.M. Eggleston, A.
Ellison, C.M. Evans, C.V.
Faulkner, J.P. Ferguson, A.B.
Ferris, J.M. Fielding, S.
Fierravanti-Wells, Fifield, M.P.
Forshaw, M.G. Heffernan, W.
Hogg, J.J. Humphries, G.
Johnston, D. Joyce, B.
Kemp, C.R. Kirk, L.
Lightfoot, P.R. Ludwig, J.W.
Lundy, K.A. Macdonald, I.
Marshall, G. McEwen, A.
McGauran, J.J. McLucas, J.E.
Moore, C. Nash, F.
Parry, S. * Payne, M.A.
Polley, H. Scullion, N.G.
Sherry, N.J. Stephens, U.
Troeth, J.M. Trood, R.B.
Watson, J.O.W. Webber, R.

* denotes teller

Question negatived.

Senator LUDWIG (Queensland) (10.10 pm)—The opposition opposes schedule 6 in the following terms:

(27) Schedule 6, Part 4, page 107 (lines 2 to 36), TO BE OPPOSED.

I have already spoken to this. It deals with fair dealing for research and study. I will not take time to reiterate the arguments that I have already made about that. The government’s paltry opposition to it did not really make it, but I will move that motion based on the arguments that I have already made.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (10.11 pm)—The government opposes this motion, which would omit the proposed amendment in the bill of section 40, which is on copying that is deemed to be a fair dealing for research or study. As Senator Ludwig has said, we have gone through the arguments pretty extensively, and I will not add to them.

The TEMPORARY CHAIRMAN (Senator Murray)—The question is that part 4 of schedule 6 stand as printed.

Question agreed to.

Senator LUDWIG (Queensland) (10.12 pm)—The opposition opposes schedule 8 in the following terms:

(28) Schedule 8, item 8, page 119 (line 32) to page 120 (line 6), TO BE OPPOSED.
This motion is about insubstantial copying or cherry picking. The main committee report from the Senate Standing Committee on Legal and Constitutional Affairs recommended that the government consider the possibility of amending the proposed subsection 135ZM(B)(5) in schedule 8 of the bill so that insubstantial copying of works and electronic works need not be continuous. The government in this instance did not accept this recommendation. You considered the provision technologically neutral. You backtracked on it from your original position. The position that Labor has put forward is a more sensible position. I will not go to the detail. It is plain that the government has not looked at recommendation 11 in any meaningful way. There is still a problem in this area and the government should be encouraged to accept our motion. It would improve the overall bill. I recognise that this is a position which the government has not picked up. It would be helpful if the government picked up the recommendation. I recognise that I probably do not have the numbers in this chamber, so I will not take up a substantial amount of time arguing for it. Simply put, it would be a much better than the position the government has got to.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (10.13 pm)—The government opposes this motion, and this will come as no surprise to the opposition. This provision implements a recommendation of the Phillips Fox digital agenda review. This provision is one that the government cannot see any way to support. In any event, there has been adequate discussion tonight on these matters.

The TEMPORARY CHAIRMAN (Senator Murray)—The question is that item 8 of schedule 8 stand as printed.

Question agreed to.
market entrants, and it is therefore anticompetitive.

To say what we are debating here has significant ramifications is an understatement. This is a substantial power shift in favour of copyright holders—but only those that are big and powerful enough to pursue a comprehensive TPM strategy. Technological protection measures are not simple things and they require a lot of resources. We are not talking about copyright owners who are creators or artists; it is the companies that have the global distribution rights of the copyrighted material. Unfortunately, this is part of a pattern of the Howard government. This government is very happy to do these things at the behest of the big end of town. It is a form of patronage that we are now seeing reflected in this aspect of this bill, and it is further evidence of a whittling away of the capacity of smaller innovators and technologists to come up with new technology solutions and new innovations.

It is interesting to note that the exposure draft of this bill did not have this deficient definition. In fact, it contained a definition that kept the link between the use of TPMs and protection from copyright infringement. It is worth noting that the government majority House of Representatives review of technological protection measures—they had a whole review of it in the House—came up with the following recommendation:

The Committee recommends that, in the legislation implementing Article 17.4.7 of the Australia-United States Free Trade Agreement, the definition of technological protection measure/effective technological measure clearly require a direct link between access control and copyright protection.

That was the House committee. I think, to their serious credit, government senators on the Senate Standing Committee on Legal and Constitutional Affairs also recommend a return to this original definition. Two parliamentary committees and one exposure draft agree with Labor’s amendment.

This issue attracted a lot of attention at the disgracefully brief Senate inquiry, and we heard conflicting evidence of legal opinions—some said that the definition of the TPM in the bill we are debating was required to satisfy the free trade agreement requirements, and we heard evidence and legal opinions that in fact the exposure draft definition was required to satisfy our obligations under the free trade agreement. So we got it from all sides. Labor and Liberal senators on the committee were both convinced that the intent of the free trade agreement and its rather vague wording permits the definition that contains the link and that such a definition adequately fulfils our obligations.

I cannot speak for the Liberal senators’ reasoning, but Labor has been convinced of the need for the link to exist, on the basis of maintaining the integrity of the purpose of the laws: to protect copyright. In addition, we heard advice that, in fact, that definition was the only definition that would satisfy the free trade agreement.

We asked at the Senate committee hearing whether the department had received advice in the time between the exposure draft and the bill, and the department informed the committee that they had received advice that led them to unlink the TPM definition and the protection from copyright infringement. The Senate committee requested and received, I presume, at least some of this advice—and key aspects of it confirmed Labor’s fears that this push to change the definition was indeed to protect future business models of incumbent players.

It is important to note that this advice was provided to the committee on the condition that it was kept in confidence, and this was claimed because of the commercial sensitivity of the advice—because it was all about
business models! I think it is obvious that the
government has been got at, and it is fair for
me to ask the minister on what specific basis
they changed their minds. I would also like
to ask whether they received any representa-
tions from US interests or, indeed, the US
embassy.

It is also important to refute claims by
AFACT, representing the Motion Picture
Association and other copyright holders and
distributors, that the exposure draft did not in
fact comply with the free trade agreement. I
would like to refer to evidence presented to
the Senate inquiry from Professor Brian
Fitzgerald et al in response to a direct ques-
tion by Senator Ludwig. Senator Ludwig’s
question was: what is your response to evi-
dence from the department that the AUSTFA
requires the TPM provisions to be drafted as
they are currently drafted—that is, incorpo-
rating a linkage to copyright infringement
would not meet the requirements of the free
trade agreement? A summary of the answer
provided by Professor Fitzgerald was that the
incorporation of a link to preventing or in-
hibiting copyright infringement in the defini-
tion of TPM and access control TPM is sup-
ported by the text of the AUSTFA, the find-
ings of the Office of International Law, the
findings of the House of Representatives
Standing Committee on Legal and Constitu-
tional Affairs and US case law. Professor
Fitzgerald expanded on this by asserting that:
The Attorney-General’s Department response to
the committee is not an obstacle in this interpreta-
tion. In substance the article cited by the Attor-
ey-General’s Department—that is, 17.4.7(d)—
prevents Australia from requiring copyright own-
ers to prove that an actual infringement has oc-
curred; for example, that someone has actually
copied the work to obtain protection under the
TPM provisions. It does not limit the definition of
TPM or prevent Australia from enacting laws that
require a copyright owner to prove that a technol-
gy was designed to prevent or inhibit copyright
infringement for it to be a TPM.

Finally, the professor cites two principal
statements in the free trade agreement which
prescribed the boundaries of the definitions
of technological protection measures and
access control technological protection
measures under domestic law, and these are
articles 17.4.7(a) and 17.4.7(b). Article
17.4.7(a) insists on a connection with the
exercise of copyright owners’ rights. Article
7A says:

... in order to provide adequate legal protection
and effective legal remedies against the circum-
vention of effective technological measures that
authors, performers and producers of phonograms
using connection with the exercise of their
rights—

that is the key phrase—

and that restrict unauthorised acts in respect of
their works, performances and phonograms.

‘And’ is obviously a key word in that inter-
pretation. Article 7(b) defines an effective
TPM as including both devices that protect
copyright and devices that control access to a
work. It states:

An effective technological measure means any
technology device or component that in the nor-
mal course of its operation controls access to a
protected work, performance, phonogram or other
protected subject matter or protects any copy-
right.

The key word in the phrase ‘or protects any
copyright’ is ‘or’. But the opinion of Profes-
sor Fitzgerald and his colleague Mr Dale
Clapperton submitted that in taking both
17.4.7(a) and (b) into account the correct
interpretation of article 17.4.7 requires a di-
rect link between any effective TPM and the
prevention of copyright infringement. Labor
agrees. The impact of the government’s defi-
nition is not only an abuse of copyright law;
it also creates massive disincentives for
software innovation. Combined with inade-
quate exceptions to permit the development
of interoperable products, the threat of
criminal offences is enough to prevent the development of such interoperable products.

