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**SITTING DAYS—2006**

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

Governor-General

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

Senate Officeholders

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

Senate Party Leaders and Whips

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

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

**PARTY ABBREVIATIONS**

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

**Heads of Parliamentary Departments**

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

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

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

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

Leader of the Opposition
Deputy Leader of the Opposition and Shadow Minister for Health
Shadow Minister for Education, Training, Science and Research
Leader of the Opposition in the Senate, Shadow Minister for Indigenous Affairs and Shadow Minister for Family and Community Services
Deputy Leader of the Opposition in the Senate and Shadow Minister for Communications and Information Technology
Shadow Treasurer
Shadow Attorney-General
Shadow Minister for Industry, Infrastructure and Industrial Relations
Shadow Minister for Foreign Affairs and Trade and Shadow Minister for International Security
Shadow Minister for Defence
Shadow Minister for Regional Development
Shadow Minister for Primary Industries, Resources, Forestry and Tourism
Shadow Minister for Environment and Heritage, Shadow Minister for Water and Deputy Manager of Opposition Business in the House
Shadow Minister for Housing, Shadow Minister for Urban Development and Shadow Minister for Local Government and Territories
Shadow Minister for Public Accountability and Shadow Minister for Human Services
Shadow Minister for Finance
Shadow Minister for Superannuation and Intergenerational Finance and Shadow Minister for Banking and Financial Services
Shadow Minister for Child Care, Shadow Minister for Youth and Shadow Minister for Women
Shadow Minister for Employment and Workforce Participation and Shadow Minister for Corporate Governance and Responsibility

(The above are shadow cabinet ministers)
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<td>Gavan Michael O’Connor MP</td>
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<td>Joel Andrew Fitzgibbon MP</td>
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<td>Shadow Assistant Treasurer, Shadow Minister for Revenue</td>
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<td>Shadow Minister for Small Business and Competition</td>
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<td>Shadow Minister for Sport and Recreation</td>
<td>Senator Kate Alexandra Lundy</td>
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<td>Shadow Minister for Homeland Security and</td>
<td>The Hon. Archibald Ronald Bevis MP</td>
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<td>Minister of State</td>
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The PRESIDENT (Senator the Hon. Paul Calvert) took the chair at 12.30 pm and read prayers.

MEDIBANK PRIVATE SALE BILL 2006

Second Reading

Debate resumed from 30 November, on motion by Senator Santoro:

That this bill be now read a second time.

Senator MURRAY (Western Australia) (12.31 pm)—The Medibank Private Sale Bill 2006 contains a number of amendments and provisions to facilitate the sale by the government of Medibank Private in 2008. The bill is comprised of three schedules. Schedule 1 modifies provisions in the Health Insurance Commission (Reform and Separation of Functions) Act 1997 and the National Health Act 1953 to allow the Commonwealth to sell its equity in Medibank Private Ltd. It repeals section 35 of the HICA, which currently has the effect of prohibiting the Commonwealth from transferring its shares in Medibank Private. Schedule 1 also amends the NHA to provide for the fact that, once sold, Medibank Private will become a for-profit organisation and have a resulting need to distribute profits. Finally, schedule 1 also creates a new section, section 73AADA, allowing for the payment of compensation if property is acquired from a person other than on just terms.

Schedule 2 contains provisions which form the MPL sale scheme and deal with the actual process of selling Medibank Private. It does not limit the method or timing of the sale, and it recognises that the government may wish to use a number of strategies to obtain the maximum revenue from the sale. It also contains provisions which will enable Medibank Private to modify its constitution and rules such that it can alter its not-for-profit status and operate, once sold, on a for-profit basis. Schedule 2 also contains two appropriations clauses in relation to the cost of the MPL sale scheme and other situations in which expenses may arise. Also within the second schedule are provisions which relate to the ownership of a privatised MPL, including a five-year period in which the maximum stake that can be held by anyone in MPL will be 15 per cent.

The bill contains requirements relating to the Australian nature of MPL, including that the company is to remain incorporated in Australia and that the majority of directors must be Australian citizens, and it ensures that its central management and control is ordinarily exercised in Australia. Schedule 3 contains consequential amendments relating to various operational aspects of Medibank Private which will cease to exist once Medibank Private is privatised. These include the removal of fixed remuneration governed by the Remuneration Tribunal Act as currently applied to certain MPL officers and the removal of non-application of section 186 and paragraph 461(d) of the Corporations Act 2001, which MPL currently enjoys.

According to page 8 of the explanatory memorandum:

The ... financial costs and benefits from a future sale or sales of ... Medibank Private Limited are difficult to quantify at this stage.

Many people and politicians seem to have a knee-jerk reaction to privatisation. They are either for or against it, without much thought or research. The Democrats policy is not to oppose privatisation when it is done for the benefit of the community and in the public interest. In situations where privatisation is genuinely in the public interest and benefits the community then it should be supported. I do not believe that it has been clearly shown that the sale of Medibank Private Ltd is or is not in the public interest or for the benefit of
the community. On the one hand, I can see no sound policy reason as to why the government should continue to be involved in the private health insurance market. The role for government is the provision of public health services. On the other hand, I have not been satisfied by the government’s stated case for the sale of Medibank Private.

There is considerable distance between the real reasons for the sale and the stated reasons for the sale. Page 2 of the explanatory memorandum states that there are five objectives for the sale of Medibank Private, these being:

- to contribute to an efficient, competitive and viable private health insurance industry;
- to maintain service and quality levels for Medibank Private contributors, including in regional and rural Australia;
- to ensure the sale process treats Medibank Private Limited employees in a fair manner, including through the preservation of accrued entitlements;
- to minimise any post sale residual risk and liabilities to the Commonwealth; and
- having regard to the above objectives, to maximise the net sale proceeds from the sale.

I believe the real reasons for the sale are in fact that the government can see little policy benefit arising from keeping Medibank Private in public hands, that the government earns no income from Medibank Private and that the government can make a windfall profit or surplus of a few billion dollars from this sale.

Those are not bad reasons, but it is concerning that the government has been justifying its actions with reasons that are not what I consider to be its real and genuine reasons. The government has been dishonest in its claim that selling Medibank Private will remove a conflict of interest. This argument has been employed in defending the government’s position in relation to the sale, no doubt due to the strong and positive connotations such a position has. Where there is a genuine conflict of interest, then its avoidance, minimisation and removal is to be encouraged. However, I doubt the sincerity of the government’s claim that, by selling Medibank Private, it will eliminate a conflict of interest.

The Hansard of the Senate Standing Committee on Finance and Public Administration inquiry shows this extract from a conversation between Senator McLucas and Mr Charles Maskell-Knight, who is the Principal Adviser, Acute Care Division, Department of Ageing:

Senator McLucas—How does the sale of Medibank Private resolve a conflict of interest?

Mr Maskell-Knight—One postulates that the government may find itself in a position where it is trying to decide how to regulate the industry, having regard to the fact that it owns a major player in it. If it no longer owns a major player in it, it can make decisions about regulatory policy based on first principles.

Senator McLucas—Can you identify any time where the government has regulated differently because it owns the major player?

Mr Maskell-Knight—Not that I can think of.

Exactly. Further, doubt must be cast on the government’s claim at page 2 of the explanatory memorandum that the sale of Medibank Private will contribute to an efficient, competitive and viable health insurance industry. On the evidence put before me during the committee inquiry, I cannot say that I have been persuaded that a more efficient, competitive and viable health insurance industry will necessarily result if Medibank Private is transferred to private hands. Equally, however, I am not persuaded that a more efficient, competitive and viable health insurance industry will result if Medibank Private remains in public hands.

What I am sure of is that the simple sale of Medibank Private is insufficient of itself to produce greater competition, as the gov-
The government would have us believe. The health insurance market is far from an ordinary free market, as I noted during the committee hearing, in discussion with Dr John Deeble:

Senator MURRAY—... One of the points you make very clearly in your long discourse ... is that the private health insurance industry is in no sense a free market; it is a very managed market. It is a market characterised by high subsidies, high government intervention, high regulation, very low mobility of customers between funds and extremely poor customer knowledge because of lack of comparability. In other words, it is, to use an economist’s term, a most imperfect market.

Dr Deeble—Absolutely.

Senator MURRAY—that is right, isn’t it, as a summary.

Dr Deeble—And it is an oligopolistic market—six major funds dominate.

As increasing competition is a stated objective for the sale of Medibank Private—and it is obvious that the sale of Medibank Private alone seems unlikely to result in marked changes to the competitive characteristics of the private health insurance market in Australia—I think it is crucial that as part of the sale process the Productivity Commission be required to inquire into competition in the private health insurance market. The last time such a project was carried out was almost 10 years ago, with the Productivity Commission’s 1997 report *Private health insurance*. Given the circumstances, it is an opportune time for that report to be updated and reviewed.

Aside from the government’s motivations and reasons for selling Medibank Private, there are other aspects which merit discussion here. A key issue throughout the debate has been the question of ownership of the assets of Medibank Private and whether or not members will be entitled to seek compensation from the government. Most accept that the government has the right to dispose of Medibank Private. But the Parliamentary Library *Bills Digest* rightly highlights the risk that the government may be exposed to a potential class action by MPL members seeking compensation from the government as a result of Medibank Private being privatised.

It is important to note that the bill accepts this risk as real. In the bill, liability rests with the Commonwealth—the classic constitutional clause allowing for compensation where property has been acquired other than on just terms. More accurately, it does not rest with the government; it rests with the people of Australia, the taxpayers.

I am not at all convinced by the legal advice from Blake Dawson Waldron, which maintains at page 3, item (f), of the brief to the department:

Contributors have no rights or property interests in assets comprising the Fund, or enforceable rights to the benefit of Fund assets ... For this reason, the Commonwealth will not be liable to pay compensation ...

Despite the evidence given to the committee by the department, it is clear that the government does not agree, either, with the legal advice from Blake Dawson Waldron. Otherwise, why would it have a clause giving a Commonwealth indemnity to cover the risk?

The government says that the liability clause is a standard one—a precautionary provision that would prevent the validity of the bill being challenged if it did not allow for compensation under the just terms provisions of the Australian Constitution. This is a circular argument. In the absence of such a liability clause, no-one would challenge the validity of the legislation unless they thought there was a case for compensation.

The fact is that the bill specifically anticipates the risk of a compensation claim and allows for the taxpayer to pick up any compensation tab. This is a problem that needs to be faced up to. The only sure-fire way to
avoid this risk altogether, therefore, is to sell Medibank Private Ltd to its members. Rather than selling off Medibank Private via a public float—as the government seems intent on doing—or private placement, Medibank Private could be mutualised and sold to its members. By way of example, if there are 1.2 million members, which was the evidence we had, each member could be offered a right of first refusal to purchase a shareholding equivalent to $1,500. This would give the government $1.8 billion, a figure at the upper end of estimates that have been suggested it might raise in public sale and at a lower cost than otherwise might be the case with a public float. Those share portions which were left over as a result of members opting out could then be sold to the general public. The members of MPL could then operate it as they saw fit, including a public float later if they so wished.

In my mind, this removes any risk that the government may be exposed to. It means the government receives its money. It satisfies the members by giving them right of first refusal in buying into Medibank Private and is potentially the lowest cost approach. Remarkably, however, the government so far has refused to seriously consider this as the avenue to proceed down. One cannot help but feel that, by and large, the government believes there to be an assumption that the sale of government assets must be by public float.

Finally, I wish to address what is to be done with the proceeds from the sale of Medibank Private. As I noted earlier, the sale of Medibank Private may raise a sum of close to $2 billion for the government—a substantial windfall. The important question then is: what will the government do with the proceeds from the sale? Up to $2 billion will be a substantial amount, and there should be concern about what the government will do with the proceeds from the sale of this Commonwealth asset.

The bill is silent on the matter. The realistic options would seem to be: placing the proceeds of the sale into general revenue for current expenditure; placing the money into the Future Fund to meet the future superannuation liabilities of public servants; or to hypothecate the funds. The first two options I have listed strike me as being singularly unattractive. It would be poor financial management and poor financial policy to put the proceeds of asset sales into general revenue for current expenditure. Tipping the money into the Future Fund to meet the future superannuation liabilities of public servants would be a singularly unattractive option, as opposed to the far more immediate and better alternative represented by the need for current health capital expenditure. This suggests to me that the sound option would be the hypothecation of the funds for the provision of public health care services. The Democrats have been anxious for some years about the lack of Commonwealth expenditure on mental and dental health, as well as on other public health measures.

Further, I believe that such hypothecation of funds would also help alleviate concerns that some stakeholders and certain members of the public hold in connection with the proposed sale of Medibank Private. The following questions are generic to all privatisation sales: is the public interest better served by the asset remaining in public hands? Can the sale realise funds that can be put to a better use? A strong case has not been made for Medibank Private remaining in public hands. The weakest aspect is with regard to the present intended use of the realised sale funds if it were to move out of public hands.

I reiterate that Democrat policy does not state that Medibank Private should be kept in public hands. Democrat policy states that the
Australian Democrats are not automatically opposed to privatisation of government assets. Each case of privatisation should be assessed on its merit with reference to the community benefit and the public interest. The question is: is this sale genuinely in the public interest and for the benefit of the community? I do not believe that the government needs to continue to play an ownership role in the private health insurance market. I believe that the public health market is the area which the government should focus on. However, I do not wish to see the Medibank Private Sale Bill 2006 pushed through parliament without regard for some of the key issues that the proposal raises, especially when there are potential consequences for the people of Australia. The concern over the risks of compensation claims must be taken seriously, and effort should be spent in minimising the potential for these risks where possible.

The revenue that would be raised from the sale of Medibank Private must be dealt with specifically by the bill. Not to do so would be to leave the door open for its appropriation into general revenue or for the sale funds to be tipped into the Future Fund. Neither of these alternatives justifies the sale.

I have circulated amendments which will address our concerns and which will hopefully receive some positive responses. The other thing I have addressed is the issue which was looked at by the Senate Standing Committee for the Scrutiny of Bills, and that is the open-ended nature of the provision for when the sale should be concluded and therefore when the provisions of the bill should apply. I have sought to limit that in time terms, as the scrutiny of bills committee implied. In closing, I wish to move two second reading amendments.

The ACTING DEPUTY PRESIDENT (Senator Watson)—Senator, you can move only one second reading amendment. However, you can foreshadow a second one.

Senator MURRAY—I will do that then. I foreshadow that Senator Allison will move:

At the end of the motion, add “but the Senate is of the view that prior to the sale, the Productivity Commission be required to conduct an inquiry into the private health insurance industry, with specific attention to enabling an efficient, competitive and viable private health insurance industry”.

And I move:

At the end of the motion, add: “but the Senate is of the view that prior to the sale, the government of the day be required to prepare and present a discussion paper to the Parliament addressing the (eventual) method of sale of Medibank Private Limited, with particular reference as to why that particular method was chosen over alternative methods”.

Senator McEWEN (South Australia) (12.48 pm)—The Medibank Private Sale Bill 2006, which we are debating today, is yet another litmus test for the public to gauge this government’s lack of social responsibility. It is another opportunity for Australians to see this government dismantling social goods and taking away things that are of benefit to all Australians in favour of a system where nothing is in public ownership and everything is hostage to the vagaries of private enterprise—which this government posits as some kind of economic nirvana.

Labor does not support this legislation, and Labor has pledged to abandon the idea of selling Medibank Private when we are elected to run this country on behalf of all Australians. The arguments in favour of the sale are based on ideology, not fact. It is the same basis for legislating that we have become used to in the 10 long years that this government has been in power. Never mind that the public do not want public assets sold off; just sell them off anyway. Never mind that there is no good economic reason for it;
just sell them off anyway. It is a predictable approach so often shown by this government in matters of national importance, an approach that shows the government refuses to be guided by the principles of equity and fair play and will not be deterred by the best-informed opinion or by the most reasonable argument for the common good.

This a government that has rolled back the broad idea of fair play and social responsibility for a narrow concept of so-called ‘values’ that further legitimises and endorses the rights of the least vulnerable over the majority of Australians who deserve greater social protection and consideration. Here again we see the government using its Senate majority to fulfil the long-held dreams of a Prime Minister who has a passion for erasing any social good put in place by former Labor governments. As we know, the Prime Minister does not like Medicare but is not game—yet—to dismantle the social good. He voted against the creation of both Medibank and Medicare and has in the past pledged to destroy Medicare. As I said, that would be too unpalatable for the Australian public at the moment, so instead he is targeting the next-best thing, which is Medibank Private—despite the fact that Medibank Private has been a part of Australia’s history, culture and economy since 1976 and, even more importantly, despite the fact that it is a successful organisation, and despite the fact there is no good reason to sell it. What other reasons could the government have for selling Medibank Private Ltd, when the weight of discussion says that there is little evidence to support the merits of the proposal in this legislation? In fact, the sale could be a double whammy in also failing to provide a check on the cost inefficiencies of the health system generally—let alone all the other possible damaging consequences that have not been addressed by senators opposite.

It is another example of the slavish devotion this government shows to competition and privatisation, a devotion that could well prove detrimental to the wellbeing of many Australians who can least afford to be victims to this government’s unreasonable and narrow agenda. It is clear that the ideological imperative is at work again in this legislation, but the government will never admit that. What reasons do they put forward for flogging off Medibank Private and what independent academic and objective support is there for those reasons? Not much, I suggest.

Senator Minchin, the Minister for Finance and Administration, said the decision to sell was reached because the government has no good policy reason not to sell and it is necessary for the government to remove the perception of conflict of interest as both regulator and provider. The latter point is an interesting one, a position that assumes without any basis that government presence in the market actively compromises efficiencies through control, potential or real. That argument is erroneous. It is just a smokescreen for ideology.

Even when Medibank Private is privatised, as it no doubt will be, despite the lack of any good reason to sell—there is no doubt this legislation will pass the chamber—it will be subject to the myriad legislation and regulation that already control the health industry in this country. The argument that government control impedes efficiency conveniently ignores the real control the government has in regulation. It is disingenuous to claim government ownership of the fund is a conflict of interest when government has that regulatory control.

Then there is the argument that somehow flogging off Medibank Private will make it more efficient and effective. Even a good report card for Medibank Private, in an unusually forthright brief prepared by the Par-
liamentary Library—a report card that highlights its good performance in the provision of efficiencies, services, premiums, innovation and competition—cannot save it from the Prime Minister’s draconian sell-off. The library brief, which is very comprehensive, offers no evidence for the government’s position on the economic efficiencies that are claimed to flow from the privatisation of this asset.

Even former Liberal Prime Minister Malcolm Fraser, as the report indicates, knew that one of the benefits of Medibank Private under government ownership would be to help keep premiums down. But, as the library brief further points out—and common sense tells us—a not-for-profit structure is far more likely to act in the interests of its members, because the imperative is clearly not just to reward shareholders.

While we are talking about members, nearly three million Australians are members of Medibank Private. We should acknowledge that the rights and entitlements of those members are not at all certain in this legislation. Senator Murray, who spoke just before me, has made reference to that point, and I will make a few more comments about that further on. Why sell a public institution that has since 2001-02, as Standard and Poor’s have observed, set long-term strategies for profitability and efficiencies and has again, as seen from 2004-05 reports, delivered on those strategies?

We know from independent reporting that Medibank Private’s administrative expenses are below the industry average. You would have thought that that was a demonstration of the efficiencies that the government claims Medibank Private needs to implement. It has already implemented those efficiencies and is a well-run organisation. The results at Standard and Poor’s, an independent organisation held in high esteem by economists and others in our community, vindicate Medibank Private’s efforts in this regard. Surely those are the results that a government wants from a health insurance provider, any health insurance provider. It appears, from all the evidence, that being both regulator and provider is neither detrimental to the fund’s performance nor to competition in the sector generally.

In addition, Standard and Poor’s noted that Medibank Private has embraced innovative marketing strategies and has been very competitive in a market that Standard and Poor’s itself calls ‘competitive and highly volatile’. It is entirely possible that the sale of Medibank Private could lead to a lessening of competition with a greater concentration of larger insurers perhaps unwilling to embrace the innovative competition strategies in the manner that Medibank Private has.

Indeed, Medibank Private has triumphed. It is the No. 1 insurer in four states and has, as I said, almost three million members and 30 per cent of the Australian health insurance market. It is an iconic institution and a favourite of the Australian public, who join Medibank Private not just because it is competitive, efficient and provides good services but because it is in government control. It is one of the features that attract people to become members of Medibank Private.

As I said, it is a successful organisation and we are told that competition in the industry makes for successful organisations. Medibank Private is successful, so now we fundamentally want to change it. Why? There is no justification for the government’s arguments in that regard. The bar to better competition and outcomes in the opinion of many experts is not in the current mix of health insurance providers but in the structure of the regulatory framework under which the industry operates.

CHAMBER
I understand the government is looking at that regulatory framework. Wouldn’t it have made sense to have done that first, to see what the rules of play are going to be before changing the teams on the field? As for public policy reasons, according to health economist and expert on health insurance Dr John Deeble, Medibank Private has successfully supported universality and equity through minimal levels of regulation. So what exactly are the ‘public policy reasons’ that the minister claims are reasons for this legislation before us?