I will speak briefly to Labor’s next amendment, which looks at inserting another inclusion into the definition of computer programs. Interoperable products allow consumers genuine options in their use of software and create alternative non-proprietary products. This is important to ensure that the perpetuation or emergence of monopolies is avoided. This is particularly important for innovators in the open source area.

We will be moving an amendment for an exception to permit the development of not just interoperable computer programs but the data as well. That is Labor’s next amendment. Without this exception data can be locked up and access denied without the use of proprietary products. Even if the data itself was not copyright protected, which is quite absurd, it defies archiving principles.

My colleague Senator Ludwig has just suggested that we move the two remaining opposition amendments together—that is, opposition amendments (30) and (31). I seek leave to do that.

Leave granted.

Senator LUNDY—I move opposition amendments (30) and (31) on sheet 5133 revised:

(30) Schedule 12, item 9, page 188 (line 19), after “program”, insert “and data”.

(31) Schedule 12, item 13, page 211 (after line 4), after section 202A, insert:

202B Contractual evasion of technological protection measures

A provision of a contract which purports to evade the technological protection measures provided for by this Part is void and of no effect.

I turn now to opposition amendment (30). Including data in this definition and exception to allow computer interoperability as a legitimate reason to circumvent a technological protection measure overcomes a particular concern of experienced technologists in the area, whereby without the definition of data being included in that way it is quite possible for interoperable computer programs to be produced but the data to be unavailable because it is stored in a proprietary format. This is particularly true not when the data itself has any copyright protection but when in fact the format in which the data is stored becomes inaccessible if it is not available through that interoperability exception.

The issue of the interoperability of data is an important one, and I am familiar with the Commonwealth government’s archiving policies in this regard. A great deal of effort has been put in by the National Archives to promote the use of data formats and storage formats that are open sourced—that are accessible. The issue for them is very much that the Commonwealth ought not to be locked into licensing arrangements surrounding proprietary software and/or data standards to access that content in the future. Without those open standards or the ability to interoperate with both the programs and the data itself, serious commercial disadvantage and public policy disadvantage can be inflicted. (Time expired)

Senator ELLISON (Western Australia—Minister for Justice and Customs) (10.30 pm)—The government opposes opposition amendments (29), (30) and (31) and does so for a variety of reasons. Firstly, in relation to whether the technological protection measures are anticompetitive, our answer is a clear no. As noted by Senator Lundy, the bill contains a broad exception from liability for circumvention where a TPM has an anticompetitive impact on the availability of spare parts and services. It also contains exceptions allowing for the creation of interoperable software and other articles. These exceptions will ensure that the provisions will not lock in existing players but will allow the evol-
tion of technology. I think that is an important aspect in relation to the TPMs.

In relation to the consideration of the views of the United States on TPM issues, I can say quite clearly that the United States contributed its views to this discussion as much as any other stakeholder. We talked to domestic stakeholders, both copyright owners and users, and we spoke to the United States as well. When we have a free trade agreement, we have to ensure that we comply with the treaty that we have signed. There is nothing untoward in that. Of course we discussed the matter with the United States like any other stakeholder.

Amendment (29) is opposed on the basis that schedule 12 of the bill, which is in line with the Australia-US Free Trade Agreement obligations, has been the subject of substantial consultation. I think that has been the hallmark of the process in relation to the drafting of this bill. In response to the exposure draft of the TPM provisions, both copyright users and owners sought greater clarity and simplicity in the operation of the definitions. They also sought certainty on the issue of geographic market segmentation. The government listened to the views of all stakeholders and created a definition that will enable owners to safely make copyright materials available online, while also ensuring user certainty over the important areas of region coding and the supply of aftermarket goods and services. It does not require an everyday consumer to make a determination about whether their computer makes copies when they access websites or use computer software. We believe Labor’s amendment will put uncertainty back into the TPM definition. The amendment, we believe, will stifle the development of online distribution of copyright material, placing Australia at a disadvantage compared with the rest of the world.

Similarly, in relation to amendment (30), which deals with the TPMs exception for the development of interoperable computer programs, the government does not support this amendment for the reason that the amendment is unnecessary. We believe it does not bring greater clarity. The TPM scheme cannot be used to prevent individuals or businesses from using existing data with new computer software. The definition of a TPM requires that a TPM be placed on material in which copyright subsists by or on behalf of the owner of the copyright. A software company that prevents customers from using their own copyright material in the form of data by the application of a TPM would not be protected by the scheme. Even if the software-inserted copyright material belongs to the company with the customer’s data, the act allows the customer as a copyright owner to authorise circumvention of a TPM that prevents access to the customer’s data. Aside from that, we believe Labor’s amendment would provide little additional assistance to those involved in the creation of interoperable programs, as it only applies to one of the six types of liability under the bill. It would not allow dealings in circumvention devices or services to be used for the purpose of whatever additional activities it is trying to address, nor would it provide any exceptions to criminal activity.

Opposition amendment (31) involves the contractual evasion of technological protection measures. Again, the government does not support this amendment for the reason that the relationship between contracts and exceptions is not confined to the TPM scheme. The issue of contractual override of copyright act exceptions is relevant for the act as a whole. How could the opposition show that its amendments will not have the unintended or unfortunate effect of implying that every other exception in the act can be overridden by contract? I think this issue is a
very complex one in relation to the contractual evasion of TPM measures. We believe that this requires more policy consideration and is something which we can look at as the legislation is bedded down. I think that those reasons spell out why the government cannot support the three Labor amendments.

Senator Lundy (Australian Capital Territory) (10.36 pm)—Going to the issue of contractual evasion, this has been previously raised, I think in the law review, and it has popped up in the inquiries. It relates to the way in which consumers are treated. The problem is this: many people know that when they open a new application or purchase new software they are required to tick a box that says that they have read a very long, complicated and convoluted contract. The theory is that this is a contract that is somehow negotiated between the consumer and the company, and it has the effect of overriding law that is in statute. The reality, however, is that of course consumers have no power to vary the terms of the contracts that have this overriding effect. So, in general, they are completely disempowered. We are concerned that, because of the criminal liabilities associated with some of these penalties, that again puts consumers at a disadvantage. Indeed, it allows copyright holders to escape their responsibilities as well and fails to protect their interests.

But I do not want to spend time on that. I want to spend time on the substantive amendment, which I believe is the one that relates to the TPM. I am highly intrigued by the minister’s statement that of course the government consulted US stakeholders. I am actually flabbergasted, because the time for doing that was during the negotiation phase of the free trade agreement, which laid out these clauses that we are now trying to interpret for the purposes of Australian law, in the Australian parliament. Why on earth did US interests get a say?

I can understand that AFACT represented the Motion Picture Association and all the global corporations, and some of them might be US interests, but I do not think it is appropriate that the US made representations on how on earth this parliament should interpret the agreement for the purposes of this bill. That is outrageous. I seek some more clarification on that because our job with this bill—and this is completely timely; we have to pass some legislation prior to 1 January to fulfil our obligations under the Australia-US Free Trade Agreement—is to make law that is compliant with that agreement, not to ask the US what they think. Perhaps the wording was too vague for their liking or they had their own corporate interests ask them to toughen it up a little bit. I think those arguments have no right to influence how we determine what is suitable for Australian law, particularly since we have seen evidence of international interpretation of this law. I referenced it earlier: the Office of International Law and, indeed, according to Professor Fitzgerald and others, US case law have determined that that link ought to apply.

I suppose this is where the outrageousness or audacity of the government’s decision to drop this link really comes to the fore. I think the minister has basically confessed that it has been at the behest of US interests—not Australian interests and certainly not Australian consumer interests—to change this link. We are setting an appalling precedent whereby the Copyright Act, copyright protection measures, TPMs and all those things can now be used to protect a business model, and that can be their motivation. That is just not right. It is certainly not right given the circumstances in which we find ourselves debating this, which is supposed to be the interpretation of the free trade agreement into Australian law.

I go to another statement that the minister made: that the amendment that Labor has
I also do not accept the government’s explanation with respect to the word ‘data’. I think that is a quite reasonable expansion of that exception. My interpretation of what the government said is that data would in fact be rolled into their definition anyway, so I think they are just being pig-headed about not supporting this amendment—perhaps because they did not think of it. I think that is highly unfortunate as well. I will leave it there.

Finally, I want to stress that the minister’s assertion that there was substantial consultation on this point was absolutely false, particularly because the exposure draft contained the link. That was heralded by everyone except, obviously, AFACT and US interests. There was not substantial consultation on the current wording of the bill. They snuck it out with the final bill, and many people did not see it until the bill hit the deck in this place. That is not substantial consultation. It is basically being sneaky, and I think that is unforgivable, particularly in this circumstance.

I will close my comments by reminding senators that the purposes of copyright law in the first instance are to protect the interests of the creators of new works in such a way that there is a financial incentive for them to keep creating and a return on their own investment in time and effort to make it all worth while. I think there are many aspects of this bill where that has probably been lost sight of, but this particular definition is a complete departure. That is an unwelcome precedent with respect to copyright law that I think will undermine the integrity of these laws in Australia.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (10.45 pm)—I want to make one thing very clear. Whilst the US made submissions, it did not enjoy any position which was more advantageous over other stakeholders and those
submissions that were put to the government. Whether or not we listen to what the US says is another matter, but I can assure you that the policy that we have developed has been policy which the government firmly believe is in the best interests of Australia and no-one else.

Senator BARTLETT (Queensland) (10.46 pm)—I presume we all want to get this wrapped up one way or the other by 11 o’clock this evening, so I will not talk for an excessive length of time, but I do want to put a couple of points on the record on behalf of the Democrats. I do not have a problem with governments listening to views from the US, Kazakhstan or anywhere else. The point is, though, that it is clearly the US view that has been adopted by the government, and I do have a problem with that. Everyone has a right to put in a view from anywhere, but the concern I have is that it is the US view that has been adopted. Again, before the cheap shots come out, that is not an anti-American comment. If we were talking about wheat then we would be horrified about giving the Americans any advantage, but in this area giving the US an advantage does not seem to be a problem. I read from paragraph 3.139 of the majority report of the Standing Committee on Legal and Constitutional Affairs:

The committee accepts the Department’s explanation of the need to ensure compliance with the AUSFTA. However, the committee notes the apparent divergence between the view expressed by the Department in the course of the inquiry—into the legislation as it now stands—and other previous interpretations of the AUSFTA put forward by the Department and the Federal Government.

That is why it is legitimate to ask the question: what has changed? Why is it that even under the department’s own reasoning, under their previous exposure drafts, there was a particular interpretation that was seen as consistent with the free trade agreement, and then suddenly at the last minute it was changed—the change in relation to the link between prevention of the infringement of copyright and TPM of the Copyright Act that occurred—particularly when it seems clear that this will tilt the balance further towards the US side of the argument? It is also a reminder that in this debate, as in many other debates, words are not what they seem a lot of the time.

When we are talking about terms like ‘free trade agreement’ and people like the Democrats express concern about it, that does not mean that we are anti free trade any more than it means that we are anti the USA. The concern, as was made clear by people back when there were committee inquiries into the free trade agreement, is that in many respects it is actually anti freeing up of trade—it is anticompetitive. To some extent you could say all copyright is anticompetitive. As I have said all the way through this debate, you are always faced with having to balance competing interests. The fact is the approach the government is now taking in regard to technological protection measures, at least on many people’s interpretation, goes beyond protecting our copyright to an anticompetitive measure more broadly. That is undesirable. I do not think there is any doubt that the free trade agreement, as it was agreed to by the Australian government and indeed, I might say, by the ALP, has components—not the whole thing, but components—that are anticompetitive and anti freeing up of trade. But that is, I suppose, revisiting a debate that we had a couple of years ago.

In pointing out that the ALP supported the Australia-US Free Trade Agreement after a couple of, frankly, fairly minor last-minute amendments put forward by the then leader, Mr Latham, does not negate the validity of the argument that Senator Lundy is making now. We all accept that the Australia-US
Free Trade Agreement is in place, for better or worse, and I am not saying it is 100 per cent bad by any means. We certainly all therefore accept that, under the terms of that, we have to ensure that this aspect of our legislation is compliant with it by the end of this year. But within that, there is still leeway. There was leeway in respect of what the wording was in the exposure draft. That has been modified by the government. I think it is completely appropriate for questions to be asked, as Senator Lundy has, as to quite why that change was made. I also agree that the reasons given have not been particularly convincing.

Having said that, as is the case with much of this legislation and certainly this section as the committee inquiry demonstrated and the committee report noted, these are technical and complex provisions. There were different views put forward about this particular point and whether there is a link to copyright infringement and, indeed, how it portrays itself in the free trade agreement or in US law let alone in this legislation. I will conclude by going back to the point I started at in my first contribution this evening. It is not always clear who the winners and losers are out of all these changes, but I think it is a fairly safe bet that one group that will be the winners, at least for the next few years, will be the lawyers. To some extent that is unavoidable. Everybody will be testing the limits of what all this means with all of these changes.

I think we could have done a better job than we have, though frankly it is amazing that we have done as good a job as we have given the time frame. I think it is worth noting and giving some positive recognition to the government for taking on board, at least to some extent, the concerns that were raised from various people in the community. I particularly commend the work of the senate legal and constitutional committee. My views are not the same in totality as those the government members or the ALP members of the committee put forward but I do think, given the outrageously short time frame, the committee did an extraordinary job and those people that provided input to the committee did an extraordinary job.

I suppose if there is one example of the benefits of all this newfangled technology, then we are out of the era of 78 records, flexible LPs, eight tracks and all those things and into digital technology and CDs, past the wireless. There is simply no way we could have done it in that sort of time frame even a few years ago. The ability of people to put arguments online and to transmit data very quickly to try to get amendments up and scrutinise them very quickly using all this new technology is, frankly, the only way that we had any hope of being able to deal with the legislation and the large package of changes that the government has put forward including their further 80 amendments this week. But I still fear that we have come short of where we should be because of an unnecessarily truncated time frame. It seems frustrating after literally years of consultation that in the last couple of days so many things have to be rushed through when there is not the need to do so. In schedule 12 of the bill that these amendments go to, it is necessary to do so, and I accept that. Like Senator Lundy, I just do not accept some of the content of that schedule and I think these amendments do a better job of addressing those concerns.

Question put:
That the amendments (Senator Lundy’s) be agreed to.
The committee divided. 
(The Chairman—Senator JJ Hogg) 

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**AYES**

- Allison, L.F.
- Bishop, T.M.
- Carr, K.J.
- Evans, C.V.
- Forshaw, M.G.
- Kirk, I.
- Lundy, K.A.
- McEwen, A. *
- Moore, C.
- Nettle, K.
- Sherry, N.J.
- Stephens, U.
- Wong, P.

**NOES**

- Adams, J.
- Bernardi, C.
- Campbell, I.G.
- Colbeck, R.
- Ellison, C.M.
- Fielding, S.
- Fifield, M.P.
- Humphries, G.
- Kemp, C.R.
- Macdonald, I.
- McGauran, J.J.J.
- Nash, F.
- Payne, M.A.
- Scullion, N.G.
- Trood, R.B.

**PAIRS**

- Brown, B.J.
- Campbell, G.
- Conroy, S.M.
- Hurley, A.
- Hutchins, S.P.
- Milne, C.
- O’Brien, K.W.K.
- Ray, R.F.
- Sterle, G.
- Wortley, D.

* denotes teller

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**Question negatived.**

**Progress reported.**

**ADJOURNMENT**

The DEPUTY PRESIDENT—Order! It being after 11 pm, I propose the question:

That the Senate do now adjourn.

**Condolences: Hon. Sir Harold Young KCMG**

Senator CHAPMAN (South Australia) (11.03 pm)—Tonight I want to pay tribute to a fellow South Australian, former Liberal senator and President of this chamber Sir Harold William Young, who died last week. Harold was born on 30 June 1923 at Port Broughton in South Australia. On Monday I had the privilege of attending his funeral service in the chapel of the Berry funeral parlour in Adelaide, and therefore I was unable to speak on the condolence motion in this chamber on Monday afternoon.

The funeral service, conducted by the Reverend David Purling, who had been the Methodist minister at Alford when Sir Harold was farming there, was a great celebration of Sir Harold’s life and an appropriate farewell. Sitting atop Sir Harold’s coffin was a sheaf of Alford wheat and two poignant letters from grandchildren. Adjacent to the coffin was Sir Harold’s Knight Commander of the Most Distinguished Order of St Michael and St George decoration, and the flowers and message from our Senate President, Paul Calvert, sent on behalf of all of us. Appropriately, looking down on proceedings and the large gathering of mourners from a large plasma TV screen was the smiling, happy face of Sir Harold.

The chapel was overflowing with mourners, among them Senate President Paul Calvert and Don Morris from his office, our Black Rod and several of Sir Harold’s former parliamentary colleagues, among them Ian Wilson, Don Jessop and Steele Hall. From
state politics in South Australia, there was Stan Evans, Graham Gunn, Legh Davis and Joan Hall. Apart from Reverend Purling’s words of faith and comfort, Sir Harold’s eldest son, Scott, gave a wonderful eulogy which encapsulated Sir Harold’s character and achievements, while elder daughter Sue read a poem. The mourners joined in Sir Harold’s favourite school hymn, Immortal Invisible. It was an appropriate celebration of Sir Harold’s life.

Growing up and attending primary school in the mid-north farming district of Alford, Sir Harold won a scholarship to Prince Alfred College in Adelaide for his secondary schooling. As a fellow ‘Old Red’, it was great to see his grandsons following this schooling tradition, in their Princes blazers at the funeral. Sir Harold returned to Alford after completing school to become a wheat farmer and grazier. He was a progressive and successful farmer, and later he studied economics by correspondence, apparently attracting disdain from some of his farming colleagues.