The Senate Standing Committee on Finance and Public Administration’s inquiry into this bill and the subsequent report grappled with the justification for the government’s position. The dissenting reports from the opposition and minor parties underlie the paucity of argument that the government has put forward to support this retrograde bill. The government senators’ report from that inquiry woefully failed to support, let alone robustly support, the purposes of the bill—except the purpose of maximising the amount of money that the government will rake in when it flogs off this valuable public asset. If we look at the other grounds that the government senators relied on in their report, we find the already discredited claims about some ill-defined public policy, the concocted conflict-of-interest arguments and the furphy over the benefit of competition, when Medibank Private is already competitive and successful.

Then we have the government’s reliance on the CRA International report, which comments favourably on the proposed privatisation and the possibility—not the certainty—of improved efficiencies and lower premiums. There is not much else in that CRA report that the government can hang its hat on. Both the AMA and the health insurance expert to whom I referred to earlier, Dr Deeble, are dismissive of the government department commissioned report.

It is interesting to note that the AMA starts its additional submission to the Senate inquiry by saying that it has no philosophical objections to the sale of government assets when appropriate and yet goes on to say that it believes the sale of Medibank Private will lead to higher premiums for members of private health funds. The AMA says:

In the first instance, the higher premiums will have an impact on the members of Medibank Private. However, Medibank Private is a major player in every State/Territory health insurance market. Higher premiums will make Medibank Private less competitive and will allow other funds to raise their premiums also.

In the view of the AMA:

... these outcomes are deleterious to the broad strategy of support for private health insurance. The sale of Medibank Private will inevitably have a deleterious impact on the Budget cost of maintaining that support. The Parliament needs to consider all budgetary impacts of the sale, not just the expected sale proceeds.

That AMA submission goes on to provide substantial data supporting its position. I will not repeat that here. But it is telling that an organisation whose membership is not known for its left leanings and its left ideology believes that this privatisation is going to be a bad thing for the people of Australia.

Another aspect of this bill that needs to be looked at is the broader current role of Medibank Private. This broad role was envisaged by both former Prime Ministers Whitlam and Fraser when Medibank was set up and it was that Medibank Private was to act as a moral social agent in the health insurance industry. Many experts in the field disagree with Senator Minchin's view that there exists no social policy ground to impede the sale. Dr Deeble argued strongly that the opposite is the case. Medibank Private has long provided that balance between need
and justice. It has offered a stable national presence in the insurance market and has competed financially with other insurers. Importantly, it carries the flag for broad public interest in the health insurance field.

There is much in this bill that needs to be exposed for what it is. Read together, the Senate committee report and the library’s research brief and subsequent Bills Digest—and other submissions to the Senate inquiry—clearly outline that the government has mounted a slight and untenable case. The predominant weight of evidence should halt this bill in its tracks on the grounds of reason and fair play.

As I mentioned earlier, there are other reasons for stopping this bill, including the unresolved question of the rights of current members of Medibank Private in the sale process and as beneficiaries of the proceeds of any sale. The government has attempted to stave off the legal uncertainties in that regard by seeking a legal opinion from Blake Dawson Waldron, an opinion that has been rebutted by the library in its expertly and independently prepared Bills Digest. The fact that the government is not wholly convinced by its own commissioned legal advice is evident in the moves to include in the bill some safety net clauses that are clearly intended to compensate members if indeed there are future claims by them arising from detriment after Medibank Private is sold. While that is some good news for members, the fundamental question of whether this is something the government can sell without risk of challenge is not yet resolved. Nevertheless, the government pushes ahead with the legislation.

A further issue was raised by the Senate Standing Committee for the Scrutiny of Bills, of which I am a member. So is Senator Murray, who spoke before me. We are going to have open-ended legislation sitting on the books, as the government’s stated intention is not to sell Medibank Private until 2008—that is, after the next federal election. So we are going to have legislation on the books without knowing what the economic, social and political circumstances of the nation will be when it comes into being. That is a very poor way to make legislation, and the scrutiny of bills committee—as it should—will bring to the Senate’s attention every occasion when legislation that has no stipulated commencement date is proposed by this government.

There are then the matters of the future employment status of the staff of Medibank Private and the lack of any consideration of that in this legislation. All we get is a patronising attitude to the issue in the government senators’ committee report, which acknowledges that the ‘prospect of changed ownership may be unsettling for staff’. Yes, the prospect of perhaps losing your job is unsettling. You would think that the government might have thought to address the staff issue in a more constructive way than just saying ‘staff can keep themselves informed and also raise any concerns or questions they might have about the implications of Medibank’s sale’. I am sure being informed is a great consolation to those staff of Medibank Private who are very concerned about what their future employment prospects are. Then there is the question of foreign ownership. The bill acknowledges legitimate concerns about foreign ownership, with some measures to prevent the loss of Australian control of the organisation. However, those restrictions expire after five years. After that, Medibank Private is up for grabs.

I will also make passing reference to comments made by Senator Fielding in his dissenting Senate committee report, in which he says that the government is ‘selling out’ Australian families by selling Medibank Pri-
vate. Labor could not agree more, and that is why we will not support this bill and why we have given the Australian public a guarantee that Labor will do genuine family impact statements for all legislation that a Labor government brings to the parliament.

In finishing: the evidence garnered in the Senate committee inquiry, the evidence shown in the information provided to all members of parliament by the esteemed Parliamentary Library and the evidence in the department’s own commissioned report is that there is no good economic, social or public policy justification for the sale of Medibank Private. The government senators’ report to the Senate committee is a hopeless conjecture of possibilities and assertions—a ‘romancing the stone’ approach. It is both shallow and selective—a straw argument that fails to sell the case, yet the government arrogantly expects the Australian public to cop it.

The government senators’ report merely echoes the government’s overall attitude. It is a government that is prepared to thumb its nose at anything that does not fit its fixed and narrow vision. It is a government that is not concerned with expert opinion and argument. It is a government that arrogantly and intentionally fails to establish sufficient grounds or arguments for its case. Worse still, it is prepared to vandalise public institutions in the name of its cause, without due regard for the consequences. The government has not made its case for selling Medibank Private, and this bill should not be supported—and it will not be supported by Labor.

Senator NETTLE (New South Wales) (1.08 pm)—The Australian Greens oppose the sell-off of Medibank Private. We do so because we do not want to see further privatisation of health care in this country. We are proud and vocal supporters of the public health care system in this country, and we want to see the federal government prioritise and invest in public health care in this country. But it is not just the federal government that we want to see do that; it is the opposition too. Instead what we have is the government, with the support of the opposition—with the support of the new deputy leader of the Labor Party, the shadow minister for health—spending over $3 billion of public funds every year subsidising people’s private health insurance. Instead of investing that over-$3 billion of public funds each year in our public health system, we see them subsidising people’s private health insurance.

In speaking to the Medibank Private Sale Bill 2006 today, I offer a challenge to the new deputy leader of the Australian Labor Party. Does she support investing public funds in our public health care system? Will the new deputy leader and the new Leader of the Opposition continue to support pouring public health funds, taxpayers’ dollars, into subsidising the private health insurance that is taken up predominantly by Liberal Party voters in wealthy electorates like that of the Minister for Health and Ageing, Mr Abbott? Will this new Labor dream team continue to support pouring over $3 billion of public funds into subsidising people’s private health insurance, rather than delivering public health outcomes and public health services for the millions of Australians across this country who need that support?

That is the challenge I offer today to this new Labor team. What is their commitment to public health care? Do they believe in and will they take to the next election a policy that echoes the one that the Greens have been calling for for years, which is a prioritising of investment in our public health services? That $3 billion is sitting there. It is taxpayers’ money. It is in our budget for health care, and it is not being spent that way. It is currently being spent subsidising
the people in wealthier electorates who take out private health insurance.

Later in my speech, I will go into the figures for people who take out private health insurance and whose electorates they live in. To give you a snapshot: they live in the electorate of Tony Abbott on the northern beaches. The member for Warringah has the highest uptake of private health insurance. So the people in his electorate—the people with the highest uptake of private health insurance—get the largest proportion of any electorate of that over $3 billion that the government and the opposition support using to subsidise people’s private health insurance. They get those public funds—not the people in the electorate of Lalor, where the new Deputy Leader of the Opposition comes from, where only 36.6 per cent of people have any access to those public funds which are put into our budget to be spent on public health services. That is one of the lowest percentages we see around the country.

Effectively, the current position of the opposition on this issue is to support subsidising the private health insurance of those people who live in wealthy electorates like that of the health minister, Mr Abbott, so that they get that access to public funds rather than those people who live in Labor electorates like that of the new Deputy Leader of the Opposition. They are not getting access to those funds. So the challenge today for the new deputy leader of the Labor Party is: are you going to support the 64 per cent of people in your electorate who rely on the public health care system? Are you going to take to the next federal election a policy which says that that over $3 billion of public funds—contributed by taxpayers for health services in this country—will be spent on public health care?

Do you have a commitment to public health care in this country, or are you going to continue with the existing policy of the opposition, which is to spend that over $3 billion subsidising the private health insurance of those people who live in wealthy Liberal electorates—to ensure that they get access to those public funds and to ensure that they get support and subsidy for their private health insurance—rather than investing it in the public health care services of this country? The challenge on day one for the new Deputy Leader of the Opposition is: do you support the public health system of this country or are you going to continue to pour money into subsidising the private insurance bought by people in Liberal-held electorates and wealthy electorates of this country—electorates like that of Minister Abbott?

That is central to this issue in the piece of legislation that we are dealing with today. This piece of legislation is about a particular private health insurance operator. If this proposed legislation goes ahead in the sell-off of Medibank Private, we will see premiums going up—and I will get onto some of that detail later. Every time private health insurance premiums go up so too does the amount of public funds that are put into the private health insurance rebate to subsidise the private health insurance of wealthy people, in predominantly Liberal-held electorates, who take out private health insurance. Every time we see premiums go up we also see—and we must see—an increase in the rebate that is paid. Public funds are being spent on subsidising private health insurance rather than being invested in public health care, and that is what we will see if this legislation goes ahead.

The opposition can stand up and oppose this legislation, as do the Greens, but the question is: when it comes to the issue of the private health insurance rebate, does this new opposition dream team, including the member for Lalor, continue to support spending over $3 billion of public funds on subsidising
the private health insurance of those people who live in wealthy Liberal electorates like that of Minister Abbott? Eighty-six per cent of people in Minister Abbott’s electorate get access to these public funds which should be spent on public health care. Only 36 per cent of people in the electorate of Lalor have any access to public funds which should be earmarked for public health care. I will be seeking to move amendments in the process of dealing with this legislation and to say yet again that the Greens’ priority when it comes to public money being spent on health care is to invest that money in our public health system. We do not want to see more money every year—it is up to over $3 billion now, and so it is not a one-off—being taken from the public purse with the support of the government and the opposition and put into subsidising private health insurance for, predominantly, those people who live in wealthy Liberal electorates. That is the fundamental question we are dealing with in this piece of legislation.

Recent evidence does tell us that the sell-off of Medibank Private will lead to an increase in premiums. We need only look at recent history to see that this is what is occurring. Unlike the government’s rhetoric—their claim that this will lead to a limit on premium increases—health commentators who have been discussing this legislation point out that this is simply not the case. The President of the Australian Medical Association pointed out in the Canberra Times in September that ‘the sale of Medibank Private will drive up premiums as the new owner sought to maximise returns to shareholders’. We saw the Community and Public Sector Union and the Save Medicare Alliance in their joint submission to the Senate inquiry also arguing that private ownership of Medibank Private would increase premiums. And, let me remind you again, every time premiums increase so does the amount of public funds being spent on subsidising private insurance rather than going into our public health system, where it is desperately needed. Recent evidence tells us that will occur.

Over the last five years we have seen this happening. In 2002 there was an average rise in private health insurance premiums of 6.9 per cent. The Minister for Health and Ageing at the time, Senator Patterson, ‘warned’ in the Canberra Times that any attempt by health funds to raise premiums the following year would be ‘met with scepticism’—not a terribly successful warning given that in the next year, 2003, there was a 7.4 per cent rise in premiums. It was not just a rise in premiums but a rise in the amount of public funding being used to support this private health insurance industry rather than being invested in our public healthcare system.

In the next year, 2004, there was another increase. The average increase then was 7.6 per cent—another increase not just in premiums for people but also of public funds, a privatisation of public funds, our health budget going away from public taxpayers into the hands of the private insurance companies running this sector. In 2005 it was the same thing again: a 7.9 per cent increase in premiums—another increase in public funds being transferred from the public purse to the pockets of predominantly wealthier Australians who take out private health insurance. This year we have had a rise again—five years in a row. It was 5.7 per cent this time. The evidence tells us that premiums are going up and up and up. The sale of Medibank Private will push premiums up, and every time premiums get pushed up public funds are transferred out of our taxpayers’ hands and into the pockets of those people who take out private health insurance in this country.
Total up those five years of increases that I have just outlined. That is a 35.5 per cent increase in private health insurance premiums over those five years! A 35.5 per cent increase in premiums! And what goes along with that: a massive transfer of public funds away from taxpayers into the pockets of those people who buy private health insurance, subsidising the insurance industry. That is not delivering us the public health services and outcomes that people in the community want. In the lead-up to the last federal election I attended several meetings with the ACTU and with a range of health unions. Health economists across this nation were unanimous in their acknowledgement of the inefficiency that exists in the private health insurance rebate and in the way it does not deliver improved public health outcomes. How many more health economists do we need to come out and say that this does not work before the government and the opposition recognise the problem?

This is a fundamental social justice issue. We have had the new leader of the Labor Party write prolifically about the importance of social justice, and of course the Greens have welcomed that. The concept of social justice is fundamental not just to the Greens and our philosophy but also to the development of the Labor Party. It is a fundamental concept about looking after those people in our community who need access to health services through our public health system. If there is that genuine commitment to social justice then I challenge the new Leader of the Opposition to put his money where his mouth is. Let us see a commitment from the opposition. There is over $3 billion there every year—easy money. If you want to support our public health system, there is the money—you do not need to look any further; it is the elephant in the lounge room—over $3 billion, every year. Take that money and invest it in our public health services and the social justice outcomes that you will get by doing that are the very things that people in this community have been crying out for: that investment in health services. Don’t just continue with the rhetoric of believing and supporting the public healthcare system. Show us that prioritisation of public health care by taking that funding and investing it in the place where it can deliver the very best public health outcomes in this community—that is, in our public health system. People have been asked which healthcare system they use, and surveys have found that in cases of emergencies, regardless of whether or not people have private health insurance, they turn to their public hospital and to the public healthcare system to ensure that they get proper care.

The latest Australian Bureau of Statistics private health insurance data found that:

In 2004-05 20% of people with private hospital insurance who were admitted to hospital in the previous 12 months reported their most recent admission had been as a public (Medicare) patient.

So, regardless of whether people have private health insurance, when there is an emergency and they need health care, they recognise that it is through the public healthcare system that they are able to get that support.

Prue Power, Executive Director of the Australian Healthcare Association, said just last month:

It is important to understand that public hospitals treat the most-complex cases and provide most emergency treatment, while private hospitals tend to focus on less-complex elective procedures.

If we want to ensure that people are able to get access to the emergency treatment that is provided by our public healthcare system, we need to invest in it. There is over $3 billion every year waiting to be invested, waiting to be spent, in our public healthcare system. That is my challenge today to the new...
Leader and the new Deputy Leader of the Labor Party: let us see whether you have a genuine commitment to investing in and prioritising public health care in this country. That is the position of the Greens. That is the position that I have argued in here for the last 4½ years and that I will continue to argue. It is not just me; it is the health economists around the country who recognise that our public system is the best way to ensure that all Australians, regardless of their capacity to pay, have access to quality health care. In order to ensure that those Australians have access to that care, we need to see an investment of public funding, and there is $3 billion there every year that can be injected into ensuring that we have a quality system.

I indicated that the Greens have done some analysis on this issue in terms of the uptake of private health insurance. It was based on data from a Roy Morgan survey of over 50,000 people. It showed that across Australia the private health insurance rebate means that residents of rural, remote and outer suburban electorates are effectively subsidising the insurance of those people living in wealthy Liberal-held electorates. Residents of Labor-held electorates lose out. Those seats held by the National Party, interestingly, are the worst off. Yet we continue to see both of these parties supporting their own constituents, subsidising the private health insurance that is taken out by the people who live in the electorates held by Tony Abbott and others in the Liberal Party. They are the facts on the ground. The private health insurance rebate is a redistribution of wealth away from those people who contribute across-the-board through their taxation into the pockets of those wealthy insurers. This is something that needs to be turned around. The challenge today is to the opposition: don’t just oppose this bill—that is an obvious one—take up the challenge of ensuring that we have a quality public healthcare system across the board.

Join the Greens in saying there is over $3 billion there every year, let us invest it in the healthcare system in this country to deliver the best outcomes, most equitably and most fairly to all Australians regardless of their capacity to pay. Let us put that funding where it is most needed: in our public healthcare system, not in the pockets of the private health insurance industry.

Senator MOORE (Queensland) (1.28 pm)—I take up part of the challenge posed by Senator Nettle and indicate that the obvious response is that the Australian Labor Party are opposed to the Medibank Private Sale Bill 2006. We have been opposed to the privatisation of Medibank Private in the past, we are opposed now and we will continue to be opposed to the sale of Medibank Private. That contrasts greatly with the government’s position. We all know the government has always wanted to sell Medibank Private. It is no surprise that this legislation is before us. The government made its public announcement that it wanted to sell, it was going to sell—and it has made that announcement a few times—and its most recent announcement was in April this year. Of course, it had to then bring in legislation to make that statement real.

Again, in this place I am going to put on the record my complaint about the role played by the Senate committee process in the ongoing determination of legislation. When the government made its decision that it was going to sell MPL and made that decision public, there was surprise from people who are members of Medibank Private—of which I am one and I think many people in this place are also members of Medibank Private—and there was surprise in the community about this. From the Labor Party’s point of view, it is clear that the government always wanted to sell Medibank Private, along with the long list of other public entities which have been sold and which the govern-
ment promised it would sell—sometimes it changes its mind—and it is clear that the government has a privatisation agenda.

Somehow during the election process, and most particularly during the last election process, the sale of Medibank Private was not high on the agenda. In terms of the public pronouncements during the election processes, it was not a killer argument with the community. So when we actually had the election results and the change in the numbers in this place—which I think is a stimulus to the ability to move forward with this type of legislation—whilst we expected the legislation to come forward there was still a sense of surprise in the community and amongst the people who have private health cover. However, once the announcement was made publicly, it was important that the legislation was brought in to make it a reality so that we could go through the farce of the debate here—so that we could have the rubber stamp of the decision.

Following normal practice, the legislation was put before the Senate Standing Committee on Community Affairs for review. The legislation was brought in in late October and was referred to the Scrutiny of Bills Committee—and a number of people here have already spoken as members of the Scrutiny of Bills Committee—and the Senate Standing Committee on Community Affairs, of which I am a member. I see that the chair, Senator Fifield, is in the chamber at the moment. The committee advertised the inquiry on 25 October 2006 and went through the normal processes of contacting people who have shown interest. In terms of health insurance, the Ombudsman and a number of different associations and organisations were personally approached to see whether they cared to make a contribution to the committee. Then there was one hearing, on 3 November. The inquiry was advertised on 25 October, there was one hearing on 3 November and the date to report back to this place was 27 November. So for this particularly significant piece of legislation that is going to change the status of one of the largest—if not the largest, depending on whose figures you are actually looking at—private health funds in the country, the decision by the major owner, the government, was to sell it off despite conflicting legal advice, which we saw as members of that committee. Considering the range of issues, the amount of time dedicated to the effective scrutiny of that legislation was one hearing day. That is extraordinary pressure.

I have actually got the name of the committee incorrect and I apologise for that. I have been referring to the Senate Standing Committee on Community Affairs, which is the other committee I am on. I apologise to the extremely effective secretariat of the Senate Standing Committee on Finance and Public Administration. Of course, that is the appropriate committee. It is just that community affairs has a crossover with health. There was extraordinary pressure on that secretariat to work with the chair and the other members of the committee to have their report ready in a very quick fashion in order to bring the legislation to this place for consideration.

As with the vagaries of the way the schedule operates, this legislation was not actually debated last week, which I think was the intent of the government. It had to be rushed forward and tabled on 27 November so we could go to the debate, but it is actually being debated this week, as we can see. Again, the effective time for scrutiny, consideration and exchange of knowledge and opinions has been truncated, which it is of deep concern to me and, I am sure, to other members in this place and to people who watch the processes of government. We should not be rushing through such significant issues. We should be considering more
clearly, with greater concept of detail, and allowing more debate around how we can best move forward. Given that, at least the people who did have the opportunity to make a contribution—and I think most of them are on record, as we can see through the Hansard—noted their concerns about the limited time they had to put forward their concerns and be involved in an effective debate, because this issue demands debate.