Sir Harold served the interests of farmers in several capacities before entering federal parliament. He was Vice-President of the Farmers and Graziers Association of South Australia, a member of the South Australian state wheat research committee, a member of the Australian Wool Industry Conference and, importantly, a member of the federal exporters overseas transport committee. It was in this latter role that he worked in negotiating freight costs in the shipping industry at a time when Britain held the monopoly over it.

I first met Sir Harold during the Senate election campaign in 1967 when, because an early House of Representatives election in 1963 had put elections for the two houses out of synchronisation, there was a Senate-only election. He was third on the Liberal and Country League ticket, as it then was, behind sitting senators Laucke and Buttfield, and was successful in being elected, with the LCL winning three of the five seats in South Australia at that election.

As a Young Liberal, this was my first involvement in an election campaign and I well remember handing out how-to-vote cards in the morning at the Newton polling booth and returning late in the day after cricket for another stint to scrutineer. Little did I then know that, when Sir Harold sought re-election in 1974, I would be a candidate, albeit unsuccessful, on the Liberal Senate ticket with him in a double-dissolution election ticket of six, of which only four were successful in being elected. On that occasion I think they were Senators Davidson and Jessop, Laucke and Young.

Spending time campaigning with him during that 1974 election, I came to know him well and appreciate his warmth, enthusiasm and common sense. I particularly remember a car trip with him and Reg Withers from Adelaide to Maitland on the Yorke Peninsula where, along with the Wakefield MP of the time, Bert Kelly, we all addressed a public meeting. I certainly learned a lot from the conversation during that trip.

Sir Harold’s strong values were expressed in his maiden speech in the Senate. He expressed honour at being in a position where he could maintain the traditions of decorum and the principles of democracy, and uphold the rights of man in the parliament. It was, he stated, his intention as a parliamentarian that the contributions he made would ensure that those opposite maintained every respect for him, in spite of any differences of opinion.

In that respect, there is no doubt that he was exceptionally successful, being elected President of the Senate in 1981 with wide support across the political spectrum. He held this position until his defeat at the 1983
double-dissolution election—a bad one for the Liberal Party, which saw the defeat of the Fraser government. He was the last President of the Senate to wear a wig as a part of his formal dress and the first to appoint a female to the Senate staff.

From 1975 to 1983 we served together in this parliament and his friendship and sage advice was highly regarded by me as a young parliamentarian, as was his willingness to doorknock with me in the southern suburbs of Adelaide, supporting my endeavours to win and then hold the marginal seat of Kingston for three terms. His appointment as Knight Commander of the Order of St Michael and St George in the New Year Honours List in 1983 for his service to the parliament was well deserved. Later that year he was granted the title ‘Honourable’ for life.

Although during a period well before Sir Harold’s Senate presidency the Democratic Labor Party held the balance of power in the Senate, generally it had supported the Liberal governments of that era. In contrast, Sir Harold Young was the first President in a Senate where the balance of power was held by a more independent party, the Australian Democrats. As highlighted by their then leader, Senator Don Chipp, in his congratulatory speech when Sir Harold became President, this created a greater likelihood of hung and tied Senators, causing many problem days and late nights, with associated difficulties for the President. Indeed, it was again Senator Chipp who said, at the end of Sir Harold Young’s presidency of the Senate:

The last Senate was not an easy one to chair and I place on record my party’s appreciation of your predecessor Sir Harold Young, who, sometimes, under extremely difficult circumstances, did a creditable and worth while job.

It was further pointed out that not once during Sir Harold Young’s tenure as President of the Senate was there any motion of dissent from one of his rulings moved or even contemplated, such was his skill and dedication to the task.

Sir Harold Young’s significant parliamentary career included periods as Government Whip, Opposition Whip, Temporary Chair of Committees, shadow minister on the media, and also chairman of the Senate select committee on offshore petroleum reserves and member of the Senate industry and trade committee. It also included service on the parliamentary publications committee, the Senate standing orders committee, parliamentary public works committee, Senate estimates committees and no less than seven years on the new Parliament House committee.

Sir Harold Young’s first speech contained aspirations for Australia and for South Australia which were ultimately brought to fruition, standardisation of the railway line between Port Pirie and Adelaide and the linking of all capital cities by standard gauge railway being just one of these. He spoke of the pending introduction of containerisation in shipping freight and the gains it would provide for Australia’s exports, the need to develop and make use of Australia’s natural resources, the importance of secondary industry and the diversification of Australia’s production as a trading country.

Senator Sir Harold Young was well regarded by everyone as a very fair and decent President of the Senate. His acumen on political procedure was exceptional. It is people like Sir Harold who have ensured that this parliament retains the decorum of a fully developed democracy.

Sir Harold was highly popular in his home state of South Australia, representing effectively the farming constituency in our state. He will be remembered for having served South Australia with great capacity, enormous skill and great distinction. Sir Harold Young had many great qualities, including
his terrific ability to make friends and his
great generosity of spirit to all of those
around him. He visited here on a number of
occasions in recent years to attend the retired
members reception, which is usually held
around 11 May. I often saw him at those
functions. The other occasion on which I
regularly saw him was the Adelaide test
cricket match, which again, of course, com-
mences tomorrow in Adelaide. I am sure he
will be sorely missed by his friends at that
match tomorrow. That was certainly one of
his regular events of recent years. It was a
pleasure to catch up with him there, as well
as on other occasions in recent years, and
maintain the friendship that was made so
many years ago. I reinforce my condolences
to his widow, Margaret, and his children,
Sue, Scott, Andrea and Rob and their respec-
tive families.

World AIDS Day
International Day of People with a Dis-
ability

Senator McEWEN (South Australia)
(11.13 pm)—Tomorrow, 1 December 2006,
is World AIDS Day, and on 3 December we
will observe the International Day of People
with a Disability. Tonight I wish to make a
few comments about both HIV-AIDS and
people with a disability. I am also going to
use this opportunity to acknowledge a great
South Australian organisation that does ex-
emplary work protecting people from dis-
ees such as HIV-AIDS and which also as-
ists people with disabilities to participate
equally in our community.

It is now 25 years since HIV-AIDS was
first diagnosed. It is estimated there are now
some 39.3 million people in the world living
with HIV-AIDS. There will be over four mil-
lion new infections in 2006, and nearly one
million of them will be in our area of the
world—East, South, and South-East Asia and
Oceania. Too many people have already died
of HIV-AIDS and related illnesses and too
many people will have their economic, cul-
tural and social opportunities stolen from
them because they are or someone they know
is living with HIV-AIDS. In Australia, thank-
fully, our HIV-AIDS infection rates are tenu-
ously stable. However, practitioners in the
field remind us all the time that we cannot be
complacent about the situation here.

One of the best ways to prevent the spread
of HIV-AIDS is to ensure that people engage
in safe sex practices. Ensuring people engage
in safe sex practices requires that they are
educated about sex, sexual relations, sexual-
ity and the potential outcomes of participat-
ing in sexual activity, including pregnancy
and contracting sexually transmitted diseases
such as HIV-AIDS. People partake in sexual
activity, always have done and always will. It
is a part of life—an essential part of life, in
fact. Most people will participate in some
kind of sexual activity during their lives.

People with a disability also participate in
sexual activity. There are, in Australia, some
3.95 million people with a reported disability
and it is safe to assume that most of them,
like the rest of us, have engaged, will engage
or wish to engage in sexual activity. The In-
ternational Day of People with a Disability
reminds us that people with a disability often
suffer discrimination in respect of participat-
ing fully in the political, economic, cultural
and social aspects of life. Unless their special
needs are met, disabled people can miss out
on services most of us take for granted, and
that includes information about matters to do
with sex and sexuality, including safe sex.

The South Australian organisation to
which I earlier referred is SHine SA. SHine
is an acronym for Sexual Health Information,
Networking and Education. First established
in the late 1960s as the Family Planning As-
sociation, SHine is a state and federally
funded organisation that works in partnership
with government, health, education and community agencies to improve the sexual health and wellbeing of South Australians.

Starting from the principle that all people should be able to enjoy good sexual health, SHine has prioritised the groups of South Australians that have the most need and least choice in achieving that objective. Amongst the communities most in need are young people 19 years and under, young adults 20 to 30 years old, Aboriginal and Torres Strait Islander peoples, people from regional, rural and remote communities and people with disabilities. The many programs and initiatives that SHine undertakes are outlined in the organisation’s excellent annual report, which I commend to senators.

Because of the work that it does, SHine’s activities attract the attention of some people and organisations who are opposed to the public provision of information and education about sex and sexual health, particularly when it involves young people. Research consistently shows that countries that provide comprehensive sex education programs in schools have lower incidences of teenage pregnancy, abortion and sexually transmitted diseases. Research in this country also consistently shows that, by year 10, the majority of secondary students in this country are sexually active in some way. Given these facts, you would think the responsible thing to do would be to ensure that all young people have as much information as possible about how to keep themselves safe if they engage in sexual activity. But that is not an attitude we see from some groups in our community, who think that if we do not talk about sex young people will not engage in sexual activity—don’t talk about it and it will go away! Fortunately, most Australians do not share that hopeful, if not ludicrous, view of human sexuality.

In 2003 SHine, with funding from the South Australian government, developed and trialled a program for school students called SHARE, an acronym for Sexual Health and Relationships Education. When the SHARE program was trialled in 15 South Australian schools, SHine came under attack. In a concerted, well-organised campaign various groups whipped up debate, attempting to alarm the public by falsely and maliciously portraying the program as dangerous, a moral threat, an attempt to undermine parental authority, a threat to so-called ‘family values’ and even, in some newspaper advertisements, an attempt to ‘steal your children’s values’.

A particularly vile part of the campaign was the homophobic content of much of the material put about by opponents of the program. A frightening aspect of the orchestrated campaign was the personal attacks and intimidation perpetrated on the staff of SHine by some opponents, who took matters to the extreme. Organisations that were overtly opposed to the SHARE program included Right to Life, the Australian Family Association, the Festival of Light, the Family First Party, the Assemblies of God churches and the Liberal opposition in the state parliament. Despite the campaign against SHine, the SHARE program was accepted by parents and teachers and successfully trialled in South Australian schools. It received overwhelmingly positive responses from teachers, parents and children.

Earlier this year SHine again came under attack, this time by the Family First Party in South Australia. As I said before, SHine identifies people with a disability as one of the groups in our community most in need of its services. SHine works with disabled persons advocacy groups and health providers and carers to assist disabled people achieve the goal of good sexual health.
People with disabilities, just like other Australians, sometimes engage sex workers. Unfortunately, disabled people are often particularly vulnerable in this situation and there is evidence that unscrupulous providers take advantage of their vulnerability. Adelaide’s Sex Industry Network, SIN—an interesting acronym—has compiled a list of sex workers who provide safe and responsible services to disabled persons. The intention of the list is to protect vulnerable people who may engage sex workers. At the request of a disability advocacy organisation, the list was forwarded, on one isolated occasion, by the Sex Industry Network to SHine. Subsequently a copy of this list somehow came to the attention of Family First in South Australia. In September this year, a member of Family First in the legislative council in South Australia, Mr Dennis Hood, used the existence of the sex industry list to make another appalling attack on SHine and its staff. Accusing SHine of supporting prostitution and of misusing public moneys, he called for SHine’s funding to be frozen and for a police investigation.

There has been no finding of wrongdoing by SHine or its staff. Here is an organisation that works harder than most to ensure disabled people are treated with respect, dignity and fairness. In September 2006, we had Family First trying to destroy SHine. The upshot of that action by Mr Hood was that SHine and its staff were again subjected to virulent personal attacks and intimidation, and disabled persons were subjected to salacious media speculation about their sexual needs.

Fortunately, as with the SHARE program, the attitude of most South Australians—and, I suspect, most Australians—was that, despite the hysterical reaction of Family First, no-one else could see what the fuss was about. The prevailing attitude was that people—even disabled and young people—participate in sexual activities and, if they are going to do so, it is better to do it in ways that keep them safe and healthy. I commend the work that SHine and its staff do on behalf of all South Australians, and I look forward to receiving their next annual report.

**World Poverty**

**Senator BARTLETT** (Queensland) (11.22 pm)—I want to speak tonight about the issue of poverty. We have had a reasonable amount of media coverage in recent weeks about the latest efforts by people throughout the Australian community to reinforce that core message, the global message, to make poverty history. The important part about Make Poverty History is not just that it has some well-known and charismatic spokespeople out front—like Bono from U2—nor that it is a nice-sounding or feel-good slogan, but that it is tied to, and continually tries to reinforce support for, a globally agreed set of goals: the Millennium Development Goals. Those goals were agreed in the year 2000 by all member states of the United Nations, including Australia. There are eight Millennium Development Goals, which seek to halve global poverty and its effects.

It is a grassroots community based campaign spread around the world through a huge range of different community based organisations—secular and religious, institutional and free-ranging organisations—in developed countries and less developed countries. The campaign simply seeks to keep nations around the world to their pledges and seeks to encourage them to do whatever they need to do to meet the goals and pledges that they have already adopted. So, in one very important respect it is a knitting together of perfect examples of community based grassroots campaigns with perhaps the ultimate institutional top-down campaign of a set of goals agreed to by all
member states of the United Nations. So nations and governments around the globe are agreeing to a set of goals and seeking to implement them through their societies, and people at civil society level are seeking to hold those governments to those commitments.

Seven of the goals apply principally to the developing countries and cover such areas as hunger, child mortality and access to clean water. The eighth goal—partnership for development—applies principally to developed nations such as Australia and covers action required by developed nations to help those poorer countries in their efforts to achieve the goals.

The year that is set for achieving those goals is 2015. That means six years on from the adoption of those goals we are more than a third of the way through. Developed countries like Australia are not as far down the track as we should be, given that we are six years down out of 15. We are lagging behind in moving towards meeting those goals, whether it is in development assistance, overseas aid or other measures like providing technical assistance or providing fairer trade conditions, as well as reducing debt burdens.

That is not to say by any means that Australia has done nothing; there have been some positive steps forward and I and the Democrats welcome those. I want to particularly focus in my contribution tonight on that eighth millennium development goal—developing a global partnership for development—because it is one that focuses on more than just aid; it focuses on trade.

I note that a lot of the time the Prime Minister, Mr Howard, tends to dismiss the urgings. He dismissed some of the urgings from the concerts that were held in Melbourne and the statements made by Bono, the Reverend Tim Costello and others. The Prime Minister tended to dismiss those, saying that the best thing you can do is to open up trade. That is true, but nobody is saying that it should be either/or. It should be both. They do actually intertwine—effective development assistance and fair trade. The aims of the eighth millennium development goal include developing further an open trading and financial system that is rule based, predictable and non-discriminatory, including a commitment to good governance, development and poverty reduction nationally and internationally.

The goal seeks to address the least developed countries’ special needs and recognises that opening up trade does not mean a level playing field where you can have zero rules and equal treatment for everybody. That is not, in effect, a level playing field; that is a playing field tilted very much towards those who are already far out in front. So we need to look at issues like tariff- and quota-free access for the exports of the least developed countries, enhanced debt relief for the heavily indebted poor countries, cancellation of official bilateral debt and more generous official development assistance for countries that are committed to poverty reduction.

We also need to look at the needs of the small island developing states—that is particularly relevant to Australia in relation to the Pacific island nations—as well as other countries that are, for example, landlocked or have other specific unique geographic or political situations. We have to look at the debt problems through national and international measures and look at, in particular, developing engagement and meaningful employment for young people. We have to ensure that pharmaceutical products and health systems are available at affordable levels for people in developing countries. And in cooperation with the private sector we need to ensure that the new technologies, particularly information and communication technologies, are available to those least developed countries.
If I reflect back on the debate we have just had about copyright law it might seem that it has nothing to do with this. What could copyright law possibly have to do with reducing global poverty? But copyright matters can be a significant barrier for poor countries to get access to information and to get access to materials, all sorts of technologies and even agricultural products that are covered by intellectual property rights.

If property rights are enforced with ruthless equality it basically means that the rich can have access to them and the poor cannot. That means that the rich get richer and the poor get poorer. That is completely against basic justice and what the Millennium Development Goals seek to do. I again remind the Senate that these goals have been agreed to by Australia and by all member states of the United Nations.

In 1970, 22 of the world’s richest countries, including Australia, pledged to spend 0.7 per cent of their national income on aid. Thirty-six years later, only five countries have kept that promise. Australia still has no set timetable for achieving that target. We have made some improvements in the right direction, but they are not big enough or fast enough to meet that goal. I should say that many other of the world’s richest countries have increased their aid much quicker and in much greater amounts.

The United Nations has estimated that unfair trade rules deny poor countries $700 billion every year. The poorest 49 countries make up 10 per cent of the world’s population but account for only 0.4 per cent of world trade. As an example of why aid in itself is important but not sufficient, for every dollar in aid granted to developing countries more than $30 is paid back to rich countries in debt repayment. Every day, poor countries still pay over $US70 million in debt service. Debt relief means that those countries can spend more money on basic services, improve the lives of some of the world’s poorest people and build up some of the infrastructure they need to be able to compete effectively in that fair and enhanced global trading system.