Whilst we know the government is determined to push forward, I think that it is worthy of debate to see whether the sale of Medibank Private should be concluded and, more particularly, how it should be done. We note that we now have a decision to sell—there is no real clarity about how—in the future. Once again we have a greyness of process. All the decisions will be made, it will be set up and we will do it in the future. So we move forward and have the opportunity to at least put our concerns on record. There are a number of concerns. Of course there is the basic concern about the privatisation of something that was introduced with great fanfare. There has been a long history with Medibank Private. I am one of those people who can remember, vaguely, when the idea was actually introduced in 1976 to have that process. Certainly, from the time that I was able to be employed, and I was an employee of the public sector, there was an acknowledgement that Medibank Private had a linkage with the government. For some people, this is seen as a very positive aspect.

I asked the representatives of Medibank Private directly when they came before our committee and at previous times when we had them at Senate estimates whether they actually understood the rationale of people when they chose to take up private health insurance and which private health insurance they chose. Anecdotally, there is a view that for some people there is a particular attraction in going to the organisation that has some sense of a link to the government, and Medibank Private has had that.

I refer to a letter that the previous Prime Minister, Malcolm Fraser, sent to the Save Medicare Alliance. He said in that letter that he felt that when Medibank Private was introduced there was a feeling that you could keep an eye on what was going on by having some sense of government ownership. I state that not in outright support of Mr Fraser but just to illustrate how things change. We had a Liberal Prime Minister who was involved in setting up this process and, years later, he is asked his opinion on another Liberal government’s decision to sell it. There is such a contrasting view. The fact that a previous Prime Minister was prepared to put on record some concerns that he had about the sale of Medibank Private indicates that there is some community interest in the sale.

The Save Medicare Alliance, which is a community focused alliance made up of trade unionists—certainly my own union, of which I am a proud member, the CPSU—a number of other community organisations and health focused people, is looking at the sale of the Medibank Private. In particular, there was a concern that not enough people in the community were engaged in the debate; that many people who perhaps had coverage with Medibank Private or were genuinely interested in the Australian health system were not sure about what was going on. We felt, and they felt as an alliance, that an opportunity should be presented for people to have their say. One group of people that are rarely asked their view about whether or not something should happen are those that are involved directly in the process.

I have asked at different times of Medibank Private whether they have done any internal surveying of the people who have Medibank Private coverage about how they feel about the privatisation. I have to admit
that, in terms of the correspondence I have had with the organisation—it is often just coloured brochures telling me that the premiums have gone up—sometimes I do not read with the kind of attention to detail that I should. It was stated that there had not been an open survey process. Certainly there have been attempts since we had the discussion at Senate estimates and when we had the people from Medibank Private before us during the finance and public admin inquiry, and a website has been set up. There has been a process to try and ensure that people who have coverage with Medibank Private and, most particularly, the people who are working for the organisation have the opportunity to find out what is going on rather than finding out what is happening to their workplace and their future careers by reading media releases from the government and from their employers in the papers.

Those people had the opportunity, hopefully with confidence, to ask questions and look at the incredibly important aspects of any privatisation or change of business arrangements and how that is going to be handled for employees. They were particular questions that we asked the people from Medibank Private at the finance and public administration inquiry. They assured us that that they were taking a deep interest in those issues and there was absolute confidence—that was the statement made by the representative at the inquiry—amongst all staff members that their interests were being looked after and protected. I think that that is an issue that we as a parliament should also be considering. The transfer of business arrangements needs to be clearly codified so that people know about their conditions of service, their future activities and about the locations of their businesses.

One of the key aspects of Medibank Private is that in the last 20 or so years there has been a distinct program within that agency to have regional offices. I know many parliamentarians in this place have been lobbied both on behalf of Medicare officers and Medibank Private officers to ensure that there is that local arrangement—and there are some very small regional offices across the country. We have the only major public document available to all people in the community, if they choose to look at it, about the possible impact of this sale and at the possible efficiencies that could be acquired by the sale. One of the key areas was that they felt they could find some efficiencies in administration, despite the fact that when you look at the cost balances within Medibank Private over the last years and their linkages to their income, outgoings and their administrative costs, they are right in the middle of that important list that they have—talking about administrative costings.

One of the justifications for the sale, and to make it more attractive, is that there could be advantages in efficiencies by a sale and privatisation. It would be only natural for the staff members of the organisation to wonder whether those efficiencies meant them. That is the kind of ongoing discussion we should have. Once the decision to sell has been made public, which it has, and once we get through this unfortunate necessity of going through the parliament to rubber-stamp the legislation to allow the sale to go through, we, the parliament—and at the moment the minister for finance is the major shareholder for this particular process—should have concerns about the people who work in the agency. These staff have been celebrated numerous times through annual reports and public pronouncements by the government and by the structures of Medibank Private for their efficiency, their courteousness and the way that they operate. Given that that has been the history, it is very important for us as a parliament to ensure that those workers are protected, that their concerns are noted and
that all those things are put in place before the finalisation of whatever process is to be put in place for the sale.

For me, one of the saddest things about the justification of the government has been this aura around the decision that somehow the sale of Medibank Private is going to have some impact on keeping health premiums down. There is no absolute evidence to that effect. There is no guarantee, and we all know that the costs of health care are determined by a wide range of factors. Senator Nettle used her contribution to talk about general issues of healthcare costs. But if the sale of one agency was going to have such a phenomenal impact on the healthcare premiums, perhaps we would have heard that argument before, and we have not. It has only been in the process of justifying the decision the government has already made to sell this agency that there has been any attempt to produce data to say that the sale of Medibank Private will have a downward effect on healthcare premiums. That is a particularly unfortunate argument because it gives hope to people that somehow there is a linkage and that they will have lower healthcare premiums. We heard—and I will not go through the figures again because I think Senator Nettle went through them in great detail—the recent history of healthcare premium increases, and they have always gone up. In fact, I would like to have some information about the last time healthcare premiums went down. I do not know whether we would link that directly with the sale of any organisation, but perhaps that could be the kind of economic information that we could have shared with us as a parliament. Consistently, when we asked for documentation from the various people that came before us in our inquiry, the key documents that we sought were always unable to be provided because of confidentiality in the business world.

That becomes increasingly frustrating. If you are actually trying to justify a decision to sell, it is not good enough, I believe, to say that we cannot get the scoping studies or the extensive information that has been gone through by the department because it is confidential and business-in-confidence. That seems to happen in most areas. Mr Acting Deputy President Murray, we have been together on a number of committees where that has been the response when we have asked for information. The government says that we will be able to keep those healthcare premiums down by selling off Medibank Private. The linkage is not clear. It is actually mischievous to put that out to the community and say that that is a justification for this sale.

In the small time I have left, I really want to get one quote from our committee report on record. It is from Dr Deeble. He talked about the CRA methodology—that is information that we were able to share—into the kinds of efficiencies that could be gained. I felt that it was not in-depth. I felt that it was quite a simplistic assessment of efficiencies that could be gained by the sale. But, nonetheless, it was able to be read and I applaud that. But I really want to get the quote that we used in the committee report on record here. In our committee report we talked about the fact that the AMA had raised concerns about the CRA report. As Senator McEwen said, the AMA often does not agree with many things we put forward about health issues, but in this case it came forward because it was quite concerned about the simplistic expectation that this sale of Medibank Private was going to have such a wonderful impact on the whole healthcare system. Our report quotes Dr Deeble as saying—and we actually described it as ‘bluntly’ in our report:

My criticism of the CRA report is the method that they have used, which is dressed up in all sorts of
academic gobbledygook which I know—or should know, anyway. The methodology they have used there has been misapplied.

In terms of the way that we have actually been sold the issues about the benefits of the sale of Medibank Private, I think in many ways that sums it up for me. I think there is a degree of desperation in the attempts to ensure that people think there is a science in this sale; that there is a rational reason for having this sale. In fact, there is quite a simple reason for the sale from the government’s perspective. They believe it is the best thing to do. They believe in privatisation. They want to divest themselves of this organisation. They will dress up any kind of rationale they can find—that it is going to be more efficient, it will help to keep premiums down, and somehow it will be an advantage—to make it palatable to the people involved.

How can we have an advantage in selling an Australian company? One thing we can say about a government owned company is that it is Australian owned. How we can have an advantage in a proposition that gives us a five-year window in which there will not be overseas ownership? How that can be guaranteed, I am not sure. We are opposed to this legislation—we always will be. There is no surprise in that. We know how it is going to occur. We just have to make sure that every effort is made to protect those who have coverage with Medibank Private, to protect those who work in Medibank Private and to ensure that we make the best of what is going to happen.

Senator ALLISON (Victoria—Leader of the Australian Democrats) (1.48 pm)—The Medibank Private Sale Bill 2006, as we know, empowers the government to initiate a sale of the government’s holding in Medibank Private at a time of its choosing, which it says is sometime in 2008. The bill also sets out a number of other conditions for the conduct of the sale. In preparation for the sell-off, the bill provides for changing the status of the fund from a not-for-profit organisation to a for-profit organisation. It limits individual share ownership to 15 per cent of the company for five years. It places foreign ownership and Australian identity restrictions on directors and its national office for a period of five years and it allows pre-privatisation profits to be redistributed.

We all know that the Howard government has for a very long time wanted to sell Medibank Private. The fund has in fact been on the asset sale program since 2002, when the first scoping study was commissioned. Now, of course, with the control of the Senate the Howard government is pressing forward on the sale even though it is clearly unpopular with the majority of the public and, equally importantly, even though the government cannot provide a convincing argument for how this sale will benefit the public.

The Democrats are not automatically opposed to privatisation of government assets, as you yourself, Mr Acting Deputy President Murray, have pointed out. We assess each case of privatisation on its merits and with the community benefit and the public interest as the ultimate test. Just because you own one government asset it does not mean that you should own them all. Just because you sell one government asset it does not mean that you should sell them all. Just because the Democrats have consistently opposed the massive 30 per cent rebate that is provided for those in private health insurance on the basis that it is both inequitable and inflationary it does not mean that we are happy to sell off Medibank Private for those reasons.

The test of privatisation must always be: does the asset serve a particular public purpose and provide a benefit to the community such that it should be retained in public ownership? Of course it is on that last question
that the sale of Medicare Private falls down, in my view. There are a number of arguments that support maintained government ownership, but the government has been unable to provide us with any of those convincing arguments on how the public interest would be advanced by its sale.

It is true to say that the proposed sell-off has not been as controversial as some of the government’s other privatisations over time. There is not the same community outrage that we saw with selling Telstra or the Snowy River hydro scheme. But I think we should not underestimate the impact of the sale. Medibank Private is Australia’s largest private health insurance provider. It is our largest not-for-profit fund and our only truly national private health insurer. It is the largest private health insurer in New South Wales, the ACT, Victoria and the Northern Territory, and it is the second largest insurer in other states.

Medibank Private has around a third of the market, covering three million Australians—that is, three million Australians who will have a direct interest in the sale of this insurer. But, of course, it is not just the current members of Medibank Private who will be affected; more than 10 million Australians—that is, 43 per cent of the population—hold private health insurance. Those 10 million Australians and future members of health insurance funds will be affected by the changes that this sale will bring about.

Standard and Poor’s, an organisation widely considered to be a leading provider of independent financial analysis, say the privatisation of Medibank Private is likely to ‘materially affect the competitive dynamics of the industry’—not that you need to be an economics genius to see that. It stands to reason that that would be the case when the largest provider of a particular service changes ownership in such a dramatic way, going from a not-for-profit organisation to a for-profit company. The explanatory memorandum to the bill says:

When Medibank Private Limited becomes a ‘for profit’ company, it will be able to pay dividends or return capital to its shareholders. This includes using the surpluses already built up in the Medibank Private Fund.

A not-for-profit organisation, by its very nature, is not about distributing profits but about managing its assets in the interests of its members, and it uses surpluses to the benefit of those policy holders. A for-profit organisation will inevitably have the profit motive as its primary consideration—profits that will not go towards lower premiums for members or more benefits being paid out to members but towards meeting shareholders’ demands for dividends.

And we are not simply talking about changing the nature of this one private health fund; we are talking about changing the whole sector. At the moment roughly 80 to 85 per cent of Australia’s health insurance funds are run as not-for-profit organisations. With this bill the balance of the industry will change from a predominantly not-for-profit sector to a sector that is pretty much equally split between companies that are for profit and those that are not. There is no doubt that a sector dominated by for-profit organisations will be very different from the one we currently have. If the largest insurance provider, the market leader, becomes beholden to the interests of private shareholders and starts acting to meet those interests, this will have a flow-on effect for other funds. At the very least it is likely to force the not-for-profit organisations to become more commercially driven in order to compete. For starters, it will also presumably have to deliver dividends on the $2 billion or so required to purchase the company.

It is true to say that we do not know what the exact effects of a more commercially
oriented sector will be, but the government’s assertion that it will result in downward pressure on premiums seems to be the least credible possibility. Medibank Private itself, in its 1996 submission to the Productivity Commission’s inquiry into private health insurance, argued that increasing the number of for-profit health funds potentially means an additional layer of costs—that is, to the shareholder—to the financing of health care. Medibank Private stated that this additional layer ‘will unnecessarily escalate the premium (price) for private health insurance’.

Each of Australia’s for-profit health funds has higher premiums than Medibank Private. The simple reality is that a for-profit company has to return a dividend to its shareholders and therefore it will need to generate a profit margin. There are only a few options as to where this will come from: it will be a surplus income, a reduction in payouts to members or a reduction in administration costs. Or, of course, it could come from policy holders having to make a higher contribution.

The government would have us believe that the sale of Medibank Private will enable the fund to be more efficient through reduced management costs and more private sector efficiency, but in fact there is no evidence to support that assertion. The management expenses for Medibank Private as a percentage of member contributions are 9.2 per cent, and the average for the industry is 9.5 per cent. The relevant figure for HBF is 10 per cent; for NIB, 11.8 per cent; and, for MBF, 9.3 per cent. It is true that the relevant figure for Australia’s largest for-profit medical insurer, BUPA, is 7.7 per cent; however, BUPA has also had less success in retaining members, has received more complaints about services and has a lower level of benefits paid to members as a percentage of contributions than Medibank Private does. So it is very easy to get your management costs down if you provide an organisation or service of lower quality.

Reducing benefits paid to private health insurance policy holders or limiting the amount or scope of care that an insurer offers can also offset pressure on premiums—but surely the government is not suggesting that higher gap payments for policy holders or some form of managed care to fund dividends to shareholders is an acceptable trade-off. The government would probably argue that if standards fall then members can simply switch to another provider. That, of course, ignores the reality of low portability and mobility between insurers currently, and there is nothing in the bill that will improve that situation. As was pointed out in evidence to the inquiry, it is hard to see private health insurance as a true market. Government policy coerces people into buying the product and then subsidises the industry to the tune of $2.5 billion a year.

Privatising Medibank Private will not mean an unleashing of the organisation and participation in unfettered free-market operations with enormous benefits to consumers, even if you do subscribe to the highly questionable proposition that such a framework is a good one for the health sector. There is no evidence that changing Medibank Private from a publicly owned not-for-profit organisation to a shareholder for-profit organisation will make it more efficient or more competitive, or keep premiums down. The government continues to refer to a scoping study by Carnegie Wiley to support its position, but it is not good enough when the government refuses to release the details of that study.

Medibank Private as a publicly owned company has introduced competition into private health insurance and driven down premiums. When Medibank Private first entered the market as a government owned organisation, the existing private funds waited
to see what their premiums were and then, in almost all cases, they undercut them. As a publicly owned company Medibank Private has also been able to use its buying power to reduce hospital charges. Payments to hospitals constitute more than 70 per cent of Medibank Private’s costs, and Medibank Private has been increasingly aggressive in taking on private hospitals and medical specialists and in negotiating to reduce the costs that they charge. These savings can then be passed onto the members through reduced premiums or other services. Indeed, the success of competitive tendering allowed Medibank Private to hold cost rises to only 6.2 per cent. I seek leave to continue my remarks later.

Leave granted; debate adjourned.

AUSTRALIAN LABOR PARTY
Leadership and Office Holders

Senator CHRIS EVANS (Western Australia—Leader of the Opposition in the Senate) (2.00 pm)—by leave—I inform the Senate that Senator Conroy and I were re-elected this morning to our respective positions by the Labor caucus.

Government senators interjecting—

Senator CHRIS EVANS—I am a bit concerned that the Liberal Party is so happy about that!

Senator Kemp—We wouldn’t call it a dream team!

Senator CHRIS EVANS—That is true; luckily, in the Senate, looks do not count, as the government can attest! On a more serious note, I want to express, on behalf of the Labor Party, our condolences to Kim Beazley on the sad loss of his brother in the midst of everything else today, and pass on to Susie, his parents and his sister our best wishes at a very difficult time.

Senator MINCHIN (South Australia—Minister for Finance and Administration) (2.01 pm)—by leave—if I can briefly respond, I congratulate Senator Evans and Senator Conroy on their respective re-elections as Leader and Deputy Leader of the Opposition in the Senate. I also express on behalf of the government our sincere condolences to Mr Beazley on the very sad loss of his brother, David. We extend our commiserations to Mr Beazley and his family.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (2.01 pm)—by leave—I would also like to congratulate the two Labor leaders in the Senate and indeed the new Labor leader, Mr Rudd, and his deputy, Julia Gillard; I wish them well in their respective offices. I would like to also join the Leader of the Government in the Senate and the Leader of the Opposition in the Senate in sending very sincere condolences to Mr Beazley and his family.

Senator ALLISON (Victoria—Leader of the Australian Democrats) (2.02 pm)—by leave—I join with others in congratulating Senator Evans and Senator Conroy on their re-election to their positions in the Senate. I pass on my condolences to Mr Beazley but also congratulate Mr Rudd and Ms Gillard on their election to the leadership and deputy leadership.

Senator FIELDING (Victoria—Leader of the Family First Party) (2.02 pm)—by leave—I join others in congratulating Senator Evans and Senator Conroy on their re-election to their positions in the Senate. I pass on my condolences to Mr Beazley and also congratulate Mr Rudd and Ms Gillard on their election to the leadership and deputy leadership.

Senator BOSWELL (Queensland—Leader of The Nationals in the Senate) (2.03 pm)—by leave—I also offer my condolences to the former Leader of the Opposition. It has been a terrible day for him and I feel very sad for him. Also, I congratulate the leader and deputy leader of the Labor Party.
QUESTIONS WITHOUT NOTICE

Iraq

Senator CHRIS EVANS (2.03 pm)—My question is directed to Senator Minchin, representing the Prime Minister. Can the minister confirm reports that former US defence secretary Donald Rumsfeld called for a change of strategy in Iraq two days before he resigned? Didn’t Mr Rumsfeld tell President Bush that the US strategy in Iraq ‘is not working well enough’ and that it was time for a major adjustment to US policy, including the possible withdrawal of American troops? Doesn’t this admission follow President Bush’s statement on 11 October: ‘Don’t do what you are doing if it is not working—change’? Will the government, like Donald Rumsfeld, finally concede that its rhetoric about ‘staying the course’ in Iraq is unsustainable and that the growing civil war makes it more urgent than ever to develop a new strategy and goals for the exit of our troops?

Senator MINCHIN—I have seen press reports referring to assertions that Mr Rumsfeld, the former defence secretary of the United States, had sent a memo to the White House expressing some views about the course of the campaign in Iraq. We note them with interest. Obviously, the US, in the context of the Baker led review of its position with respect to Iraq, is reconsidering its position, presumably on a daily basis, in consultation with the government of Iraq, as to what is the best course of action that should be followed.

I noted last week that the President of the United States and the Prime Minister of Iraq had met and discussed the situation. The Prime Minister of Iraq indicated his desire to retain coalition forces in Iraq at least until the Iraqi security forces are able to ensure the security of the people of Iraq. He gave an indication as to when he thought it would be possible for the Iraqi forces to assume full responsibility. Obviously, from our point of view—while I stress that our commitment is relatively modest compared to the commitment of the United States forces—our forces are doing a great job assisting the people of Iraq to bring about peace, order and good government in their country.

We are committed to remaining in Iraq while we believe that (a) we are welcome there at the invitation of the government of Iraq and while they profess the need for our modest forces to remain and (b) we are making a contribution. We continue to believe that we are making a contribution, particularly with the training of Iraqi security forces to assist them in ensuring that they can take full responsibility for the security of the country. Of course, it is indeed the case that the Prime Minister of Iraq has that objective.
What we will not do, which apparently is the Labor policy—although we wait to see if Mr Rudd brings any new dimension to this—is simply exit. The worst thing we could possibly do would be to walk away from the people of Iraq, and it would be handing the terrorists and thugs a massive victory.

Senator CHRIS EVANS—Mr President, I ask a supplementary question which goes to the core of my first question. Given that the Americans are, as the minister says, reconsidering their position, is Australia reviewing its strategy on Iraq? What process have we got in place that addresses the seriously deteriorating situation in Iraq and the future of our involvement in that country? While the minister says, ‘We will stay while we are welcome and have a job to do,’ that almost implies that we will stay even if America leaves. The point is: what are we doing to reconsider our strategy of engagement in Iraq?

Senator MINCHIN—Obviously, we keep our position under review but, at the moment, we are working closely with our coalition partners and the Iraqi government to ensure that our contribution is the most appropriate to support the transition of security responsibility to the Iraqis. Our forces are currently performing a security and training role in Al Muthanna and Dhi Qar provinces. Our ADF personnel are actively involved, with some 30 providing training support to the Iraqi army at the basic training centre in Tallil. Australia remains committed to Iraq. We continue to monitor and assess the situation. We are working towards the day when the Iraqi security forces will be able to manage on their own, but we will not cut and run and we will not leave the Iraqi people to the hands of the terrorists.

Illegal Fishing

Senator BOSWELL (2.09 pm)—My question is to Senator Abetz, the Minister for Fisheries, Forestry and Conservation. Will the minister update the Senate on the current status of the fight against illegal foreign fishing in our northern waters. What recent developments have enhanced the government’s response to this scourge? Further, is the minister aware of any alternative policies?

Senator ABETZ—I thank Senator Boswell for his question and acknowledge his genuine interest in Australia’s fishing industry. I also congratulate him on securing his party’s support at the weekend so that he can continue to stand up for Australia’s fishing industry for another six years. I am pleased to report to the Senate that encouraging progress is being made in the fight against illegal foreign fishing in our northern waters. As state Labor fisheries ministers agreed when I met with them a few weeks ago, progress is ‘very encouraging’.

Let us look at the facts: 357 illegal foreign fishing boats were apprehended and destroyed in our northern waters this calendar year—that is more than one a day; Coastwatch flights are up by eight per cent; and sightings up to the end of September were down 27 per cent on the same period last year. I can tell Senator Boswell that, in his home state of Queensland, sightings up to the end of September are down 35 per cent since the budget when we committed an extra $390 million.

More recent figures are also very encouraging. October normally represents a spike in illegal fishing activity. This year, there was a 70 per cent reduction in sightings during the month of October. It is not just the figures saying this; it is the fishermen as well. Recently the Northern Shark Industry Association, whose members work in the waters off the Kimberley, wrote to me saying that they have not seen any Indonesian fishermen over the last two months.
But there is more to be done as we strive to keep the number of incursions falling. Recently I met with the Indonesian Minister for Marine Affairs and Fisheries, Freddy Numberi, who suggested that Australia and Indonesia coordinate our naval patrols against illegal fishing along our respective borders. Last week, at the instigation of Australia and Indonesia, officials from 13 East Asian countries met in Jakarta to discuss regional approaches to tackling illegal fishing. This is ahead of a proposed ministerial level meeting in April next year.

While Labor squabbles, the Howard government gets on with the process of protecting our borders. While Labor members and senators fall over themselves to defend the rights of fish poachers, the Howard government remains committed to a tough but fair approach. The early results are in and the facts are clear: the Howard government’s tough policies on illegal fishing are having an impact, despite the protestations of the likes of Senator Ludwig and Warren Snowdon, the member for Lingiari.

I conclude by congratulating the men and women of the Australian Fisheries Management Authority, the Customs Service and the Defence Force on the wonderful job that they are doing protecting our northern waters, protecting our borders and ensuring that the fishing stocks within our economic zone and fishing zone remain the property of Australia.

### Aged Care

**Senator McLUCAS (2.13 pm)—** My question is to Senator Santoro, the Minister for Health and Ageing. Can the minister confirm that 217 aged care facilities have still not complied with the Commonwealth’s fire safety standards that were required by December 2005? Can the minister advise how many of the 217 facilities have had their certification reviewed, given that is what the department’s website says will happen in the event of noncompliance? Given that we are now almost one year on from this compliance deadline, when will all the facilities actually meet the fire safety standards the government said would be met a year ago? What guarantee can the minister give to residents in these 217 non-compliant facilities that the facilities will be upgraded to meet current Commonwealth fire safety standards by the end of 2006?

**Senator SANTORO—** The Howard government is very proud of its record when it comes to fire safety standards within aged-care facilities. Senator McLucas and the Labor Party have done much to scaremonger in relation to this matter, and I think it is important to remind the Senate of the Labor Party’s track record when it comes to fire safety. It may be very interesting to senators on both sides to know that Labor could not ensure an adequate supply of capital to aged care, at a severe cost to the quality of Australia’s aged-care homes. In fact, Labor’s—and I want to stress ‘Labor’s own’—1994 Gregory report found, and this is very instructational, that 30 per cent of nursing homes did not meet the relevant fire authority standards, 11 per cent of nursing homes did not meet the relevant health authority standards and 70 per cent of all nursing homes did not meet the relevant outcome standards. That is what we had to confront in 1996, when the coalition government came to government and had to go about rebuilding the reputation of an aged-care industry in Australia which had been utterly and totally neglected over a decade by the Labor Party.

What I can now do is inform Senator McLucas and senators opposite yet again of the track record of the Howard government: 2,677 services have provided evidence of meeting—
Senator Chris Evans—Mr President, on a point of order: I draw your attention to the relevance of the answer. The minister has been asked a serious question about what has happened to the facilities that did not meet his government’s standard. It is a very serious question and I ask that you direct him to answer the question.

The President—As you would know, Senator, I cannot direct him how to answer the question but I can remind him of the question. I ask him to return to the question.

Senator Santoro—Of course, if Senator Evans is patient, he will get all the facts and all the statistics that Senator McLucas has asked for. As I was saying, in 2006, 170 services have provided evidence of meeting the 1997 certification fire safety standards, which represents 91 per cent of services. As at 20 October 2006, 244 services had not met the higher fire standards of the 1997 certification instruments. Of these, all but three have confirmed the time frames for building works planned or in progress to meet the 1997 standard. That is a very specific answer to Senator McLucas’s question. All 244 of those aged-care facilities have submitted plans and have given a very clear indication of remedial work that is underway to the satisfaction of the agency and the department. We are very happy to have had those commitments, and the department will continue to monitor the performance against those commitments.

There are 110 homes that have been identified for potential review under section 39-4 of the Aged Care Act 1997, 59 of which have been assessed and provided with a detailed report of the required improvement for fire safety. All homes that have not met the 1997 instrument were referred to the Aged Care Standards and Accreditation Agency and, as I have informed the Senate previously, continue to be monitored to ensure the safety and wellbeing of residents is being maintained. This is an ongoing issue and it is under very active consideration by the department and the agency. We take our responsibilities far more seriously than the Labor Party did when it was in government.

Senator McLucas—Mr President, I ask a supplementary question. Have all of the 217 non-compliant facilities fully acquitted the $3,500 per resident grant given to facilities in 2004 to pay for the upgrades needed to meet the fire safety standards? Isn’t it a fact that some of the 217 facilities have indicated to the department that they have no intention of doing the upgrade work to meet the fire safety standards? What is the intended response to those facilities? Just when will the December 2005 deadline actually be enforced? When will all residents be in facilities that meet the Commonwealth’s fire safety standards?

Senator Santoro—I want to assure the Senate and anybody listening to the question and the answer that residents within Australia’s aged-care facilities are living in safety and tranquillity compared with the situation when the Labor Party was in power. What I can say is that the $3,500 per resident which was in fact received by aged-care providers was, in the overwhelming majority of cases, spent very wisely to improve safety standards and conditions within aged-care facilities. I want to take this opportunity to thank and congratulate those providers who topped up the money provided to aged-care providers within the aged-care industry. It is not just the government that is making a contribution to the safety of aged-care residents; it is also the many excellent providers who believe in best practice, and we intend to continue to encourage and assist them.

Distinguished Visitors

The President—Order! I draw the attention of honourable senators to the pres-
ence in the President’s gallery of a parliamentary delegation from the Assembly of the Republic of Portugal, led by Dr Jose Luis Arnaut, Chairman of the Parliamentary Committee of Foreign Affairs and Portuguese Communities. On behalf of all senators, I wish you a warm welcome to Australia and, in particular, to the Senate.

Honourable senators—Hear, hear!

QUESTIONS WITHOUT NOTICE

Environment

Senator FERRAVANTI-WELLS (2.21 pm)—My question is to the Minister for the Environment and Heritage, Senator Campbell. Will the minister inform the Senate how the Howard government’s environment policies and programs are delivering real results for the environment? Is the minister aware of any alternative policies?

Senator IAN CAMPBELL—I thank Senator Fierravanti-Wells for her question. The Howard government has invested roughly quadruple what the previous Labor government invested in the environment. We have also put a lot of effort into making sure it delivers on-the-ground results. I will run through some of those programs. With regard to climate change, which I think is very high on the list of most citizens who have concerns about the environment, we are on track to invest in excess of $2 billion in projects such as building the largest solar power plant anywhere in the world, using geothermal and hot rocks and capturing carbon and burying it under the sea.

In terms of water, we have invested over $2 billion in the Australian government water fund to secure Australia’s water future. We have invested $3 billion in the Natural Heritage Trust and $1.4 billion in the National Action Plan on Salinity and Water Quality. We are delivering results right across the Australian landscape through our regional delivery structure, which is on track to plant in excess of 750 million trees across Australia, protecting remnant vegetation. We are protecting, through the National Reserve System, in excess of 10 per cent of the Australian land mass now put into reserves under the Howard government at a cost of $87 million and protecting some of our rarest biodiversity, our rarest Australian wildlife and our wetlands.

With respect to the Great Barrier Reef we have—much to the delight of the finance minister—invested over $100 million to lock up and protect in excess of one-third of the Great Barrier Reef as an historic and internationally recognised marine protected area. In the Murray River, we have a plan in place to deliver 500 gigalitres of water to the environment, topping up funding under the Living Murray program with a further $500 million to give that river a chance to revive the crucial environment and also to protect agriculture along that route.

From the other side we have, in alternative policies, just slogans. There are no serious policies. We have a slogan in relation to climate change under Labor which just says ‘Sign Kyoto’. The whole world is trying to design a new Kyoto and the mob over there is saying, ‘Let’s sign up to the old one,’ the one that does not work, the one that is seeing greenhouse gas emissions go up, in fact, by 40 per cent.

We see Labor deeply divided on the issue of uranium. We know that uranium and nuclear power will play a role in a low-emissions future for the planet, yet Labor are deeply divided. We have Mr Albanese on one side saying no and Mr Ferguson on the other side saying yes. We have Labor deeply divided on the role of clean coal. We have half of the Labor Party saying, ‘No, we’ve got to get rid of coal and close down the coal mines,’ and the others confusing the message.
In relation to the Murray, they have one slogan saying ‘1,500 gigs for the mighty Murray’, yet Labor do not have a policy to deliver it. In fact, what Labor have not realised is that there was not even 1,500 gigalitres poured into the entire Murray-Darling Basin system for this entire year. They have no funding, no policy and just another slogan. On the Great Barrier Reef, we know that their only slogan is to tear up the boundaries that we plan to lock away in legislation for seven years.

The biggest challenge for Mr Rudd is to do away with the pure style and pure slogans and finally, after 10 years, come up with a policy, fund it and protect something that the Australian population cares about. Australia’s unique environment is something that is worthy of protection. The Howard government protects it with record amounts of funding and programs that deliver good environmental outcomes.

**Aged Care**

**Senator WEBBER (2.25 pm)—**My question is to Senator Santoro, the Minister for Ageing. Is the minister aware that a review ordered of Greenmount Gardens Nursing Centre, in my home state of Western Australia, last month found that it was failing to meet critical care standards including clinical care, medication and pain management and nutrition and hydration? Doesn’t the audit team’s report conclude that: residents were being incorrectly administered medication; residents at risk of dehydration were not being identified; and, due to staff shortages, staff did not have the time to ensure appropriate care was provided and documented? Can the minister explain to families and residents why no sanctions or penalties have been imposed on this facility, when it was clearly failing to deliver appropriate care to frail elderly residents?

**Senator SANTORO—I** have just sought to consult my briefing notes for specific aged-care facilities. I do not have a briefing note on that in my folder. I undertake to look into the issues that have been raised by Senator Webber and I will make a statement if necessary as early as possible.

**Senator WEBBER—**Mr President, I ask a supplementary question. I appreciate the fact that the minister is going to come back to the Senate with some information but does not this case follow that of Elizabeth House Private Nursing Home earlier this year—one I know the minister is aware of—which failed 30 of the 44 care standards but was not sanctioned like the facility that my grandmother lives in, which he is also aware of? Is the minister able to provide the same personal guarantee to the residents of Greenmount Gardens that he gave on 18 October this year, when he promised that every resident in the Elizabeth House Private Nursing Home was receiving top quality care?

**Senator SANTORO—I** wish to note today that my personal guarantee to Senator Webber has not been called into question since I gave that personal guarantee. As I said a minute or so ago, I do not have the specific information that Senator Webber wishes for. She would appreciate that there are over 3,000 aged-care facilities that are accredited throughout Australia. Obviously, I cannot have a brief on each and every one of them, but I undertake to get back as soon as possible if there is in fact anything to report.

**Mining Industry**

**Senator LIGHTFOOT (2.27 pm)—**My question is to the Minister representing the Minister for Industry, Tourism and Resources, Senator Minchin. Will the minister advise the Senate of the importance of the mining industry to the Australian economy? What possible threats are there to the economic contribution of the mining industry?
Senator MINCHIN—I thank Senator Lightfoot for that question. Certainly, Senator Lightfoot is well aware, more than most, of the importance of the mining industry to Australia. Indeed, minerals and mineral processing account for some eight per cent of our GDP but, even more importantly, annual exports are now around $68 billion, over one-third of our total exports out of this country. The industry now employs 320,000 Australians—most, of course, in regional and remote parts of the country.

Some sectors are very strong in particular. We are the world’s biggest exporter of black coal, the biggest exporter of iron ore and the biggest exporter of gold. Irrespective of where the world moves in future on CO₂ emissions, coal will remain the predominant fuel for power generation world wide for many years to come—and we are, as I said, the biggest exporter. We are currently exporting $25 billion a year of coal. Uranium mining represents a very big opportunity for us. We are already exporting some $500 million of uranium and we hold 40 per cent of the world’s low-cost uranium reserves.

But the mining industry does face a number of threats to its long-term future. The biggest threat, in our view, is the election of a federal Labor government, irrespective of who might be the leader. Labor remains hopelessly divided on the question of uranium mining. In that context it is interesting to note that nuclear power now plays a vital role in power generation world wide. There are 443 nuclear power reactors operating in 31 countries around the world, in the absence of which CO₂ emissions would be over two billion tonnes per annum higher than they are. It is in fact an act of national folly for the ALP and its state governments to restrict our ability to increase our supply of uranium to this world market. ABARE issued a report last week saying:

Australia has the potential to increase uranium mine production significantly, as it has the world’s largest resources of low-cost uranium and a number of advanced uranium projects. However, future growth in Australia’s production and exports of uranium will be determined to a large extent by whether or not new uranium mines can be developed.

The House of Representatives Standing Committee on Industry and Resources issued a report only today unanimously calling for the opening of new uranium mines. The Labor members of that committee joined with coalition members in saying that Labor’s three-mines policy is ‘illogical, inconsistent and anticompetitive’. Hear, hear! But we still have many in the Labor Party, including Mr Albanese from the House of Representatives, and the Western Australian Premier, Mr Carpenter, determined to block any new uranium mines developing.

The Labor Party remains a threat to the mining industry in other ways. Labor’s policy, now reaffirmed by the new leader, Mr Rudd, to abolish entirely Australian workplace agreements, would do enormous damage to Australia’s mining industry. Almost one in two workers in the minerals sector is now employed under an AWA. In the metals sector four out of five employees are on AWAs. The mining industry itself estimates that Labor’s policy would cost the industry $6 billion. Labor’s policy to unilaterally sign up to a domestic emissions-trading regime would drive many of our minerals-processing industries, like aluminium refining, offshore.

Our approach to the mining industry, on the other hand, demonstrates the very clear differences between the Labor Party and the government in relation to this vital industry. Labor is beholden to sectional interests such as the union movement, which is already telling Mr Rudd what to do, and of course the green movement. It is much more inter-
ested in keeping them happy than making Australia’s economy stronger. Our government, on the other hand, has a plan to keep our economy growing and to put even more Australians into jobs.

**Nuclear Waste**

**Senator ALLISON** (2.32 pm)—My question is to the Minister representing the Prime Minister. On 6 July the Prime Minister told ABC radio:

I am not going to have this country used as some kind of repository for other people’s nuclear problems … waste problems.

On 19 July Minister Campbell told Mr Laurie Oakes on the *Sunday* program:

The Prime Minister has made it quite clear that we won’t be storing other people’s waste in Australia.

Minister, today the House of Representatives Standing Committee on Industry and Resources report on Australia’s uranium says ‘a waste management industry could be of immense economic value to the nation’, suggesting a ‘role for Australia in the back-end of the fuel cycle’. It also wants Australia to adopt a licensing and regulatory framework to establish a fuel cycle service in Australia—in other words, to store other countries’ nuclear waste. Can the minister tell the chamber exactly what is the policy of the coalition government on the storage of the nuclear waste of other countries?

**Senator MINCHIN**—In response to Senator Allison’s question, I can assure you that the government’s policy is very clear. We believe that each country should be responsible for its own radioactive waste. Indeed, it was during the period that I was Minister for Industry, Science and Resources that we enacted appropriate legislation to ensure that that was the case—that we will not receive the waste of other countries. We accept our responsibility to look after our waste and we expect every other country to accept responsibility for looking after their waste and not expect Australia to do so. We are opposed to the importation of other countries’ waste, and that is now a matter of law, for which we are responsible. So whatever the House of Reps committee may say on that—and I know that there are others around the world who think that Australia would be a good place to store other countries’ nuclear waste—we reject that proposition.

Our position is quite clear on this matter. Indeed, we have taken our responsibility to store our waste very seriously, unlike other parties in this parliament who have not supported the former Labor policy, enacted by Mr Crean when he was the responsible minister, to make sure that Australia had its own purpose-built low-level radioactive waste repository—a policy that we inherited from the former Labor government and which we have endeavoured to put in place to ensure that Australia does responsibly look after its own low-level radioactive waste, a policy continuously sabotaged by parties on the other side of the chamber in this place and by state Labor governments. So we continue to have the ridiculous situation where Australia’s low-level radioactive waste is stored in basements and safes all over the country, in hospitals and research institutes. It is a ridiculous situation. We do take seriously our responsibilities to look after our own waste. We wish other parties would join us in ensuring that we can do so.

**Senator ALLISON**—Mr President. I ask a supplementary question. Minister, the House of Reps report also unanimously recommends an expansion of uranium mining and export. Is the minister aware that there are almost as many nuclear weapons around the world now as there were when the nuclear non-proliferation treaty was signed some 30 years ago and that the Director-General of the International Atomic Energy Agency has called for greater action and
strengthening of nuclear proliferation safeguards, specifically to tighten controls for access to nuclear fuel cycle technology and to accelerate global efforts to protect nuclear material? Minister, shouldn’t Australia wait until the safeguards are strengthened before we put more uranium on the market?

Senator MINCHIN—Australia has probably the most stringent safeguards in the world on the export of its uranium, developed in a very sophisticated and comprehensive fashion over many years, primarily by coalition governments, to ensure the safety and security of uranium exports from this country, which, as I said in my previous answer, go to ensuring that the 31 countries around the world who are reliant on nuclear power—including, for example, France, which I think generates some 70 per cent of its electricity from nuclear power—have the capacity to do so. We will continue to ensure those safeguards are maintained at the absolute highest standard that we are capable of delivering. I would point out to Senator Allison, as I said in my previous answer—as she professes to be extremely concerned about emissions of carbon dioxide—that the nuclear power plants that are in operation around the world, which rely on exports of uranium from our country, save the world some 2½ billion tonnes in CO₂ emissions every year. (Time expired)

Broadband

Senator PARRY (2.37 pm)—My question is to the Minister for Communications, Information Technology and the Arts, Senator Coonan. Will the minister inform the Senate how this government is expanding access to broadband? Further, is the minister aware of any alternative policies?

Senator COONAN—I thank Senator Parry for the question and for his ongoing interest in telecommunication services, in particular access to broadband in Tasmania. It is true that we have heard many varying opinions on Australia’s broadband service, but the fact is Australia is neither leader nor laggard. Australia has a good broadband story to tell and we are determined to ensure that the broadband story evolves and improves in the future.

Demand for and access to broadband services today are on the up. Today Australia has the second fastest take-up of broadband in the OECD, after Denmark. Around 90 per cent of Australian households and small businesses can have access to broadband speeds of between two megabits per second and eight megabits per second via ADSL; and from next year Telstra’s Next G is also expected to offer more multimegabit broadband speeds.

There are also now more than a dozen ADSL2+ providers supplying even faster speeds. Playing catch-up to its competitors, Telstra recently switched on its ADSL2+ service to more than 340 exchanges. I call on Telstra to go further and make ADSL2+ available to more than 90 per cent of consumers. They can do this at the flick of a switch because the ACCC have made it very clear that they have no intention to declare the service.