It is important to emphasise that, particularly with Millennium Development Goal No. 8, it is about not only increasing aid—though I think that is still important, particularly for a country like Australia that has, quite frankly, performed well below the standard, and that includes the previous Labor government as well—but also opening up the trading systems and the financial systems, but in a way that is fair and non-discriminative and does not basically allow those with the market power to exploit further those without. It is also about reducing some of the barriers, whether debt or access to education, health and information technology services. On those things we still have a long way to go, but I know that the global campaign and the grassroots campaign in Australia will continue to pressure governments—and pressure all of us in all political parties—to give greater priority to what must surely be one of the most important issues facing us as a planet as we look at where we go over coming decades. If we do not address this, I suggest that it is the sort of thing that could really come back to bite all of us. (Time expired)

Senate adjourned at 11.32 pm

DOCUMENTS

Tabling

The following documents were tabled by the Clerk:

[Legislative instruments are identified by a Federal Register of Legislative Instruments (FRLI) number]

Australian Prudential Regulation Authority Act—Australian Prudential Regulation Authority (Confidentiality) Determination No.
14 of 2006—Information provided by locally-incorporated banks and foreign ADIs under Reporting Standard ARS 320.0 Statement of Financial Position (Domestic Books) [F2006L03853]*.


Civil Aviation Act—Civil Aviation Regulations—Instruments—

CASA 422/06—Authorisation, permission and direction – helicopter special operations [F2006L03706]*.

CASA EX63/06—Exemption – training and checking organisation, flight check system [F2006L03671]*.

Civil Aviation Safety Regulations—Airworthiness Directives—Part—

105—

AD/A330/13 Amdt 4—Life Limits/Monitored Parts [F2006L03852]*.

AD/A330/67—Keel Beam Fastener Holes at Frame 40 – Inspection [F2006L03851]*.

AD/AT/28—Upper Rudder Hinge [F2006L03878]*.

AD/AT 600/5—Wing Main Spar Lower Cap Fastener Hole [F2006L03877]*.

AD/AT 600/6—Upper Rudder Hinge [F2006L03876]*.

AD/AT 800/10—Upper Rudder Hinge [F2006L03875]*.

AD/BELL 222/31 Amdt 1—Tail Rotor Blade [F2006L03846]*.

AD/BELL 430/1 Amdt 3—Tail Rotor Blade [F2006L03845]*.

AD/CASA/27—Centre Wing Lower Skin [F2006L03856]*.

AD/CASSNA 310/33 Amdt 2—Wing and Airframe [F2006L03844]*.

AD/CASSNA 400/40 Amdt 14—Wing and Airframe [F2006L03843]*.

AD/ECUREUIL/99 Amdt 1—Lateral Cargo Hold Doors [F2006L03842]*.

AD/EMB-110/53 Amdt 2—Nose Landing Gear Rotating Cylinder Assembly [F2006L03841]*.

AD/EMB-110/54—Corrosion of Wing and Vertical Stabiliser to Fuselage Attachments, Rib 1 Half-Wing and Cabin Seat Tracks [F2006L03840]*.

AD/F100/75 Amdt 1—High Pressure Compressor [F2006L03880]*.

AD/S-92/1—Main Transmission Mounting Bolts [F2006L03874]*.

AD/S-PUMA/66 Amdt 1—Main Rotor Head Spindles [F2006L03855]*.

106—AD/TAY/18—HP Compressor Stator Vane Tip Clearances [F2006L03881]*.

Customs Act—Tariff Concession Orders—

0616109 [F2006L03861]*.

0616189 [F2006L03867]*.

0616286 [F2006L03868]*.

0616287 [F2006L03869]*.

0616500 [F2006L03862]*.

0616831 [F2006L03864]*.

0616836 [F2006L03865]*.

0617523 [F2006L03871]*.

Defence Act—Determinations under section 58B—Defence Determinations—

2006/69 – Overseas conditions of service – post indexes amendment.

2006/70 – Navy completion bonus schemes.
Education Services for Overseas Students Act—ESOS Assurance Fund 2007 Contributions Criteria [F2006L03698]*.

Environment Protection and Biodiversity Conservation Act—Amendment of list of threatened species, dated 10 November 2006 [F2006L03838]*.

Fisheries Management Act—
Southern and Eastern Scalefish and Shark Fishery Management Plan Temporary Order 2006 (No. 2) [F2006L03870]*.
Southern Squid Jig Fishery Management Plan 2005—Southern Squid Jig Fishery Total Allowable Effort Determination 2006 [F2006L03832]*.

Gene Technology Act—Determination that dealings with genetically modified carnation lines be included on the GMO Register (Register 001/2004) [F2006L03771]*.

Industry Research and Development Act—Innovation Investment Fund Program Round Three Direction No. 1 of 2006 [F2006L03854]*.


Migration Act—Migration Regulations—Instruments—
IMMI 06/074—Arrangements for Work and Holiday Visa Applicants from Thailand, Iran, Chile and Turkey [F2006L03828]*.
IMMI 06/082—Travel Agents for PRC Citizens applying for Tourist Visas [F2006L03857]*.

National Health Act—Pharmaceutical Benefits Amendment Determination under paragraph 98B(1)(a) No. 3 [F2006L03873]*.

* Explanatory statement tabled with legislative instrument.
QUESTIONS ON NOTICE

The following answers to questions were circulated:

Post-Budget Function
(Question No. 1896)

Senator Milne asked the Minister representing the Minister for Agriculture, Fisheries and Forestry, upon notice, on 6 June 2006:
Did the Minister host a post-budget function after the release of the 2006-2007 Commonwealth Budget on 9 May 2006; if so:
(a) where was the function held;
(b) who was invited to the function;
(c) who attended the function;
(d) what was the cost of hosting the function;
(e) was the cost charged to the Commonwealth; if not, to whom was it charged;
(f) was a ticket price charged; if so, what was the ticket price;
(g) if no ticket price was charged, was a donation requested;
(h) how much revenue was collected by way of tickets charged or donations received; and
(i) to whom was the revenue paid.

Senator Abetz—The Minister for Agriculture, Fisheries and Forestry has provided the following answer to the honourable senator’s question:
No.

Post-Budget Function
(Question No. 1902)

Senator Milne asked the Minister for Fisheries, Forestry and Conservation, upon notice, on 6 June 2006:
Did the Minister host a post-budget function after the release of the 2006-2007 Commonwealth Budget on 9 May 2006; if so:
(a) where was the function held;
(b) who was invited to the function;
(c) who attended the function;
(d) what was the cost of hosting the function;
(e) was the cost charged to the Commonwealth; if not, to whom was it charged;
(f) was a ticket price charged; if so, what was the ticket price;
(g) if no ticket price was charged, was a donation requested;
(h) how much revenue was collected by way of tickets charged or donations received; and
(i) to whom was the revenue paid.

Senator Abetz—The answer to the honourable senator’s question is as follows:
Yes.
(a) Office of the Minister for Fisheries, Forestry and Conservation, Suite Number 117, Parliament House, Canberra.
(b) Officers of the Department of Agriculture, Fisheries and Forestry. Nominated representatives of industry groups associated with the Fisheries and Forestry portfolio.
(c) A list of attendees was not retained.
(d) $1,404.50
(e) Yes, to the Departmental Budget administered for the Minister for Fisheries, Forestry and Conservation.
(f) No
(g) No
(h) Not applicable
(i) Not applicable

Maternity Payment
(Question No. 2098)

Senator McLucas asked the Minister representing the Minister for Families, Community Services and Indigenous Affairs, upon notice, on 19 June 2006:
(1) How many young women: (a) under the age of 16 years; and (b) from 16 to 18 years, have claimed the Maternity Payment since its introduction.
(2) Has there been an increase in teenage pregnancies since the introduction of the Maternity Payment.

Senator Kemp—The Minister for Families, Community Services and Indigenous Affairs has provided the following answer to the honourable senator’s question:
From 1 July 2004 to 31 May 2006, Maternity Payment was paid to 335 customers aged 16 and under, and 8,910 customers aged 16-18.
The Department does not have direct oversight on medical matters such as teenage pregnancy. However, payments of Maternity Payment to teenagers have decreased from 3.64% of all Maternity Payment customers in 2004-05 to 3.36% of customers in 2005-06 (as at 31 May 2006).

Victoria: Country Mail Centres
(Question No. 2487)

Senator Allison asked the Minister for Communications, Information Technology and the Arts, upon notice, on 13 September 2006:
(1) Can the Minister confirm that the recent announcement by Australia Post to transfer mail sorting from country mail centres in Ballarat, Bendigo, Geelong, Morwell and Seymour to the Dandenong Letters Centre (DLC) has led to: (a) the loss of approximately 20 full-time jobs; (b) a delay of one day of mail delivery to the Latrobe Valley area; and (c) the employment of new labour at DLC on reduced conditions.
(2) Does the Prime Minister’s requirement that Commonwealth entity jobs be protected in rural areas still apply; if so, were these changes approved by the Minister or the Prime Minister.