I have been asked about some alternative policies. The question for the Senate is: what will Labor’s policy on broadband be now that the leadership deckchairs have been shuffled again? I congratulate Senator Conroy on being re-elected Deputy Leader of the Opposition in the Senate and I certainly hope he comes back soon because I really miss him.

Last year, in his budget reply speech, Senator Conroy pulled Telstra’s publicly announced broadband plan off the shelf and—guess what—rebadged it as Labor’s new broadband policy. And when Telstra pulled out of that deal earlier this year the house of
cards on which Labor’s plan was built collapsed at Senator Conroy’s feet and he was left with a multibillion-dollar sham plan.

Senator Conroy is well known for his statement that he does not really have any particular policy interests. I do not know whether he has reached a fork in the road—it seems as if so many other Labor members have—but it now seems abundantly clear that Labor is unable to do the hard yards and come up with a workable policy for the provision of broadband across Australia. In the meantime, the coalition government gets on with business. In the last 12 months we have gone from the fifth fastest in broadband take-up to the second in the OECD. We have committed more than $1 billion to ensure equitable access to broadband, irrespective of where people live. There are now more than four million homes, businesses, schools and community organisations, among others, who have access to fast broadband. This is broadband in action. As usual, the Labor Party is missing in action.

**Australian Communications and Media Authority**

**Senator WORTLEY** (2.41 pm)—My question is to Senator Coonan, Minister for Communications, Information Technology and the Arts. I refer the minister to the investigation by the Australian Communications and Media Authority into a disturbing incident on the Big Brother program in July that was streamed live over the internet. Can the minister confirm that ACMA found that there is a loophole in the current law and that material streamed live over the internet is not regulated? Does the minister recall stating that legislation would be introduced at the earliest opportunity to ensure new internet services would be subject to the same content restrictions that apply to television? Can the minister explain to Australian families concerned about offensive internet content why this legislation has still not been introduced into the parliament? Will the minister guarantee that the legislation will be in place before the new series of Big Brother starts early in 2007?

**Senator COONAN**—Thank you to Senator Wortley for the question. In answer to the last part of her question, my understanding is that it will most certainly be in place before the next screening of Big Brother. As Senator Wortley may be aware, the government, well prior to the particular incident to which she alludes, had the authority, ACMA, conduct an inquiry into the extent to which live and streamed content over the internet was able to be regulated.

In fact, the review had identified some bases upon which the legislation could be strengthened—indeed, strengthened more broadly than just over the internet, but also over mobile telephones, particularly in relation to triple play. Clearly, in the circumstances, it is very important that the government be in a position where it can have the best possible legislation to deal with all possible ways in which the internet is evolving, without in any way impeding the freedom of the internet. We want to make sure that content on the net is appropriate and can only be accessed in appropriate ways.

So we have had this review as to convergent devices, and there will be some legislation introduced into the parliament, I think in the next sitting. The government takes very seriously the need for appropriate material on the internet, certainly in terms of streamed material. The legislation has been drafted; it is now being consulted on by industry. So far as I am aware, it will be introduced in February next year and, subject to the consultation that is currently underway, I am very confident that the government will have in place a scheme to deal with the emerging technology as it occurs.
Senator WORTLEY—Mr President, I ask a supplementary question. Can the minister confirm that the national internet filter scheme that she announced in June is still not in operation? Can the minister explain why the protection of Australian families from exposure to harmful internet content has been given such a low priority by this government? Why has the government failed to do all it can to protect Australian children from dangerous internet content?

Senator COONAN—I have actually been reminded by Senator Kemp, who I think lived through all of this, how absolutely extraordinary this is. It is very hard to take the Labor Party seriously on this issue. They are the same Labor senators who opposed all of the government’s attempts to protect Australian families from offensive content on the internet. The Labor Party even went as far as to oppose legislation to prevent the misuse of freedom of information to obtain access to the addresses of websites, including child pornography, that have been taken down by the regulator. The Labor Party should not be coming in here and trying to lecture this government about matters that we take very seriously and will continue to take seriously to protect children—(Time expired)

Illegal Immigration: Detention

Senator NETTLE—My question is to the Minister for Immigration and Multicultural Affairs, Senator Vanstone. Given the news today that Sweden has had to step in and rescue the Iraqi refugee Mohammed Sagar, whom Australia abandoned on Nauru five years ago, will the government now grant a visa to the other Iraqi refugee, Muhammad Faisal, who was similarly abandoned by Australia on Nauru five years ago and now spends his days in a psychiatric hospital in Brisbane?

Government senators interjecting—

The PRESIDENT—Order! Senators on my right, there is too much noise.

Senator VANSTONE—I might start by indicating to the Senate that it is not at all a correct interpretation of the events that have occurred to say that people have been abandoned on Nauru. In fact, if that were the case, Mr Faisal would not be in Australia receiving medical treatment. It is a somewhat difficult leap of faith to say that he was abandoned on Nauru when he happens to be in Australia receiving medical treatment. There is a little problem of a jump between a leap of faith and facts there, Senator—but I have had that problem with you before. Mr Sagar has apparently been offered resettlement in a third country. I note that you referred to a particular country. I do not know where you have got that advice. UNHCR and the third country involved had asked that that not be bandied about—but that is for you to answer to, not me. But, once again, I notice that you will do things that suit you rather than assist the UNHCR in their task.

The United Nations High Commission for Refugees has secured a place for Mr Sagar in a third country. We are very grateful to them for working on that task. They indicated that they would, and they have knocked on a number of doors. This is therefore a successful resolution because Mr Sagar has an adverse security assessment and Australians do not want people who have adverse security assessments brought to Australia. The senator well knows that I cannot go against the adverse security assessment. I do not know what it is, and I do not seek to ask. There is another agency that is properly charged with that. We have trust and faith in that agency. They have given an adverse security assessment, and that is that.

As to Mr Faisal—who you declared as being abandoned on Nauru—as you say, he is in Australia receiving medical treatment.
Therefore he is not, in your terms, abandoned on Nauru.

Senator NETTLE—Mr President, I ask a supplementary question. I note the minister’s answer that this has been a ‘successful resolution’ after five years for Mohammed Sagar on Nauru. Does the minister also consider that it is a successful arrangement that Mohammed Faisal, after five years on Nauru, has become so suicidal he had to be evacuated from Nauru and now spends his days in a psychiatric hospital in Brisbane? Can the minister also answer: how long will the eight Burmese asylum seekers who are currently in Nauru be left to languish there? Will it be another five years, Minister?

Senator VANSTONE—Just for the sake of my colleagues I think it is important to remind them that the question comes from the senator who did a press conference asking whether Immigration was responsible for someone being tipped over a balcony and coming to some harm in Sydney airport. She then later announced she did not really know whether there were Immigration people involved or not and the only reason she did it was it seemed a good thing to do.

The Burmese people have been there for six weeks. That is a very short period of time. I understand the doomsayers want to go out and predict doom and gloom in advance, but they have been there for a very short time. We are doing everything we can to resolve that issue. When I have some more to say on that I will say it.

Defence: Joint Strike Fighter

Senator MARK BISHOP (2.50 pm)—My question is to Senator Ian Campbell, representing the Minister for Defence in this place. While the government has reconfirmed its intent to purchase the Joint Strike Fighter, it is yet to explain how it will fill the capability gap between the retirement of the F111s in 2015 or beyond. Didn’t the Minister for Defence admit this earlier this month when he stated that ‘the government is looking at cost-effective options’ to ensure that we maintained air superiority in the region through that gap? Given the retirement of the F111s is just three years away, will the government announce the options and costs being considered and when will it actually make a decision on this critical issue? Why is the government so keen to commit $16 billion to purchase the JSF, yet so reluctant to explain how it will ensure Australia maintains its regional air superiority before it arrives?

The PRESIDENT—That was a very long question, Senator. I remind you of the time limits on questions.

Senator IAN CAMPBELL—I thank Senator Bishop for a very important question about Australia’s air defence. The government’s view is that there should not be any lack of air defence capabilities between the commissioning and bringing into service of the JSF and the phasing out of the F111. In the brief reading of the notes provided on this issue, I note Deputy Chief of Air Force, Air Vice Marshal John Blackburn, told a media briefing on 10 October this year—as reported in the Canberra Times on 11 October—‘We are confident that, with the program as it is currently progressing, we should not need an interim solution’. The upgrades to the FA18 together with these additional capabilities will deliver greater precision within the strike capability than available through a combined pre-upgrade of the FA18 and the F111 fleet. When the F111 is withdrawn from service, the strike role will transfer to the enhanced FA18 and then ultimately to the JSF. In terms of the costings that Senator Bishop asked about, they are important questions. I have some notes on costs here but I have not read
them in thorough enough detail to report them to the Senate. I will be happy to provide further detail subsequently.

Senator MARK BISHOP—I ask a supplementary question, Mr President. I thank the minister for that partial response. Can the minister confirm that any interim options to maintain our air superiority will be additional costs over and above the $16 billion for the JSF itself? Is the government now expecting taxpayers to pay potentially hundreds of millions of dollars because it has failed to plan for the implementation of this new defence capability? What are the cost implications if the delays in the delivery of the JSF, as reported, significantly slip to 2017 or beyond?

Senator IAN CAMPBELL—I cannot do any better than to quote Air Vice Marshal John Blackburn, who made it quite clear that he is confident—and this is the air vice marshal in charge of the project—and he said, ‘We are confident that, with the program as it is currently progressing, we should not need an interim solution.’ In terms of the costings, I said at the end of my first answer that I am happy to provide Senator Bishop with further details.

Aged Care Services

Senator HUMPHRIES (2.54 pm)—My question is to the Minister for Ageing, Senator Santoro. Given the well-known problems surrounding the ageing of the Australian population, particularly the expected increase in the number of aged people in the coming years, can the minister advise the Senate what new steps are being taken by the Howard government to ensure that our aged care system is accessible for all older Australians and their families?

Senator SANTORO—I thank Senator Humphries for another thoughtful question. Senator Humphries continues to provide me with much good insight and advice about the operation of the aged care industry. I am sure that all senators in this place will agree with me when I say that finding the right place to care for and support an older person is one of the really important decisions in their lives—whether it is for parents, spouses or individuals. The Howard government has recognised this and has responded by creating a new website that will make it easier to search for aged care services. I had the pleasure to launch the Aged Care Australia website in Parliament House last Thursday which was attended by representatives from the aged care industry and seniors organisations. The website can be found at www.agedcareAustralia.gov.au. It will provide faster access to information about aged care services through its interactive capabilities. People can save valuable time searching for the right home. Instead of travelling to several places to compare services, internet users can now view and compare homes online and decide which best meet the needs of the particular person for whom they wish to find care. With the click of a button, users can view photographs of facilities as well as maps of their location which show proximity to shops, parks and other important facilities such as churches and sporting clubs, which some older Australians still use right into old age.

The website also helps people search for services in their local area to support them staying at home, including personal nursing, home modification, maintenance and transport services. Users will also have the ability to store, update and share with family and friends material they have selected from the site. It also allows family members, interstate or overseas, to be part of what is a very important decision. Many a time I have been told by people who live overseas who have an elderly relative in Australia being cared for by relatives here how much they would like to participate in that important decision.
I think that this website now enables them to do so. These search tools not only allow consumers to find the service that they need but also give service providers a real incentive to improve the quality of the services, and information on sanctions, certification and accreditation will be readily accessible to consumers.

In the past, people looking for information about aged care have used the phone, but we know from new research that many now prefer to find it on the internet. The latest ABS data shows that one in five older people among the 65-plus age group use a computer at home—up from about 10 per cent in 1998. That is just a staggering statistic. I was able to tell people at that launch last Thursday about an elderly person who was being looked after and assisted by a volunteer from the community. That elderly person was 98 and was navigating the internet and particularly looking out for aged care services in a way that would put many of us younger people who use the internet to shame. Undoubtedly that person was benefiting greatly from Senator Coonan’s great work. Internet usage in the 45- to 54-age group, baby boomers who are looking for aged care options for their parents, has also increased from around 25 per cent in 1998 to around 60 per cent. This data certainly illustrates the usefulness of this new initiative, and I am proud that the Howard government has been able to deliver again for older Australians.

Airborne Early Warning and Control Aircraft Project

Senator HUTCHINS (2.58 pm)—My question is to the Minister representing the Minister for Defence, Senator Ian Campbell. Can the minister confirm that the project to acquire six airborne early warning and control aircraft is two years late? Can the minister guarantee that taxpayers will not have to pay for a cost blow-out in this project on top of the $3½ billion that has already been budgeted? In light of the two-year delay, does the government intend to review its budget decision to spend $469 million on this project this financial year? Will the government also come good on Minister Nelson’s threat of 29 June to pursue damages from the contractor given that the project is now two years late? Aren’t taxpayers entitled to expect that there will be consequences for contractors who fail to meet contract requirements to deliver multibillion dollar projects on time and on budget?

Senator IAN CAMPBELL—I am happy to get all of the details that Senator Hutchins has asked for. The government is very focused on making sure that Australian taxpayers get value for their money. What we see in defence under the Howard government is a substantial increase in defence spending, a substantial movement in defence spending towards the sharp end in making sure that we are combat ready, and historic levels of investment in world-leading technologies to ensure the defence of Australia. It is in stark contrast to the running down of Australia’s defence preparedness under Labor, the running down of investment in defence under Labor and the massive decrease in combat readiness under Labor. It is audacious of Labor to ask questions about major defence contracts when everyone always remembers Labor’s management of defence contracts. Senator Kemp regularly says three words about the biggest bungled defence contract in Australian history under Labor: the Collins class submarine.

Senator HUTCHINS—Mr President, as you are aware, the minister did not answer my question. Is the minister aware of reports that Qantas will seek compensation from the manufacturer if its 20 new A380 aircraft are two years late? Why aren’t Australian taxpayers entitled to the same protection given
that Defence’s six airborne early warning and control aircraft will also be two years late?

Senator IAN CAMPBELL—I have said to Senator Hutchins that I will in fact give him details in relation to the question in terms of the costings and the detail of that program. But I reiterate the point that the coalition government under John Howard’s leadership is investing more in defence. It is also substantially making sure that the money that is spent on defence is for effective equipment and that it is also putting more money into the front end, with capabilities undreamt of under Labor. Labor ran down Australia’s defences, infrastructure and Defence Force personnel, and under the coalition we have built those defences to historic levels.

Senator Chris Evans—Mr President, I raise a point of order going to relevance, but also the fact that the government is unable to provide any answers in relation to serious defence questions, because the minister will not bring in a brief. I ask Senator Minchin to think about the performance. More and more answers are being refused on the basis that the minister does not know anything about it. The minister has been asked two very serious questions on defence and the government has no response. The point of order is on relevance. If the minister does not know anything and will not bring in his brief, then he ought to sit down and not rave on.

The PRESIDENT—On the point of order, the minister did say that he would take the matter on notice and I am sure he will.

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

QUESTIONS WITHOUT NOTICE: ADDITIONAL ANSWERS

Aged Care

Senator SANTORO (Queensland—Minister for Ageing) (3.03 pm)—I would like to add to the response that I provided to Senator Webber’s question in relation to Greenmount Gardens in Western Australia. The agency found that there was no serious risk to residents. Issues of noncompliance have been put on the timetable by the accreditation agency for improvement by the deadline of 12 January. The home has agreed to measures to urgently address issues of non-compliance raised by the state. I can inform Senator Webber and the Senate that another visit is scheduled on 12 January, at which time the agency and the department will determine whether the home has addressed the areas of noncompliance. I have been informed that if progress is not satisfactory at that time the department will then consider going down the path of sanctions.

This is the process that is also working well in relation to Elizabeth House, the other example that was raised by Senator Webber. The timetable for improvement in that case does not expire until 15 December, but I can inform Senator Webber and the Senate that already the home has been assessed as complying with 43 of the 44 outcomes. I wish to repeat that: the home has been assessed as complying with 43 of the 44 outcomes. So I can confidently say that the process is working to bring the home back into compliance without the heavy-handed, punitive measures advocated by the Labor Party which consequently would impact heavily on both the residents and the staff of the home.

PARLIAMENTARY LANGUAGE

The PRESIDENT (3.04 pm)—On Friday, at the time for the adjournment debate, Senator Moore, in the chair, undertook to refer to me a point of order taken by Senator Bob
Brown to the effect that certain words uttered by Senator Ian Campbell were offensive under standing order 193 and should be withdrawn.

Senator Campbell ascribed certain policies to the Greens. Statements about the effects of the policies of parties which are regarded by the parties concerned as incorrect or misleading are usually dealt with by way of claims of misrepresentation and correction in debate. This is how Senator Brown initially referred to Senator Campbell’s remarks on Friday, and how such remarks have been dealt with in the past.

On this occasion, some difficulty was created by the Committee of the Whole reporting progress and the adjournment debate commencing before Senator Brown could respond in debate in Committee of the Whole. In other possible situations it may be difficult for a senator claiming misrepresentation to make a response as early as the senator would like.

Claims about the effects of the policies of parties, however, should continue to be dealt with as matters of misrepresentation and correction in debate rather than offensive words under standing order 193. That standing order should be reserved for its intended purpose of avoiding words which are personally offensive within the meaning of the standing order.

Senator Bob Brown—Mr President, if I may respond to your ruling, that was the point that I made clear in this place on Friday: the words used by Senator Ian Campbell were personally offensive to me. From the chair, Acting Deputy President Moore asked for those words to be withdrawn. Senator Campbell did not withdraw the words and I remain offended. It is not a matter of debate on policy. The senator made an accusation against me which was untruthful and highly offensive to me personally. Mr President, I ask you to look again at the matter and rule that section 193(3) of the standing orders has been breached by Senator Campbell, with the particular use of the words that I referred to, and that Senator Campbell is requested to withdraw those words because they are highly offensive.

The PRESIDENT—I was not here, and we have reviewed the Hansard. I have taken advice and that is why I gave the ruling I did today. I will have another look at the matter in the light of what you have just pointed out, but my understanding is that it was a misrepresentation rather than an offensive word.

Senator Bob Brown—Thank you.

QUESTIONS WITHOUT NOTICE:
TAKE NOTE OF ANSWERS
Aged Care

Senator McLUCAS (Queensland) (3.08 pm)—I move:

That the Senate take note of the answers given by the Minister for Ageing (Senator Santoro) to questions without notice asked by Senators McLucas and Webber today relating to aged care. I should say that they were responses, not answers, in my motion. I have to say it was a particularly poor effort by the Minister for Ageing today. I am sure Senator Webber will go to the substance of the answer to her question, but even in the question that I asked, which went to the issue of fire safety, the only reason the minister got onto answering the question was because he was called to order by our leader in the Senate.

He started off by filling in time talking about something that happened in 1994. Yes, we did do an inquiry into aged care in 1994, but let us remember that is 12 years ago and to rely on something that occurred 12 years ago as a defence for what the government is currently doing is a pretty long bow to draw. Yes, the Labor government in 1994 was concerned about aged care; yes, we undertook
an inquiry; and yes, we started the process of delivering the response to that inquiry. For
the minister to say that something that hap-
pened in 1994 was the reason that we are in
this mess and therefore it was of course al-
ways the Labor Party’s fault, I have to say, is
a pretty poor defence. Senator Santoro also
accused me—and he does at every possible
occasion—of scaremongering. I refute that
allegation absolutely and I will continue to
do so.

The simple fact is that there are 217 resi-
dential aged care facilities out of nearly
3,000 in Australia that do not comply with
the 1999 Commonwealth fire safety stan-
dards. Many senators in this place know this
story: there was a discussion with the aged
care sector and agreement between the aged
care sector and the government that there
needed to be improvement in building stan-
dards and fire safety. It was an agreed posi-
tion. The Labor Party agreed with that posi-
tion. The government allocated $3,500 for
every resident in every aged care facility in
Australia in order to achieve that goal. Labor
agreed with that as well, but Labor at that
point said, ‘What are the processes that this
government is putting in place to ensure that
that money is spent on improving building
standards and fire safety?’ That is where the
policy flaw in the government’s proposal is:
there is no assurance that the money allo-
cated, the $513.3 million, will end up being
spent on improving building standards and
fire safety.

I think the minister himself said, ‘The
overwhelming majority has been spent
wisely.’ That is simply not good enough.
When you spend over half a billion dollars
and you come to the view that the over-
whelming majority was spent wisely, the
taxpayers of Australia do not think that is
good enough. We need to have an acquittal
process where we can be assured that the
money that was allocated by this government
is actually spent improving the safety of
older, vulnerable Australians who live in
residential aged care facilities in Australia.

I ask the question: how does the minister
know that the overwhelming majority of that
money was spent wisely? There is no process
for the minister to understand how much was
spent and where. What is going to happen to
those facilities where the money was not
spent wisely? It is not good planning. It was
a good policy with a bad structure when it
was implemented because we were never
quite sure that the money was going to end
up where it was intended.

We still do not know what is going to
happen to those 217 facilities. Some appar-
ently are going to have a review. I will have
a good, close look at the Hansard to find out
what the minister did actually say. But I am
very concerned about the three—and I will
check again with the Hansard—facilities in
Australia who refuse to engage with the gov-
ernment, who refuse to tell the government
what they are going to do in order to meet
the 1999 fire safety compliance, and the
government are not doing anything about it
in order to ensure that money was spent
wisely. (Time expired)

Senator PATTERSON (Victoria) (3.13
pm)—Whenever Labor get up and talk about
aged care, their concerns and their tears are
crocodile tears; their comments are nothing
short of hollow and hypocritical. All you
have to do is look back at Labor’s record on
aged care, and it was nothing short of dis-
graceful. Senator McLucas talks about tax-
payers not thinking that our system is worth
the money they are paying. Let me tell you:
they were very critical of Labor’s record.
When they had the Gregory report back in
1994, it found that 13 per cent of nursing
homes did not meet relevant fire authority
standards. That is what Senator McLucas is
complaining about now. Thirteen per cent of
nursing homes then did not meet relevant fire authority standards; 11 per cent of nursing homes did not meet the relevant health authority standards; 70 per cent of nursing homes did not meet the relevant outcome standards; and 51 per cent of nursing home residents were living in rooms with three or more beds. That was the state of nursing home care when we came into government. I visited nursing home after nursing home and I saw situations that were totally unacceptable and intolerable.

The then minister, Mrs Bishop, when she took over aged care, closed 200 nursing homes. When I was shadow minister for aged care I used to lie awake at night worrying about how you would actually close nursing homes, accommodate those people while you closed them, find somewhere for them to go and relocate them. But she did it, with 200 of them. How many did Labor close before that? A big, fat zero—none. They were just full of empty rhetoric. There was no action and no substance. The Prime Minister mentioned that just today about their new leader—all style and no substance. They were all style and no substance then and they are all style and no substance today. They come in here criticising what we have done and the enormous changes that we have put into aged care and they fail to look at their record, as I said, of 13 per cent of their nursing homes failing to meet relevant fire authority standards and the other standards I listed.

What have we done? Under a number of ministers, we have put into place a certification process to ensure that aged care homes reach specific building standards. We have introduced a complaints resolution scheme and a free call number so that, if any resident, family member or staff member has a concern or complaint, it can be raised anonymously. We introduced the position of the Commissioner for Complaints, who has a role in mediating and negotiating outcomes as a result of complaints. We have required aged care facilities to meet these high standards and we have actually publicised those that do not. We have made people aware of when nursing homes fail to comply.

In addition, what we have seen is the creation of a role for a new aged care commissioner, an Office for Aged Care Quality and Compliance, a rigorous new complaints investigation procedure, compulsory reporting of abuse and legal protections for whistleblowers. What we have seen is Minister Santo Santoro taking very quick action when we saw the totally unacceptable abuse of some older people in nursing homes, particularly the sexual abuse of older people in nursing homes. He actually instituted additional funding to monitor this. But we never hear Labor talk about that.

When I was shadow minister and we saw the introduction of a bond for hostels and then the building and upgrading of hostels, I gave credit to Labor where credit was due. I always criticised them where criticism was due, but I always gave them credit. We never once hear the shadow minister come in here and say anything about the enormous changes we have put in place—the innovative programs, the new transition care programs for older people going from nursing homes to hostels and the programs to establish additional places outside of aged care facilities when people want to live in their own homes so they have choice about ageing in place. They do not talk about the new measures for strengthening accommodation bonds paid by older people to make sure that those are protected. None of those positive things are mentioned. They do not talk about dementia being made a national priority. Labor can only criticise. Labor is all about style and nothing about substance.
Senator MOORE (Queensland) (3.18 pm)—Not in direct response to a question in question time this afternoon but, rather, as an aside, Senator Abetz was justifying some of the comments made by Senator Santoro in response to a direct question—not a criticism, but a direct question about what was happening in aged care. I really hope that Hansard picked up the comment from Senator Abetz. His response was that, in his answer, the minister was contextualising. I thought that summed it up. What happens whenever people from this side of the chamber ask specific questions about issues—and it is particularly in aged care, but it could be justifiable across any other responses that we try to obtain—is that, instead of listening to the question and working out what the response is, which sometimes they may not know, and attempting to provide a response, they go into a litany of history about what happened in the past and in particular what happened in previous Labor governments.

Whilst that is interesting—and I think Senator Santoro actually used in one of his responses the words that something would be ‘of interest’ to people in the Senate—and whilst the historical context to most responses is interesting, basically what we are trying to achieve in parliament through the parliamentary questions process is to ask questions about now and the future and sometimes about what has not been done in the recent past. It does not seem to me that it should be too difficult to try to obtain some particular information.

What we were asking about today was fire safety standards. This has been an ongoing issue. In fact, in the historical lesson which we received we found out that the issue of fire safety in aged care homes has been around for a very long time. It is not un-ward for people to ask about—particularly as we tend to find out information from the minister by media release—or try to find out about what is happening with regard to the figures that we have been told of through the media release on homes that have not met the standards.

In my short time in this place these questions have been regularly asked at the Senate estimates process. It has been an ongoing issue. The response which came out of an industry discussion around what could be achieved to upgrade buildings and facilities, in particular in terms of safety, was a particular funding allocation, which we actually celebrated. Contrary to what Senator Patterson said in her comments, we actually acknowledged that giving a particular line of finance was a good thing. What we are trying to find out now, though, is what is happening. In terms of the over 200 homes which have been publicly identified as not meeting the expectation for fire safety, what is occurring to ensure that they do? That would not seem to be such a difficult question, but we cannot receive a response.

Subsequently, we heard again from the minister about a new and I think very positive initiative—the website that has been produced by his department. I am not quite sure how we were supposed to know about that website, because I have not seen that press release yet. My understanding is that it was announced with great fanfare in this place last week. Somehow no-one from this side of the chamber seemed to be aware that its launch was going on. I congratulate the minister on launching a new website process. I think that is useful.

The website will actually tell the people of Petrie, Longman and other places in the area where I happen to have my office why, when the target ratio that has been proclaimed proudly by the government—again, by press release—of 88 beds per 1,000 citizens over 70, the number of accessible beds in their
part of the world, a particularly beautiful part of the world, falls short by over 160.

The website is a good initiative. It is good to be able to go to it and look at what is available. But a website does not give you a bed. It would be more useful if we could have beds provided. We acknowledge that the government has spent money on aged care, but it is our job to ensure that we hold the government to account for the wide-ranging promises it makes to the community, see that those promises are kept. You cannot claim that you are meeting the aged-care needs of the community when in particular regions of my own state those ratios are not being met. We do applaud positive initiatives, but we think that our job as parliamentarians is to ensure that the government is held to account. And when I visit that website, which I will, I hope that every facility is named. 

(Time expired)

Senator HUMPHRIES (Australian Capital Territory) (3.23 pm)—I think we should be clear that there is a campaign going on here. It is a campaign designed to excite fear in older Australians in particular that in some way services to older Australians are at risk, in decline, not adequate, and that rigorous standards are not available to protect the people who access those services. Let us be clear: no matter what regime one establishes, no matter how many services are provided, no matter how much money is pumped into a particular sector, it is always possible to find someone somewhere who does not meet those service standards. The best questions to ask are: to what extent have standards lifted, to what extent are standards falling short, and where can the Australian community find evidence that those things are occurring?

It needs to be said absolutely clearly that the standard of aged-care facilities available to older Australians today is vastly better than it was 10 years ago—immeasurably better than it was then. I acknowledge Senator Moore’s concession that that is the case, that there have certainly been improvements and that she welcomes new initiatives. That is fantastic. But it is important when engaging in this debate that we explain to Australians that that is the case and not mislead them into thinking that there are serious problems across Australia because in some homes, in some facilities across Australia, those standards are not met.

I accept that, in debates of this kind, it is the job of Senator McLucas and others to draw attention to weaknesses in the system—but only as long as they do not mislead people into thinking that Australian aged-care facilities are facing some kind of crisis. After listening to Senator McLucas, one could be forgiven for believing that there is a crisis in Australian aged care when, in fact, in fairness, if there has ever been a crisis in Australian aged care, it took place 10 or more years ago. That is when the inquiry to which reference was made in question time today was set up which exposed the dangers and weaknesses in Australian aged care. That was the point at which there was a crisis in aged care in Australia, and that crisis has eased dramatically as a result of the actions of this government.

We have put in place measures with respect to fire safety, which was the subject of specific questions today in question time, and they have, first of all, set a benchmark that did not exist before. Today, some 91 per cent of services in Australia have provided evidence that they meet that benchmark, and I regret that there are still nine per cent that do not. But I think it is quite wrong to suggest that it is impossible for members of this parliament to understand what is going on with that other nine per cent. As the Minister for Ageing said today in question time, those homes which have not yet met that standard
have provided time frames for building works in which, they say, they will meet that standard. Of 110 homes around Australia that were identified for potential review under section 39.4 of the Aged Care Act, 59 have been assessed and provided with a detailed report on the required fire safety improvements.

As I said, there will always be cases where those standards are not met because people simply do not have the wherewithal, or the conviction or commitment, to make sure that their homes meet particular standards, but the point is that the trend is very clearly and very convincingly towards meeting those standards. There is no question about that. The situation has improved dramatically, and I believe that the government and particularly the minister should be given credit for that. Getting people information is what that website is all about. It provides people with up-to-date information on what is happening in their own region.

Senator Moore is calling for more aged-care beds. We can always do with more beds. I suspect you could double the number of beds in Australia—as indeed this government effectively has—and still find that there was a shortage of beds in some areas and in some categories of care. But again, looking at where we have come from, we can see a huge improvement, and that is the message which will come out of this debate today. There is still some way to go. But if I were a person needing an aged-care facility, I would rather be in an aged-care facility today than 10 years ago, when standards were obviously far inferior to what they are today.

Senator WEBBER (Western Australia) (3.28 pm)—I must say I was a little dismayed by the answer that Senator Santoro initially gave me to the question that I asked him today. Whilst I acknowledge and appreciate that he did provide some additional information after question time, his somewhat dismissive attitude—that I could not expect him to know about every aged-care facility in this country, all the thousands of them—was disappointing, to say the least. I do not expect Senator Santoro as the Minister for Ageing to know about every aged-care facility in this country, but I do expect him to know about each and every one that fails its audit or where the audit report shows there are some significant issues in that facility. If he does not know that, if he does not have time to read those reports, perhaps he should spend more time here and less time in Texas and actually do the job that he is paid to do. Surely, if there are thousands of them then really we should have a sense that there is a crisis—and there has not been a significant easing of the crisis, as claimed by those opposite. I do think it is the minister’s job to know about the audit reports. He seemed to know about the audit report on my grandmother’s aged-care facility, but he knew nothing about the audit report on the Greemount facility, an audit report which the community in Western Australia has known about for quite some time.

This is not an issue that suddenly came up yesterday; this issue has been known in the community in Western Australia for weeks. If it is too hard for Senator Santoro to find out about that significant aged-care facility then perhaps he should give the job to someone else. I would also say that it is, perhaps, the last refuge of scoundrels to dredge back 12 years. If that is the best excuse the minister can come up with then it really is time for him to move on. I have raised my concerns about the Melbourne facility that my grandmother lives in. It is an issue that Senator Santoro is well aware of; it is one of the facilities that Senator Santoro has given his personal guarantee is going to be fixed and that everyone in the facility is going to get top quality care. I am not interested in what
was happening 12 years ago. We are all prepared to concede that, with the ageing population—and we all talk about the ageing population in Australia—aged care is a much more significant priority for political parties on both sides than it was some time ago.

Twelve years ago, my grandmother was living in her own home, on her own, fully self-sufficient. Her youngest grandchild was six. That is how ridiculous it is to go back 12 years to find some kind of comparison. If the minister is going to herald all the supposed great achievements of this government in the last 10 years then he should fess up to the problems, too. Do not dig back 12 years—fess up to the failings as well as trying to herald supposed achievements.

As for Senator Humphries coming in here today and saying that there has been an aged-care crisis but it has ‘eased dramatically’, I wish him luck explaining that to the people in the south-west suburbs of Perth. I do not think a 500-bed shortfall in the south-west suburbs of Perth is a crisis ‘easing dramatically’. Tell that to the 500 families that are looking for a safe facility—a facility that is going to look safely after their valued older parent or grandparent, be fully accredited, have the fire safety standards it is meant to, give them their medication on time, give them their medication appropriately, look after their hydration and give them all the critical care and pain management that they need.

According to the government’s own ratio, there is a 500-bed shortage in the south-west metropolitan corridor in Perth. That is 500 families that are having to look elsewhere to find someone to look after their loved ones. That is not an easing of the crisis. That is not a dramatic easing in these times of economic prosperity. It is absolutely outrageous to come in here and not know the state of the homes that are failing their audit reports, or to claim that things have eased dramatically when there are still significant older, established suburbs in Perth that do not have the aged-care beds that their families and residents so desperately need. And the only excuse this government can come up with is that, apparently, in 1994 it was worse. That is absolutely pathetic. If that is the best the minister can do then, as I have said, it is either time for someone else to have a go or it is time for Senator Santoro to stay here and stay away from Texas. (Time expired)

Question agreed to.

Nuclear Waste

Senator ALLISON (Victoria—Leader of the Australian Democrats) (3.33 pm)—I move:

That the Senate take note of the answer given by the Minister for Finance and Administration (Senator Minchin) to a question without notice asked by Senator Allison today relating to nuclear waste management.

I must say, I am very pleased that the minister was as firm as he was in assuring us that the government was opposed to taking the radioactive waste of other countries. He said, ‘The policy is clear: each country should have responsibility for its own waste.’ Unfortunately, that will come as news to quite a few people—people who have heard the Prime Minister floating the idea of ‘product stewardship’, which are of course weasel words for taking back waste and storing radioactive material that might have emanated from this country.

They will also be surprised to hear that because of the report put out today by the House of Representatives Standing Committee on Industry and Resources. It was unanimous, I understand. Both major parties were represented on that committee. The report makes it very clear that it wants to take Australia down the nuclear fuel cycle path, including taking waste back. The report says:
The Committee concludes that, by virtue of its highly suitable geology and political stability, Australia could also play an important role at the back-end of the fuel cycle in waste storage and disposal. Again, such a development could be highly profitable...

It goes on to say:

The Committee also notes that the IAEA has suggested the eventual establishment of back-end facilities on a multinational basis. Given the prospect that some nations currently using nuclear power will not be able to establish domestic repositories (e.g. due to unsuitable geology), this is a service that Australia could be uniquely positioned to provide for the world.

You cannot get much clearer than that. One wonders how it is, if the government's policy is so strong on this issue—that is, that we are not going to touch any other country's radioactive waste—that so many members of the government, and the opposition, I might say, would put their name to a report which suggested the opposite.

Again we have seen the Prime Minister floating ideas and sending everybody off—Ziggy Switkowski to do a review of nuclear power in this country and the aforementioned committee to produce a huge document about expanding Australia's role in uranium mining and going into the nuclear fuel cycle. What is it all about when the government is saying that that is not their policy? It is my understanding that it is not the policy of the ALP either. Is it some runaway committee that has gone off and done this report, despite the fact that it is nobody's policy? Or is it just trying to persuade all of us, including the two major parties, that this is feasible on the basis of the almighty dollar—that if we do this we will make more money and there will be economic benefits for Australia?

I challenge those economic benefits, even in expanding uranium mining. I have not had the chance to read this document in full, but it does have some tables which I think are pretty interesting. The tables show that there are only 24 reactors on order around the world and even fewer being planned. Of that 24, Asia will have seven, Europe will have just two, the former USSR will have five, India, Pakistan and Iran will have by far the most at 10 and the US will have just one. So much for this idea that the future is going to be very rosy for this country because of the 'dig it up and ship it out' mentality. In fact, it is very hard to see where our uranium is going to be sold because, as I understand it, of the 441 or 443—depending on whose figures you read—nuclear reactors operating around the world, quite a large percentage are reaching the end of their natural life. They are going to go out of commission and what is there to replace them? There are just 24 reactors that are currently under construction or on order. It is fanciful to suggest that suddenly we will be making squillions of dollars selling uranium to a world which is phasing out nuclear power. I know that is not something the nuclear industry wants to hear about. It has clutched onto the greenhouse effect as one saviour but the reality is that countries around the world, other than the ones I have mentioned, are not signing on to nuclear power. (Time expired)

Question agreed to.

PETITIONS

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

Child Abuse

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

To the Honourable President and members of the Senate in parliament assembled:
This petition of certain citizens of Australia draws to the attention of the Senate, the lack of a specific offence covering the transmission of child pornography and child abuse material via mail within Australia.

Your petitioners therefore ask the Senate to make laws that:

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

by **The President** (from 21 citizens).

**Mr David Hicks**

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

The petition of the undersigned citizens of Australia draws the attention of the Senate to:

- commitments made by the Attorney-General, Hon Philip Ruddock MP, in August 2006 that he would seek the return of Australian citizen David Hicks from US detention in Guantanamo Bay if the United States of America did not lay substantive new charges against him by November 2006;

- recent statements by the Minister for Justice and Customs, Senator the Hon Chris Ellison, that it is not satisfactory that David Hicks has been held in detention for so long without facing trial;

- the recent observation of the Law Council of Australia that the new US military commissions are still grossly unfair, will not provide a fair trial for David Hicks, and will likely be challenged in another drawn-out appeal to the US Supreme Court; and

- the Fremantle Declaration signed by State and Territory Attorneys-General on 10 November 2006, which calls on all Australian Governments to uphold fundamental legal principles including the right to a fair trial, the prohibition of detention without trial, and the prohibition of torture.

Your petitioners therefore request that the Senate take action:

- immediately and decisively to end the indefinite detention of this Australian citizen;

- to ensure that he be charged and tried without further delay by a competent and independent tribunal with all of the protections of the rule of law that Australian citizens would expect, compliant with the Geneva Conventions; and

- to insist that failing this, David Hicks be returned to Australia and his indefinite detention without trial be brought to an end.

by **The President** (from 28 citizens).

Petitions received.

**NOTICES**

**Presentation**

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

That the time for the presentation of the report of the Finance and Public Administration Committee on the transparency and accountability of Commonwealth public funding and expenditure be extended to 8 February 2007.

**Senators Siewert and Moore** to move on the next day of sitting:

That the Senate—

(a) notes:

(i) the important role that the non-sniffable fuel Opal plays in addressing the scourge of petrol sniffing in remote Aboriginal communities, and

(ii) the announcement by the Government in September 2006 of the roll-out of Opal fuel in Alice Springs;

(b) notes, with concern:

(i) that misinformation about negative impacts of Opal fuel on car engines has caused a number of petrol stations to cease selling Opal fuel, and

(ii) the delay in the promised promotional campaign to support Opal fuel in Alice Springs; and
(c) calls on the Federal Government to start to actively promote Opal fuel in Alice Springs immediately.

Senator Milne to move on the next day of sitting:

That the Senate—

(a) notes that:

(i) in regard to the promise by the Prime Minister (Mr Howard) in the 2004 election to protect 18,700 hectares of old-growth forest in the Styx and Florentine valleys, the Minister representing the Prime Minister, Senator Minchin, stated in the Senate on 30 March 2006 that ‘It is absolutely outrageous to suggest that the Prime Minister has not honoured his promise. He is honouring his promises to the people of Tasmania in full. This was a major commitment to the people of Tasmania to achieve both the protection of vital forests and the protection of jobs...’,

(ii) Senator Minchin’s claims are contradicted by the admission by the Minister for Fisheries, Forestry and Conservation (Senator Abetz), as reported in the Mercury on 30 November 2006, that ‘not all the Upper Florentine Valley was protected as pledged during the 2004 election campaign’,

(iii) Senator Minchin’s statement is contradicted by the Government’s own literature about the outcome of the election promises, ‘The Tasmanian Community Forest Agreement: Fact sheet no. 3’ (May 2005), which admits the failure to meet the Prime Minister’s election promise because the protected areas in the Styx and Florentine contain ‘4,730 hectares of old-growth eucalypt against a target of 18,700 hectares’, and

(iv) the Federal Government is funding logging operations in the Styx and Upper Florentine valleys and publicly-funded road construction is planned to continue in the Upper Florentine; and

(b) calls on the Government to immediately protect in full all areas that the Prime Minister promised to protect during the 2004 election.

Senator Nettle to move on the next day of sitting:

That the Senate—

(a) notes that Australian citizen, Mr David Hicks has been detained for 1,822 days; and

(b) calls on the Australian Government to ensure the release of Mr Hicks from Guantanamo Bay.

Senators Allison, Bob Brown, Bishop and Bartlett to move on the next day of sitting:

That the following bill be introduced: A Bill for an Act to prohibit the use, possession and manufacture of cluster munitions, and for related purposes. Cluster Munitions (Prohibition) Bill 2006.

Senator Ellison (Western Australia—Manager of Government Business in the Senate) (3.39 pm)—I give notice that, on the next day of sitting, I shall move:

That the provisions of paragraphs (5) to (8) of standing order 111 not apply to the following bills, allowing them to be considered during this period of sittings:


I also table statements of reasons justifying the need for these bills to be considered during these sittings and seek leave to have the statements incorporated in Hansard.

Leave granted.