Senator Coonan—The answer to the honourable senator’s question is as follows:
The following is based on information provided by Australia Post.
(1) (a) and (2) Gippsland Mail Centre has experienced a reduction of 14 full time equivalent (FTE) staff. Each of the other Country Mail Centres will reduce staff by two FTEs. There have been
no involuntary redundancies imposed on affected staff, who were offered local redeployment, retraining or a voluntary redundancy package.

(b) Australia Post has advised that there has been no change to delivery performance as a result of the revised arrangements.

(c) As a result of the changed sorting arrangements at Morwell, 10 permanent part-time staff were recruited at the Dandenong Letter Centre each for 20 hours per week. In response to the changed sorting arrangements at the other Country Mail Centres, the Dandenong Letter Centre is still assessing the longer term labour needs and in the interim has recruited 10 casuals on a temporary part-time basis.

Permanent and casual staff employed in response to these initiatives are employed on identical conditions to those of all Australia Post employees, consistent with the General Conditions Award and Certified Agreement (EBA6). It is expected that the casual staff at the Dandenong Letters Centre will become permanent part-time employees, once resources requirements have been confirmed.

Australia Post advises that there is no change in service levels in regional areas.

Pandemic Influenza Packs

(Question No. 2490)

Senator Carr asked the Minister representing the Minister for Health and Ageing, upon notice, on 14 September 2006:

With reference to the tender process for the supply of pandemic influenza packs:

(1) Can the Minister confirm that an officer of the department telephoned Mr Roger Bullen, a director of the company Crystal Healthcare, on 3 June 2005, regarding a tender that had been submitted by the company for the supply of 100 000 packs.

(2) Can the Minister confirm that this company submitted the tender in response to a request made by telephone to its director, Mr Roger Bullen, by an officer of the department on the previous day, 2 June 2005.

(3) Can the Minister confirm that this officer informed Mr Bullen by telephone on 2 June 2005 that the department had experienced a poor response from potential tenderers for this contract, and that this was a reason for inviting Crystal Healthcare to submit a tender.

(4) Was Crystal Healthcare informed by telephone by an officer of the department on 3 June 2005 that the company had been successful in its tender for the contract.

(5) Can the Minister confirm that the contract for which Crystal Healthcare submitted a tender was for 100 000 packs.

(6) Can the Minister confirm that the company was requested by this officer to begin work immediately and, as a matter of urgency, with an initial supply of 2 000 packs.

(7) (a) In making this request, did the department comply with the Commonwealth Procurement Guidelines and other relevant guidelines, regulations and required procedures; and (b) can references to the relevant guidelines, regulations and procedures, as set down, be provided.

(8) Did an officer from the department subsequently call Crystal Healthcare to correct an error in the department's request for a quote regarding the total number of disposable gloves required for the 100 000 packs.

(9) Did a letter dated 6 June 2005 to Crystal Healthcare from the Acting Assistant Secretary, Biosecurity and Disease Control Branch, refer to an 'initial order' for 2 000 packs.

(10) Does the term 'initial order' imply that there would be a subsequent order or orders made; if not: (a) why was this term used in the letter; and (b) what was the term intended to mean.
(11) Given that Crystal Healthcare had submitted a tender for the supply of 100 000 packs, why did the letter from the Acting Assistant Secretary not refer to this tender, as well as to the quote for the initial supply of 2 000 packs.

(12) (a) When was the decision made to revise the requirements for the procurement of the packs, so that the procurement was to be done in two phases and by means of two separate contracts; and (b) why was this decision made.

(13) Was the revised contract for the balance of the packs, comprising of 98 000 packs, advertised; if so: (a) when; and (b) where was the contract advertised.

(14) Did this revised contract include the requirement that the packs be stored in an Australian capital city; if not, what specification did the contract make regarding the storage of the packs.

(15) (a) When was the decision made to change the specification regarding storage of the packs; and (b) why was this decision made.

(16) Was this change made according to the Commonwealth Procurement Guidelines in regards to informing all involved in the tender process of the change; if so, which relevant guideline or guidelines were referred to.

(17) When was the contract for 98 000 packs awarded to the American company Cleanroom Garments.

(18) When was Crystal Healthcare informed that Cleanroom Garments had been awarded the contract.

(19) (a) In informing Crystal Healthcare that Cleanroom Garments had been awarded the contract for 98 000 packs, did the department comply with the then-current Commonwealth Procurement Guidelines; (b) which relevant guideline or guidelines were complied with; and (c) in particular, did the department comply in this instance with guideline 7.25; if so, can an explanation be provided of how the department complied; if not, why not.

(20) (a) Did the tender process for the supply of the packs comply with all of the requirements set out in section 7 of the Commonwealth Procurement Guidelines regarding accountability and transparency; and (b) in particular, can an explanation be provided of how the department met, at every stage of the tender process, all of the requirements set out in each of the parts 7.23, 7.24, 7.25, 8.22, 8.23, 8.30, 8.48, 8.49 and 8.50 of the guidelines.

Senator Santoro—The Minister for Health and Ageing has provided the following answer to the honourable senator’s question:

I have no personal knowledge of the events in question but am advised as follows:

(1) Yes.

(2) No. On 2 June 2005, the Department of Health and Ageing sent by email a Request for Quote (RFQ) to a select number of companies, including Crystal Healthcare (VIC), for the supply of equipment to constitute 100,000 PanFlu VacPacs. This RFQ also noted that a specified quantity of this equipment was to be assembled into 2,000 PanFlu VacPacs, with the remaining equipment to be stored pending constitution into PanFlu VacPacs at a later date.

I can confirm that Crystal Healthcare (VIC) submitted a proposal on 3 June 2005 in response to the RFQ for 100,000 PanFlu VacPacs.

(3) No.

(4) No. On Friday 3 June 2005, an officer from my Department notified Crystal Healthcare (VIC) by telephone that based on their submission to the RFQ, received on 3 June 2005, Crystal Healthcare (VIC) was the preferred supplier of 2,000 PanFlu VacPacs. There was no contract between the Department and Crystal Healthcare (VIC) on Friday 3 June 2005.

(5) Crystal Healthcare (VIC) submitted a tender in response to an RFQ. An Expression of Interest (EOI) and Statement of Capability for the purchase, assembly and storage of 2,000 PanFlu
VacPacs, and the purchase and storage of equipment sufficient to constitute a further 98,000 PanFlu VacPacs was issued to selected prospective suppliers on 1 June 2005, and then revised and reissued as a Request for Quotation on 2 June 2005.

(6) No. At no stage did the Department indicate that Crystal Healthcare (VIC) was to commence work immediately.

(7) (a) and (b) As indicated, the Department did not indicate that Crystal Healthcare (VIC) was to commence work immediately. The EOI and Statement of Capability issued on 1 June 2005, and then revised and reissued as an RFQ on 2 June 2005, were compliant with the Commonwealth Procurement Guidelines (2005) and the Department of Health and Ageing Chief Executive Instructions.

(8) No. The departmental officer contacted Crystal Healthcare (VIC) on 3 June 2005 to correct the total number of disposable gloves required for 2,000 packs.

(9) Yes.

(10) (a) and (b) The use of the term ‘initial order’ did not imply that there would be a subsequent order with Crystal Healthcare (VIC). The term was used to indicate that the purchase of 2,000 packs was to fulfil the first portion of the Department’s requirements and that a subsequent contract with an, at that time, undetermined supplier may be entered into.

(11) The correspondence from the Acting Assistant Secretary to Crystal Healthcare (VIC) dated 6 June 2005 was sent in response to a quote for 2,000 supplied by Crystal Healthcare (VIC) on 3 June 2005.

(12) (a) 3 June 2005. (b) It became clear on the receipt of tenders that the tenders were so dissimilar as to prevent any meaningful comparison. This was particularly so for the storage costs. Given that the storage was not a significant issue for the first 2,000 packs, and that the equipment was required rapidly, the decision was made to procure the first 2,000 packs immediately, and then prepare a revised RFQ to provide greater clarity with respect to the whole of life costs of the procurement.

(13) (a) and (b) On 9 June 2005, a RFQ and Statement of Capability for the provision of equipment to constitute 98,000 packs was sent to all companies that had originally been invited to tender.

(14) The stock availability section of the RFQ and Statement of Capability specified that storage should be in an Australian capital city.

(15) (a) and (b) The decision to allow storage of the PanFlu VacPacs outside an Australian capital city was made after the selection of the preferred supplier and during contract negotiations with that supplier in accordance with the achievement of value for money under the Commonwealth Procurement Guidelines.

(16) The decision to allow for the storage of the PanFlu VacPacs outside an Australian capital city was made in accordance with Commonwealth Procurement Guidelines clause 4.1, namely that “Value for money is the core principle underpinning Australian Government procurement. In a procurement process this principle requires a comparative analysis of all relevant costs and benefits throughout the whole procurement cycle (whole-of-life costing).” The RFQ and Statement of Capability noted that the “Department may at its discretion and at any time enter into negotiations based on the information you provide”.