The statements read as follows—

Defence Legislation Amendment Bill 2006

Purpose of the bill

The bill amends the Defence Force Discipline Act 1982, the Defence Force Discipline Appeals Act 1955 and the Defence Act 1903 to:

• establish the Australian Military Court in accordance with the government response to agreed recommendations to the 2005 Senate
Inquiry Report into the military justice system; and

• replace the Court martial and Defence Force Magistrate trial system with the Australian Military Court.

Reasons for Urgency

The creation of the Australian Military Court is one of the major outcomes of the Senate Inquiry into *The effectiveness of the military justice system* conducted in 2004, which was critical of the military justice system.

In tabling its response to the 2005 Senate report, the government directed a two year implementation period for the agreed recommendations. This implementation period expires at the end of 2007. Passage of the bill in the 2006 Spring sittings is therefore fundamental to allow for the establishment and commencement of the new system within the implementation period.

(Circulated by the authority of the Minister Assisting the Minister for Defence)

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**Royal Commissions Amendment (Records) Bill 2006**

**Purpose of the bill**

The bill amends the Royal Commissions Act 1902 to enable regulations to facilitate provision of custody and use of, and access to, records of royal commissions, including those of the Inquiry into Certain Australian Companies in relation to the UN Oil-for-Food Programme (the Cole Inquiry).

The bill will remove any argument that there might be a requirement to provide procedural fairness to persons who could be adversely affected if documents obtained by the Cole Inquiry, or any other royal commission, for its purposes, were to be made available to other persons or agencies and used for other purposes. Providing procedural fairness in respect of use of documents could be very time-consuming, and is arguably unnecessary and unmeritorious, particularly in a law enforcement context. The government therefore considers it prudent to legislate to allow royal commission records to be used for defined purposes without having to provide procedural fairness, and is taking the opportunity to provide a framework which can be used for future royal commissions, without needing additional legislation.

The bill will insert a regulation-making power to enable regulations to be made to give custody or access to records to persons and bodies, which could then use and deal with those records, without any prior need to notify and consult those who might be adversely affected by the release and use of the records. The amendments broadly follow and generalise the model in the HIH Royal Commission (Transfer of Records) Act 2003.

**Reasons for Urgency**

The bill will enable the making of regulations concerning the provision of relevant records of the Cole Inquiry to appropriate authorities, including for law enforcement purposes. Such regulations will assist in expediting consideration of whether proceedings should be commenced in relation to the possible breaches of the law identified by the Cole Inquiry. The government therefore considers that the bill should be passed during the current sitting.

(Circulated by authority of the Prime Minister)

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**Postponement**

The following item of business was postponed:

General business notice of motion no. 608 standing in the name of Senator Nettle for today, relating to water resources of the Murray-Darling Basin, postponed till 7 December 2006.

**OIL FOR FOOD PROGRAM**

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (3.40 pm)—I move:

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.

Question put.

The Senate divided. [3.45 pm]

(The President—Senator the Hon. Paul Calvert)

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

AYES

Allison, L.F.
Brown, B.J.
Murray, A.J.M.
Siewert, R. *

Bartlett, A.J.J.
Milne, C.
Nettle, K.
Stott Despoja, N.

NOES

Abetz, E.
Bishop, T.M.
Brown, C.L.
Carr, K.J.
Colbeck, R.
Eggelston, A.
Faulkner, J.P.
Ferris, J.M. *
Ferravanti-Wells, M.
Forshaw, M.G.
Humphries, G.
Hutchins, S.P.
Joyce, B.
Ludwig, J.W.
Marshall, G.
McGauran, J.J.
Moore, C.
O’Brien, K.W.K.
Patterson, K.C.
Polley, H.
Ronaldson, M.
Sherry, N.J.
Sterle, G.
Trood, R.B.
Webber, R.
Wortley, D.

* denotes teller

Question negatived.

MR DAVID HICKS

Senator NETTLE (New South Wales) (3.48 pm)—by leave—I move the motion as amended:

That the Senate calls on the Government to immediately bring Mr David Hicks home from Guantanamo Bay.

Question put.

The Senate divided. [3.52 pm]

(The President—Senator the Hon. Paul Calvert)

Ayes........... 32
Noes........... 34
Majority........ 2

AYES

Allison, L.F.
Bartlett, A.J.J.
Bishop, T.M.
Brown, B.J.
Carr, K.J.
Hogg, J.J.
Humphries, G.
Kemp, C.R.
Kirk, L.
Ludwig, J.W.
McEwen, A.
McLucas, J.J.
Milne, C.
Moore, C.
Nettle, K.
Parry, S.
Payne, M.A.

NOES

Abetz, E.
Boswell, R.L.D.
Calvert, P.H.
Campbell, I.G.
Chapman, H.G.P.
Colbeck, R.
Coonan, H.L.
Ellison, C.M.
Ferguson, A.B.
Ferris, J.M. *
Fifield, M.P.
Ferravanti-Wells, C.
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Fifield, M.P.
Ferravanti-Wells, C.
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Fifield, M.P.
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Fierravanti-Wells, C.
Ronaldson, M. Santoro, S.
Scullion, N.G. Trooth, J.M.
Trood, R.B. Watson, J.O.W.

* denotes teller

Question negatived.

BUDGET
Consideration by Legislation Committees
Additional Information

Senator FERRIS (South Australia) (3.55 pm)—On behalf of the Chair of the Senate Standing Committee on Economics, Senator Brandis, I present additional information received by the committee relating to the supplementary hearings on the 2006-07 budget estimates.

COMMITTEES
Public Accounts and Audit Committee Report

Senator WATSON (Tasmania) (3.55 pm)—On behalf of the Joint Committee of Public Accounts and Audit, I present the 409th report of the committee, Developments in aviation security since the committee’s June 2004 report no. 400 (Review of aviation security in Australia). I seek leave to move a motion in relation to the report.

Leave granted.

Senator WATSON—I move:

That the Senate take note of the report.

I seek leave to incorporate a tabling statement in Hansard.

Leave granted.

The document read as follows—

This report presents the results of the Committee’s re-opened inquiry into aviation security in Australia. The Committee re-opened its inquiry as a result of some significant developments in aviation security since its Report 400 Review of Aviation Security in Australia tabled in June 2004.

On determining to revisit aviation security, the Committee was cognisant of major initiatives by the Australian Government to extend and deepen the security standards required of aviation industry participants, particularly the introduction of the new Aviation Security Transport Regulations in March 2005.

The inquiry received 81 submissions and undertook a programme of inspections and evidence gathering at major and regional centres across Australia, including Sydney, Melbourne, Brisbane, Adelaide, Perth, Canberra, Darwin, Cairns, Geraldton, Kalbarri, Carnarvon, Newman, Derby and Broome.

The Committee has examined:

- the principles underlying aviation security in Australia and their implementation by Commonwealth agencies with responsibility for intelligence gathering, regulation and law enforcement;
- the frontline preventative security measures of background checking of aviation industry personnel and physical security of sensitive areas of airports;
- developments in law enforcement arrangements at major and regional airports; and
- the cost imposts of and funding arrangements to support enhanced security arrangements.

The Committee has unanimously supported the initiatives of the Australian Government in aviation security and, through its recommendations, suggested further measures that will ensure Australia continues to have one of the leading aviation security regimes in the world.

The Committee has made nineteen recommendations that identify measures to further improve aviation security in Australia. These include:

- reporting to the Committee the number of unannounced security audits of major airports in 2006 and ensuring regular unannounced audits of Australia’s busiest airport, Sydney Airport, in the future;
• increasing the on-ground experience of selected Office of Transport Security personnel particularly in relation to regional aviation industry participants;
• establishing standards for aviation industry participants against which to measure proposed security measures;
• improved processes for issuing an Aviation Security Identification Card and tighter conditions and format for issuing a Visitor Identification Card;
• revised reporting arrangements for the prohibited items list for items allowed into the cabins of security classified flights;
• support and flexibility in the delivery of security training;
• expanding the functions of Regional Rapid Deployment Teams at regional airports;
• the development of an industry code for the monitoring of Closed Circuit Television at security classifies airports;
• improving communication services to security classified regional airports; and
• negotiating funding arrangements to upgrade security at security classified regional airports.

Following the introduction of the new regulations in 2005, full screening of checked baggage will be required of all flights departing Counter Terrorism First Response airports from 1 August 2007.

Whilst some argue that full screening should occur at every regional airport, the Committee states that it is simply not feasible to demand screening of all checked baggage at every regional airport. As Sir John Wheeler stated in his independent report:

…it is clear that ‘one size does not fit all’ in imposing security, regulations and standards across disparate airports… Security measures at regional airports should be balanced and proportionate and must be based on enhanced threat and risk assessments. It is always difficult to draw firm lines, and these could vary as a result of changed circumstances.

While the Committee believes that it is inevitable that additional airports will, in time, warrant screening of all checked baggage, it did not want to claim to have the expertise to identify which individual airports should be included in this category or when they should be included.

In light of the Committee’s view, it has recommended that the Department of Transport and Regional Services report to the Parliament within three months as to whether any additional airports should be required to screen all checked baggage from August 2007, beyond those already designated by the Aviation Transport Security Regulations, and further update its advice to the Parliament twice yearly.

The Committee has also recommended that the Department of Transport and Regional Services report on the timetable for implementing screening of all air cargo on passenger aircraft where passengers’ checked baggage is screened. The Department’s report should include consideration of the feasibility of implementing the screening of all air cargo on passenger aircraft where passengers’ checked baggage is screened by 1 August 2007, that being the date when 100 percent check baggage screening from Counter Terrorism First Response airports is required.

The expansion and intensification of aviation security measures in Australia has attempted and largely achieved a balance between, on the one hand, the implementation of adequate preventative security measures and readiness to respond to a breach if this occurs and, on the other, consideration of convenience and cost to the travelling public and Australian taxpayer.

I commend the Report to the Senate.

Intelligence and Security Committee
Report

Senator FERRIS (South Australia) (3.56 pm)—On behalf of Senator Ferguson and the Parliamentary Joint Committee on Intelligence and Security, I present the report of the committee, Review of security and counter terrorism legislation. I seek leave to move a motion in relation to the report.

Leave granted.
Senator FERRIS—I move:
That the Senate take note of the report.
I seek leave to incorporate a tabling statement in Hansard.
Leave granted.
The document read as follows—
The Parliament passed a number of important legal reforms in the aftermath of the attacks on the US in September 2001. Members will recall that this first package of legislation was the subject of review by the Independent Security Legislation Review Committee under the Chairmanship of Mr Simon Sheller AO QC. The Sheller Report was tabled by the Attorney General on 15 June this year.
On behalf of the Committee, I express our gratitude to the Sheller Committee. The Sheller Report was thorough and has provided a valuable framework for our own inquiry.
Australia is not immune from the influence of terrorist groups and specialist terrorism offences are an important, although not exclusive, tool in Australia’s counter terrorism strategy.
Terrorism law is essentially a preventive model that allows police to intervene at an earlier stage to avoid potentially catastrophic events. It differs from the traditional criminal justice model in several important ways. For example, the definition of a terrorist act and terrorist organisation are pivotal to a Commonwealth offences and expanded intelligence and law enforcement powers. Terrorism law also extends the criminal law by including preparatory offences, capturing conduct before intent has crystallised or any attempt is committed, and some offences relate to a person’s status rather than their actions. This raises important issues of both principle and practice.
It would be improper to canvass the alleged facts in any case currently before the courts. However, this does not prevent the Parliament from assessing the quality of legislation and responding to identifiable problems.
For example, there was criticism that the definition of terrorism was overly complex, while others described the definition as the best in the western world. The existing definition makes an important distinction between political motivated violence and other serious crimes. It also excludes ‘protest’, ‘dissent’ and ‘industrial action’ in order to send an important signal that terrorism laws are not to interfere with freedom of association, assembly and expression.
No matter how heinous a crime may be, we believe it is crucially important to maintain the terrorism law regime as a distinctive area of law. Consequently, we recommend that the motivation for the terrorist act – to advance a political, religious or ideological cause – and the exclusion for protest, dissent and industrial action should remain as part of the definition.
Some offences were said to lack specificity and do not meet the standards necessary to preserve the rule of law. To deal with this problem we have recommended some modest refinements to remove uncertainty and reduce the risk of unintended consequences. Unlike the Sheller Committee, we have not recommended repeal of the association offence but we have asked government to re-examine the provision in light of the Sheller Committee’s recommendation.
Since 2002 the Parliament has passed over thirty pieces of anti-terrorist legislation that have strengthened Australia’s ability to respond to terrorist threats. Terrorism law is now much more than a set of core offences in the Criminal Code. For example, the period for questioning terrorist suspects has been extended and there are new procedural rules for terrorism trials; law enforcement officials may seek control orders and preventative detention orders and the States have introduced a special AA classification system for prisoners that pose a threat to national security.
The Government has recognised the importance of keeping terrorism laws under review but to date Parliamentary review has been sporadic and fragmented. The picture of how terrorism laws are actually working is incomplete. It is vitally important that we retain public confidence in the new laws and that we have timely and well-informed reporting and analysis.
The Committee believes it is time for an integrated approach to monitoring and review of terrorism laws and has recommended the appointment of an Independent Reviewer, who can set his or her own priorities and report annually to the Parliament. We have also recommended an...
amendment to the Intelligence Services Act 2001 to require the Committee to examine the annual reports. This will ensure that ongoing democratic accountability is built into the system.

Finally, we are concerned that the evidence continues to point to the negative impacts of anti-terror laws on the Muslim communities. The Muslim Reference Group is an excellent initiative.

But we must also acknowledge that the impact upon Arab and Muslim communities is very real and potentially counterproductive. It is incumbent upon us all to ensure that debate about terrorism is rational, open and well informed and does not fan the flames of prejudice and resentment. While terrorism poses a threat it is also an opportunity—an opportunity to promote democratic ways of expressing dissent, increase participation in public affairs and promote social cohesion.

I commend the report to the Senate.

Senator NETTLE (New South Wales) (3.57 pm)—Speaking to this motion, I indicate that this report confirms what the Greens have been saying for five years now on these issues. It shows that there are substantial and fundamental problems with this government’s terrorism legislation and that they have serious implications for human rights in this country.

The Greens have not been party to the development of this report because the Greens are excluded by legislation from participating in the Joint Committee on Intelligence and Security. The government and the opposition work as one when it comes to these issues and Australia’s most secret agencies and they do not want the fresh and independent approach that the Greens would bring to accountability in this area. Nevertheless, in this case of a review of Australia’s security legislation, the committee has been quite critical of the government’s approach. This is despite the fact that the government controls this joint committee and despite the manner in which the government seeks to use national security as an electoral weapon.

This report shows there are big problems with Australia’s terrorism laws that must be fixed. It echoes concerns raised by the Greens back in 2002, when I participated in a Senate inquiry into the legislation which underpins the terrorism laws that we have in this country. It also echoes the finding of the government’s own Sheller review into terrorism legislation, which also found substantial problems, in particular with the power of the Attorney-General to label organisations as terrorist organisations and to therefore criminalise their members and supporters. The Greens opposed the giving of this power to the Attorney-General and we continue to oppose it. This is a view that we share with Anthony Mason, a former Chief Justice, who was reported in the Australian in October this year as saying:

Some limitation or suspension of individual rights is necessary in order to meet the threat of terrorism. But it is of fundamental importance that any intrusion into traditional rights is proportionate to the threat which is apprehended, does not involve the grant of powers that may be used for other purposes and is subject to effective supervision by the courts. Neither ASIO nor the attorney-general is a suitable guardian of individual rights.

That is not the Greens speaking; that is the former Chief Justice Anthony Mason.

Earlier in the year the Greens moved a motion in the Senate to disallow the listing of the Kurdish Workers Party as a terrorist organisation because we agreed with the concerns that had been expressed to this committee. We also agreed with the views of legal and community groups that the impact of the ban far outweighed any benefits in terms of dealing with genuine terrorist threats. Kurdish Australians who are considered refugees precisely because of their association with the Kurdish Workers Party face severe repercussions because of the ban. Kurds who flee their homeland in the future may also be refused refugee status because
of this ban, supported by both the major parties in the parliament. It is a terrible irony that Australia supports Kurds in Iraq and yet across the border we label the Kurds terrorists just so that we can get favourable treatment from the government of Turkey. Had these laws been in place in previous times, the ANC in South Africa and the East Timorese resistance movement, now governments of their respective countries, could similarly have been banned in Australia.

The Sheller report is unlike this report in that it suggest handing over the power to ban organisations to a court. This is something the Greens support. We believe it is a step in the right direction. Some of the comments in this committee report reflect some of the concerns the Greens have. The committee makes 26 recommendations on a range of issues in relation to terrorism laws. Nearly all reflect the criticisms made by the community and the legal profession that the terrorism laws radically impinge on human rights in this country. I note in particular the way the committee has highlighted the negative impact on the Arab and Muslim community as a result of the terrorism legislation that now exists in Australia.

The Greens have always supported sensible measures on these issues of terrorism, such as the strengthening of security at airports, which we have supported in this parliament. However, we share the concerns of the community and the legal profession about the way in which our current terrorism laws radically impinge on the human rights of Australians. We have always said that we believe, in the main, that our existing criminal law is the framework we should use to address the challenge that terrorism presents us with. That is the basis that we should be using. Those fundamental tenets that exist in our criminal justice system should be maintained as our defences against the scourge of terrorism that we face. I note that similar comments were made recently in a speech by Malcolm Fraser to Liberty Victoria, in which he spoke about our strongest weapons in the war against terrorism being a defence of our rights and a defence of our liberties.

This is a point that has frequently been made by me in this chamber and by other commentators on human rights, those of the legal profession and people who are concerned about these issues in the community: if we bring in increasing legislation that takes away the power and the right of Australians to interact in the way we have become accustomed to—to be able to speak, to be able to engage in political dialogue and discussion—then we are taking away those very freedoms and democratic principles that this government, the Bush government and other governments speak about wanting to defend. This is why the Greens are critical of the approach taken by the government. And it is why we say that fundamentally underpinning an approach in this country to dealing with terrorism needs to be our criminal justice system, our existing criminal law and the fundamental tenets about not being detained without a trial, about being able to have access to a lawyer, about not having your comments used against you and about the right to silence. These fundamental tenets of our legal system need to underpin the response not only in Australia but around the world to the challenge of terrorism. When we speak about terrorism we speak about criminal acts, such as murder and conspiracy, which exist in our criminal law. That is the basis on which we should be responding to the challenges that terrorism presents to us.

But make no mistake: this report is a test for the government. Will they act on these recommendations, on those of the Sheller review? Will they reform terrorism laws that exist in this country to reflect the concerns that have been put forward in this parliament by senators of all political parties? Will they
change our terrorism laws to reflect the concerns that the legal profession as a whole has expressed time and time again, through the Law Council of Australia and other representatives? Each time we have an inquiry into new terrorism legislation we hear from a range of different peak legal organisations in this country about the way in which the legislation being proposed, and passed through the parliament with the support of both the major parties, impinges on our fundamental human rights and takes away those tenets that have underpinned the legal system in this country and in Western democracies around the world. Will the government seek to reform terrorism legislation in this country, to take on board and to consider those concerns put forward by this report, by senators in here and by well-respected community and legal voices? Will they put in place human rights safeguards that have been suggested? On past form I have to say it is pretty unlikely.

The Greens will continue to oppose the government’s use of the war on terrorism to take away and undermine our human rights and the fundamental tenets of our legal system in this country. We want a bill of rights. And we want to support a fair, multicultural society, which is the best defence against the challenge of terrorism. We want to see an independent foreign policy that can address the root causes of terrorism, not inflame them. We need to address those root causes rather than symptom by symptom as we impinge on the human rights framework and the fundamental legal tenets on which this country’s legal system is based.

Senator ROBERT RAY (Victoria) (4.07 pm)—I must say, listening to the previous speaker extol the views of the former Prime Minister Mr Fraser, that I will just take that under advisement, remembering his role in the mid-1970s, with the bombing in Sydney and the total trampling then, when he was in power, on everyone’s human rights without any compunction whatsoever. I am glad the poacher has turned gamekeeper. It does show that people can be reformed and can change, especially when they do not personally have to take responsibility for their actions anymore.

What you are looking at in this report is something you will not see too often again. You will not see this government allow a committee, by way of statutory obligation, report to this parliament—because, now they have the numbers in this chamber, they simply will not put those provisions into legislation. The reason you have the Sheller report and this report of the Joint Committee on Intelligence and Security is that the opposition and other parties in this place, including the Greens, insisted that there be these reviews and report-back mechanisms.

If you want to look at the real intent of the government, you will see that the moment they got a majority here the first sunset clause they put in went for 11 years. Even though the committee generously—they almost erred on the side of generosity—recommended 5½ years, we got 11 years. That is an absolute joke.

This is not a report that was put in in anger. For the most part, this is a constructive report—a unanimous report of the committee—and one in which we do not expect the government to adopt every recommendation. But I do expect on this occasion that they have an open mind and consider every one of these recommendations, because they are all quite reasonable, as was the Sheller review.