(17) The contract between the Commonwealth Government, as represented by the Department of Health and Ageing, and Cleanroom Garments Pty Ltd (incorporated in Australia) was executed on 31 August 2005.

(18) A letter advising Crystal Healthcare (VIC) of their unsuccessful proposal was faxed on 27 September 2005.

QUESTIONS ON NOTICE
(19) (a) and (b) Yes. The Department complied with all relevant sections of the Commonwealth Procurement Guidelines and the Department of Health and Ageing Chief Executive Instructions.

(c) Crystal Healthcare (VIC) was informed of the decision as soon as possible by officers from the Department. Crystal Healthcare (VIC) was invited to seek feedback on their unsuccessful proposal but did not request this.

(20) (a) Yes. (b) See table below.

<table>
<thead>
<tr>
<th>Section</th>
<th>Explanation</th>
</tr>
</thead>
<tbody>
<tr>
<td>7.23</td>
<td>All requests for additional information by prospective tenderers were answered by the Department.</td>
</tr>
<tr>
<td>7.24</td>
<td>Not applicable.</td>
</tr>
<tr>
<td>7.25</td>
<td>Answered in question 19 above.</td>
</tr>
<tr>
<td>8.22</td>
<td>All necessary information, outlined in CPG 8.22 was provided in the RFQs issued by the Department of Health and Ageing.</td>
</tr>
<tr>
<td>8.23</td>
<td>All potential tenderers were provided with the same set of documentation, and as close to the same time as possible (noting that separate emails were sent to all).</td>
</tr>
<tr>
<td>8.30</td>
<td>When the Department modified the RFQ documentation all suppliers were advised (by email).</td>
</tr>
<tr>
<td>8.48</td>
<td>All unsuccessful tenderers were advised by the Department as soon as possible after the decision by the delegate.</td>
</tr>
<tr>
<td>8.49</td>
<td>The Department was not requested to provide this information.</td>
</tr>
<tr>
<td>8.50</td>
<td>Not applicable.</td>
</tr>
</tbody>
</table>

National Disability Advocacy Program
(Question No. 2545)

Senator Stott Despoja asked the Minister representing the Minister for Families, Community Services and Indigenous Affairs, upon notice, on 4 October 2006:

(1) Will disability advocacy agencies know before 1 October 2006 whether their funding will continue beyond 31 December 2006.

(2) When will South Australia have its systemic disability advocacy program restored.

(3) How many disability advocacy agencies will have to shut their doors.

(4) Will there be any consultations about the review and any chance for disability agencies to respond to the review.

(5) When will the tender be released and will there be opportunities to influence the principles and eligibility criteria for applying for the tender.

Senator Kemp—The Minister for Families, Community Services and Indigenous Affairs has provided the following answer to the honourable senator’s question:

(1) I can confirm that, on 29 September 2006, Minister Cobb announced that funding for all organisations under the National Disability Advocacy Program will be extended from 1 January 2007.

(2) In South Australia three of the six agencies funded under the National Disability Advocacy Program provide systemic advocacy.
(3) All disability advocacy services have been advised that funding will be continued.

(4) Details of consultations held to date are provided in the Report on the Evaluation of the National Disability Advocacy Program, which may be found on the Internet at www.facsia.gov.au. Further consultations are being conducted across Australia in October 2006.

(5) The tender is expected to be released in mid-2007 and an exposure draft is expected to be circulated before formal commencement.

**Threatened Species and Ecological Communities**

(Question No. 2558)

**Senator Bob Brown** asked the Minister for the Environment and Heritage, upon notice, on 12 October 2006:

With reference to the environmental impact assessment under the Environment Protection and Biodiversity Conservation Act 1999, specifically for threatened species and ecological communities:

(1) (a) What guidelines does the department provide on minimum survey standards for assessing the presence of threatened species or ecological communities for proponents referring proposed actions; and (b) can copies be provided.

(2) Are there protocols setting out minimum survey standards, including in relation to survey time, recommended methods or any other parameters; if so, can copies of those protocols be provided.

(3) (a) In assessing referrals where threatened species or communities may be present, what criteria does the department apply to determine the adequacy of the information supplied; and (b) what is the scientific basis for these criteria.

(4) Does the department apply detectability thresholds for threatened species and communities to inform its determination as to whether the survey effort has been adequate (i.e. the number or duration of visits required to reach a given confidence level for the survey result); if so: (a) how have these thresholds been calculated; and (b) for how many species.

(5) If no protocols or criteria are used, how would the Minister or the department know if the proponent has looked hard enough.

**Senator Ian Campbell**—The answer to the honourable senator’s question is as follows:

(1) (a) The Department of the Environment and Heritage does not provide proponents with any minimum survey standards. The Department has previously funded consultancies by scientific and educational institutions to provide information on the range of survey techniques used for fauna and flora. This information will be used to assist Departmental officers provide advice to proponents on suggested survey techniques and will progressively be made publicly available through the Species Profile and Threats (SPRAT) database. This information may also assist officers in assessing the adequacy of surveys undertaken by proponents as part of their environmental impact assessments. (b) No, as there are no formal documents available.

(2) The Department encourages ‘best practice’ flora and fauna surveys in accordance with State/Territory guidelines or expert advice. State and Territory environment departments are often the best source of information on locations of, and survey techniques for, threatened species or ecological communities as well as permits or licences which may need to be obtained.

(3) The Department takes into account a variety of information sources when assessing whether or not a referred proposal is likely to have a significant impact on listed species and ecological communities, and whether adequate information is available or has been provided to make such a decision. The Department maintains databases that are checked for each referral; independent comment may be sought or received from outside expert agencies or individuals on specific proposals; and the Department has access to internal expertise on particular species and communities. Section 391 of
the Environment Protection and Biodiversity Conservation Act 1999 requires that the precautionary principle be taken into account in deciding whether or not a referred proposal is a controlled action.

(4) See Question (3) above.
(5) See Question (3) above.

Tiwi Forestry Operations
(Question No. 2590)

Senator Siewert asked the Minister representing the Minister for Agriculture, Fisheries and Forestry, upon notice, on 20 October 2006:

With reference to information supplied by the operators of the forestry project on the Tiwi islands to the Australian Broadcasting Corporation’s ABC News Online internet site on 10 February 2006, that 15 000 tonnes of timber worth $1.5 million was shipped in February 2006 (in the form of whole logs) from the Tiwi Islands for sale in China for use as high quality furniture and flooring timber: How much did that shipment earn in Australian dollars.

Was the money paid to Great Southern Plantations, the Tiwi Land Council or some other entity.

If the money was paid to some other entity: (a) what is its name; and (b) what is its role in the forestry project on the Tiwi Islands.

Has any of that money been paid to the traditional owners of the land from which the timber was sourced; if so: (a) how much; and (b) to whom.

How many other shipments of logs have been sent from the Tiwi Islands over the past 3 years and, in each case:

(a) what was the volume exported;
(b) what was the destination;
(c) how much was paid for the shipment;
(d) to whom was the payment made; and
(e) has any of that money been paid to the traditional owners of the land from which the timber was sourced; if so: (i) how much, and (ii) to whom.

Senator Abetz—The Minister for Agriculture, Fisheries and Forestry has provided the following answer to the honourable senator’s question:

It is my understanding that the Australian Government Department of Agriculture, Fisheries and Forestry does not collect or hold this information. Answers to the questions are more appropriately sought from Great Southern Plantations, the Tiwi Land Council or some other entity.

Mexico: Tobacco Control Measures
(Question No. 2599)

Senator Allison asked the Minister representing the Minister for Health and Ageing, upon notice, on 1 November 2006:

With reference to the election of a new Director-General for the World Health Organization (WHO) at meetings held in Geneva from 6 November to 9 November 2006:

(1) Can the Minister confirm that there are currently 13 candidates, one of whom is Mr Julio Frenk, the Mexican Minister of Health.

(2) Is the Minister aware that in 2004, the Mexican Ministry of Health signed an agreement with Philip Morris International and British American Tobacco that, in exchange for a small voluntary contribution from the tobacco industry to a health insurance fund, Mexico will adopt some very modest
tobacco control measures that fall far short of the mandates of the Framework Convention of Tobacco Control, which Mexico has ratified.

(3) Is the Minister aware that the agreement also ties the Mexican Government’s interests to the tobacco industry’s well-being, and terminates if the Government of Mexico imposes significant tobacco taxes.

(4) Given this history, will the Government support Mr Frenk’s candidacy for Director-General of the WHO.

**Senator Santoro**—The Minister for Health and Ageing has provided the following answer to the honourable senator’s question:

(1) The final number of candidates seeking election to the position of Director-General of WHO was 11.

(2) and (3) No. The existence of such an agreement would be a matter for the Government of Mexico.

(4) The successful candidate for the position of Director-General of WHO was Dr Margaret Chan, nominated by China. Dr Chan was elected through a secret ballot of the Executive Board of WHO on 8 November 2006, and appointed by the World Health Assembly on 9 November 2006.