Today, I want to draw the attention of the Senate to recommendation 2. It outweighs all the other recommendations because it puts in place a recommendation for the future. We have had, in this place, 19 or 23—Senator Bartlett probably knows how many—pieces of antiterrorist and security legislation in the
last few years. None of it, of course, dovetails in. Sometimes it is slightly inconsistent. We do not have an overall regime; we have 23 parts of a regime. What we suggest in the report is that rather than have a parliamentary committee review it in a sporadic way, and rather than relying on the cumbersome processes of the Attorney-General’s Department getting to these issues, we set up an independent reviewer.

That independent reviewer, on an annual basis, would review the whole plethora of terrorist legislation and make incremental recommendations. In other words, you would not get a revolutionary change every year, but you would get improvements year by year to impose consistency and to respond to how the legislation is working and to see what problems are thrown up. It will give people with complaints or doubts about the system somewhere to go.

Of course, people have pointed out that the independent reviewer will be appointed by government and have asked what there is to stop the government putting in a stooge. I would say that, generally, reputation suggests that that will not be the case. I do not ever accuse this government of rorting the position of Auditor-General or Ombudsman et cetera. I do accuse them of totally rorting the position of Electoral Commissioner in the previous Electoral Commissioner—but that, on the whole, is the exception. I think a sensible government would see this as the perfect way forward. I am not saying we have a sensible government, because they are not really open to these sorts of new ideas. But to have an independent reviewer look at these things annually and report to parliament and the joint intelligence committee would be an excellent thing.

Of course, there is no such thing as an original idea. Where does this exist? How often do we hear, at question time, Senator Minchin get up and say, ‘Look at those people opposite; why don’t they follow the lead of Tony Blair on Iraq?’ I say to this government: why don’t you follow the lead of Tony Blair by setting up an independent review, just like they have in the UK? It worked successfully there—why not here?

It really comes back to whether the government has an open mind and wants to progress these things. It is very hard to explain to a government where its self-interest lies, but in this case its self-interest lies in adopting a proposal like this, rather than circling the wagon trains and saying, ‘We will defend exactly what we’ve got.’ We all know that in rushing 23-odd bills through this chamber there will be faults. To address those faults on an annual basis, in a less than sensational way so that incremental change comes in, is sensible government policy. It is one that assists government and does not erode its position. But it all depends on whether the government has an open enough mind to address it.

The rest of the recommendations are sensible. I know the government will adopt some and not all—I accept that—but we have commented on the various aspects of the Sheller report.

I want to conclude on this note. We have not addressed any issues that Sheller raises in terms of the proscription regime because there is a statutory requirement that next year, in the immediate future, we review that regime by itself. We will be having public hearings in the first half of next year and reporting to this parliament by about May on the proscription regime. That is why we have not addressed that aspect of the Sheller review.

I commend this report to the parliament and recommend that it read be in conjunction with the Sheller review. I think it will advance the cause of civil liberties in this coun-
try without impinging in any way on the security aspects.

Senator BARTLETT (Queensland) (4.14 pm)—I will not speak for long on this but, as I often do with the Parliamentary Joint Committee on Intelligence and Security, I want to emphasise the importance of the work the committee does. The issues that this report deals with—security and counter-terrorism legislation—are crucial and pivotal. Whilst clearly the Democrats have had disagreements with both the major parties in the content of some of the legislation that has passed into law with the support of both the major parties in recent years, I want to place on record again my view that this committee does a constructive job in its role of overseeing legislation such as this. I always make the point that I think it would be beneficial to have a third party represented on the committee. That is, of course, proscribed by legislation, so it cannot happen unless we get the chance to change the law down the track.

I also want to take up Senator Ray’s point that the sorts of accountability mechanisms that this committee provides are a clear legacy of the Senate’s role over the years as an independent house of review. As a chamber that is not controlled by government, it puts accountability mechanisms in legislation to enable just this sort of review to take place. As long as you have a committee that takes its responsibilities seriously and operates, as far as possible, in a nonpartisan way—and this committee has done that—then it provides a very valuable mechanism. But the next step of course is: what happens when the reports come down?

The previous report that this committee brought down, in reviewing the proscription regime with regard to a number of organisations listed as terrorist bodies, noted the lack of engagement and response from the government to requests and recommendations from previous committee reports. That, to me, is a worrying sign. Often, the key issue is not a government’s policy but the way it reacts to different views, different ideas and parliamentary reports. What we have seen in a whole range of areas in recent years is a growing lack of interest in reports from Senate committees and parliamentary committees and a lack of interest in their recommendations. That shows itself most strongly in the failure of governments to even bother to respond to reports—often for years. And when they do respond, it is in a fairly derisory way.

In an area as fundamental as security and counter-terrorism legislation it is even more unacceptable when you have a cross-party committee bringing down bipartisan reports that clearly are not seeking to make political points. They are clearly just putting forward constructive assessments of problems they have identified or improvements that they suggest. The recommendation that Senator Ray singled out is a clear example of that. When governments do not even bother to respond to that, or respond dismissively and very belatedly, it is a clear sign of a problem in attitude.

As we all know, legislation is not just about the detail of what is in the law; it is about the way it is administered. The real problem is when the attitude or culture of a department, the government or a particular minister does not allow proper consideration of genuine concerns. That is when the administration of a law becomes very problematic. In an area as serious as this it is something we should be concerned about. I am not saying that all of the evidence already points to that conclusion in this area, but I am saying there is enough around for it to be worrying—based on the lack of a response from government on some previous reports. I think this one will be a real test. The real test will be how promptly the government re-
sponds to what is an important report and how considered their response is. Even if the response is prompt, if it is ill-considered then it is not much use either.

Whilst the Democrats are excluded from being part of the committee, we watch its work relatively closely because it is an important area for us. We accept that there is always a balance between security and individual freedom. We think the balance is wrong at present. Even more important than that is not just that the balance is wrong in the legislation but how adequately it is administered and enforced. So we will be watching this closely to see how prompt and adequate the response is. I think it will be a key test of the government's bona fides in this area. I seek leave to continue my remarks.

Leave granted; debate adjourned.

Scrutiny of Bills Committee Report

Senator KIRK (South Australia) (4.19 pm)—On behalf of Senator Ray, I present the 12th report of 2006 of the Standing Committee for the Scrutiny of Bills, Entry, search and seizure provisions in Commonwealth legislation, together with the Hansard record of proceedings and documents presented to the committee.

Ordered that the report be printed.

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

Leave granted.

Senator KIRK—I move:

That the Senate take note of the report.

I seek leave to have my tabling statement incorporated in Hansard.

Leave granted.

The statement read as follows—

This Twelfth Report of 2006 by the Scrutiny of Bills Committee on entry, search and seizure provisions in Commonwealth Legislation is a follow-up to the Committee’s Fourth Report of 2000. The Committee took the unusual step of seeking a reference for a follow-up inquiry to allow it the opportunity to examine the nature and impact of the government responses to the Committee’s 2000 report.

The Government’s response to that original report was twofold. First, it tabled its formal response on 27 November 2003. This response was largely positive and indicated general support for the majority of the principles contained in the original report. However, of the Committee’s 16 recommendations, the Government accepted (or accepted in principle) only five recommendations and partially accepted a further four. The Government did not accept six of the recommendations, including key recommendations aimed at ensuring that the principles identified in the report are applied consistently across all Commonwealth legislation. The Government noted that the complexity and range of regulatory enforcement functions required a flexibility that is incompatible with some of the report’s principles and recommendations.

Second, in February 2004, the Minister for Justice and Customs published the Guide to Framing Commonwealth Offences, Civil Penalties and Enforcement Powers. This Guide consolidates policy, principles and precedent across the spectrum of offence, penalty and enforcement provisions, including entry, search and seizure.

The Committee welcomes the promulgation of this Guide as it signals a positive and constructive approach by the Government. The principles expressed in the Guide are largely consistent with those expressed by the Committee in its Fourth Report of 2000 and the Guide should provide a solid basis from which to achieve appropriate balance and consistency in framing entry, search and seizure powers.

The Committee’s long standing approach to entry, search and seizure provisions is based on the presumption that people have a fundamental right to their dignity, their privacy and the security of their residences and other premises, among other rights.

While the Committee considers that there is a public interest in the effective administration of
justice and government, there is also a public interest in preserving people's dignity and protecting them from arbitrary invasions of their property and privacy and from disruption to the functions of their businesses. Neither of these interests can be insisted on to the exclusion of the other. There is a need for balance.

The authority to enter and search premises, to detain and search individuals and to seize materials is essentially a creation of statute and should always be regarded as an exceptional power, to be granted by Parliament judiciously and to be exercised by executive agencies with restraint and appropriate supervision. The key question for Parliament is: "If there is justification for a power of this nature to be granted or exercised in these particular circumstances, what protection must follow?"

The Committee considers that the Guide has the potential to provide a solid basis for achieving an appropriate balance between these competing interests and explaining this for the benefit of the Parliament and the public, particularly in circumstances where there is a justified need to depart from the principles and framework expressed in the Guide. The Committee has found the Guide a useful tool in its assessment of legislative proposals and has made a number of recommendations as a result of this inquiry for the expansion and enhancement of the Guide.

This inquiry centred on a review of the fairness, purpose, effectiveness and consistency of entry and search provisions in Commonwealth legislation made since the Committee tabled its Fourth Report of 2000. For the most part, the Committee noted a degree of conformity between such provisions and the framework set out in the Guide.

However, the Committee noted a significant expansion in the range of agencies seeking to exercise powers of entry, search and seizure, often without a warrant, and has commented on the limited justification offered in a number of cases for the grant of such powers.

In particular, the Committee has noted the propensity for some agencies to seek to justify search and seizure powers simply on the basis of precedent or apparent consistency with other agencies. The Committee considers that all new legislative proposals should be judged on their own merits, based on careful assessment of the needs of the agency in the particular circumstances, balanced against the impact of the proposed powers on individual rights.

The Committee has recommended that the Guide be amended to require that the justification for entry and search powers, particularly the power to conduct personal searches, be clearly set out in the explanatory memorandum accompanying the bill. The Committee has also recommended that all new proposals for entry, search and seizure powers include legislative provision for regular reports to parliament in relation to the agency's use of the powers and the continued need for them.

The Committee has expressed concern about the potential for technological developments to test the efficacy of existing protections, particularly in relation to the seizure of electronic data and covert access to stored communications.

The Committee considers that covert access to stored communication should only be permitted with a warrant and should only be accessible to core law enforcement agencies. The subject of the warrant and the telecommunications services for which access is being sought should be clearly identified in the application for the warrant and on the warrant itself.

The Committee has recommended that the Guide be expanded to set out core principles governing the seizure of material, particularly material relevant to a different offence. The Committee has also recommended the inclusion of limitations on the subsequent use of seized material and has also recommended that legislative provision is made for the regular review of seized material and for the timely return or destruction of material not relevant to a particular investigation.

Finally, the Committee has recognised the important role of training and administrative and procedural guidelines in achieving fairness in the application of entry, search and seizure powers. While most of the legislation considered by the Committee in the course of this inquiry accords generally with the policy set out in the Guide, the Committee remains concerned at the degree of unevenness in the application of some of these principles. The Committee would prefer to see legislative provision for the formulation of train-
ing procedures and implementation guidelines and for these to be tabled in Parliament and published on the agency’s website. The Committee has suggested that the Guide be expanded to include the development of such guidelines and has raised the possibility of the establishment of a register of entry, search and seizure provisions to facilitate ongoing monitoring and audit of their use.

I commend the report to the chamber.

Question agreed to.

DELEGATION REPORTS

Parliamentary Delegation to the 115th Inter-Parliamentary Union Assembly in Geneva and a Visit to Portugal

Senator MARSHALL (Victoria) (4.20 pm)—by leave—I present the report of the Australian parliamentary delegation to the 115th Inter-Parliamentary Union Assembly in Geneva, from 16 to 19 October 2006, and a visit to Portugal, from 20 to 25 October 2006. I seek leave to move a motion to take note of the document.

Leave granted.

Senator MARSHALL—I move:

That the Senate take note of the document.

I would like to bring to the Senate’s attention a particular issue raised at the 115th Inter-Parliamentary Union Assembly. I encourage all senators to read this detailed report, as it covers the important issues addressed at the Inter-Parliamentary Union Assembly. The issue I refer to is one which I have raised many times, including at the 114th IPU assembly in Nairobi in May 2006. It is the issue of ongoing human rights abuses in the Philippines—an issue which refuses to go away. When I tabled the report of the 114th IPU assembly, I spoke of the case of Crispin Beltran, a member of the House of Representatives of the Philippines. Outlining the situation of Mr Beltran, I detailed how he had been subjected to arrest without warrant and had been continuously detained since February of this year despite successive charges against him being thrown out by the courts. I regret to inform the Senate that months later he still remains in detention—without a valid arrest warrant.

The IPU again investigated the ongoing case of Mr Crispin Beltran, as well as the cases of five other representatives from the Congress of the Philippines. The IPU found a pattern of human rights abuses in the cases of these parliamentarians, and I continue to be deeply concerned that parliamentarians who promote any opposing viewpoints within their own country then have the apparatus of the state used against them. It also expressed concern regarding the absence of proper legal process and the attempts to criminalise democratic opposition in what appears to be purely an attempt to quash that opposition. This finding comes amid continuing violence against all manner of political activists with the suppression of workers, unionists, social justice advocates, political activists and, indeed, church members.

Only weeks ago, the Filipino government came under increasing international criticism for failing to stop political violence, with the Joint Foreign Chambers of Commerce, JFC, in the Philippines, an umbrella organisation of business groups from the United States, Australia, New Zealand, Canada, Europe, Japan, and Korea calling on the President to stop the violence. Democracy is under threat in the Philippines. Since Gloria Arroyo, the President of the Philippines, came to power in January 2001, over 700 civilians, including trade union leaders, environmentalists, lawyers, municipal councillors and journalists, have been killed. Amongst the dead are pastors, priests and lay members of the various churches in the Philippines. In addition to this, many more activists have had threats made against them or assassination attempts made on their lives.
Amnesty International points out that one national human rights organisation has documented 4,207 cases of human rights violations since 2001, which include killings, enforced disappearances, illegal arrests and unlawful detention, indiscriminate firings and forcible evacuation. The common factor in all of these cases is that the victims have been outspoken on issues of poverty and justice. They have advocated for the poor and oppressed people in the Philippines, for workers’ rights, civil liberties and human rights. Very few of these crimes have been adequately investigated and the perpetrators have not been brought to justice. This is despite the Philippines being a signatory to a number of international treaties protecting human rights and having the protection of human rights enshrined in legislation. The IPU remains deeply concerned regarding the rights of parliamentarians given the facts outlined in this report. I am concerned not only for the rights of parliamentarians but for the rights of all people to participate freely and without fear in an open and democratic process. Sadly this has ceased to be the case in the Philippines.

Also, while I was at the IPU, I was given the honour of co-convening an international group of parliamentarians advocating for human rights within the Philippines. I jointly convened that with Congressman Satur Ocampo from the Philippino congress. We received widespread interest from international parliamentarians while we were at the IPU conference and we have agreed to continue that work. We will meet again at the next IPU meeting and continue to advocate in our own parliaments, to raise public awareness within our own countries and internationally and to continue to lobby the Filipino government to take human rights seriously and fulfil their international and domestic obligations. I will continue to make representations to the government of the Philippines, our own parliament and the IPU on this matter until there is a successful outcome. I recommend this delegation report to the Senate.

Question agreed to.

Parliamentary Delegation to New Zealand

Senator KIRK (South Australia) (4.26 pm)—On behalf of the Joint Standing Committee on Migration, I present the report of the Australian parliamentary delegation to New Zealand, which took place from 27 to 31 August 2006 as part of the Australia-New Zealand Committee Exchange Program. I seek leave to move a motion to take note of the document.

Leave granted.

Senator KIRK—I move:

That the Senate take note of the document.

I am pleased to speak today on the tabling of the report of the Australian parliamentary delegation to New Zealand. I had the honour of being deputy leader of the delegation to New Zealand as part of the annual Australia-New Zealand Committee Exchange program between the two parliaments. The delegation was in August of this year for a period of four days. The visit to New Zealand was timely given that the committee was close to finalising its inquiry into overseas skills recognition, upgrading and licensing. The terms of reference for our inquiry—the report of which has now been tabled—required the committee to consider how Australia’s arrangements compare with those of other major immigration countries. New Zealand was one of the countries under examination by our committee.

Australia and New Zealand have a number of things in common in this area. Both face skills shortages, and with the high degree of economic integration between the two economies and high rates of cross-Tasman migration, the committee welcomed the op-
portunity to go to New Zealand and examine its skilled migration program and its overseas skills recognition process. We found when we were over there that New Zealand is currently going through a process of reassessing its migration program in a number of respects. For example, in December last year, it announced changes to its skilled migration program. Whilst there we learnt that they have also recently commenced a review of the New Zealand Immigration Act 1987, which is now 20 years of age, and it has been determined that it is time for a review.

In February 2006, the New Zealand Minister of Immigration also announced a nationwide initiative aimed at providing improved settlement assistance to migrants and refugees. These were all issues of direct relevance to the work of the committee. The delegation met with New Zealand parliamentarians, government and non-government officials, and peak ethnic groups. The delegation report provides some background on the program assembled for the visit and a brief comparison of migration arrangements in Australia and New Zealand. The report concludes by highlighting a number of areas of interest to the delegation over the course of the visit.

In the short time that I have remaining I want to focus on five of these areas. First, the delegation was very interested to meet officers from New Zealand’s immigration department, Immigration New Zealand, and hear more about the current review of the New Zealand Immigration Act that I referred to just a moment ago. In May 2005 a comprehensive review of its immigration program, including the Immigration Act, was announced by the New Zealand government. The purpose of the review is to ensure the effectiveness of labour migration, border security and migrant settlement. This is the first major review of the act since it was established, as I indicated a moment ago. The proposed changes to the legislation include a simplified visa system for travel to and stay in New Zealand.

Of interest to the committee was the fact that in New Zealand there is currently a very different entry system for noncitizens compared with that of Australia. In New Zealand they use a two-document system consisting of visas and permits, while in Australia entry is managed solely through a visa system. In New Zealand a visa provides the authority for a noncitizen to travel to New Zealand, whilst a permit provides the authority for a noncitizen to enter and remain in the country. The discussion paper on the Immigration Act that I referred to comments that the terminology of ‘visa’ and ‘permit’ are quite confusing and many people are unaware of the distinction between the two. It is therefore proposed to bring the various elements of the visa and permit systems together into a single visa only system, as exists here in Australia. The committee will be interested in the outcomes of the review—I am sure that we will monitor it with interest—and will look at any subsequent changes to New Zealand’s immigration arrangements.

The second point I want to refer to is the following. We met with a number of senior officers from New Zealand’s immigration appeal tribunals and heard more about the proposal, which is also part of the Immigration Act review, to amalgamate these tribunals. As the delegation report notes, there are currently four immigration appeals tribunals in New Zealand. We heard that each of these tribunals has been established for a single purpose, meaning that individuals can therefore appeal to multiple bodies. The availability of these multiple avenues of appeal has led to delays in the final determination of matters. We learned that the amalgamation of the four tribunals, if it does go ahead, will provide a single procedure for determining refugee and protection status and establish a
single right of appeal, with all possible considera-
tions being heard together. Obviously the streamlining of the process is something to be commended for the following reasons: it is perceived that delays will be reduced in awaiting determinations and there will be a general improvement of the overall fairness, transparency and efficiency of the appeals system.

The third point is that the delegation was interested to learn more about New Zealand’s overseas skills recognition framework. Like Australia, New Zealand, as I said, is facing skills shortages in key employment sectors. Assessing the skills of those who wish to migrate is of course a crucial element of any migration system. Both Australia and New Zealand have mandatory pre-migration qualifications screening as a condition of eligibility for skilled migration. The New Zealand Qualifications Authority assesses international qualifications against New Zealand qualifications for migration purposes. As the delegation heard during its meeting with the qualifications authority, prospective migrants can seek a pre-assessment result and a full qualifications assessment report. A pre-assessment result is normally submitted at the initial stage of the skilled migration program. A qualifications assessment report is a requirement of the final stage of residence application.

In New Zealand, regulated professions, professional associations and registration authorities have their own requirements for membership or registration, and individuals need to have their qualifications assessed not only by the NZQA but also by the appropriate professional body. Skills recognition for the purpose of registration in certain professions in New Zealand is therefore a separate process to that for the purpose of migration. Accordingly, migrants to New Zealand may experience similar difficulties to those experienced by people seeking to come to Aus-

tralia, because of the gap that exists between migration on the one hand and registration skills recognition on the other. This issue was discussed in the committee’s recent inquiry report on skills recognition. I commend it to all senators for reading.

The fourth point is that the delegation was interested to hear about New Zealand’s refugee program, including the role of volunteers in the provision of settlement services. As the delegation report notes, under the government’s refugee quota program, New Zealand currently accepts up to 750 refugees each year—a small number by comparison to Australia, but of course New Zealand has a much smaller population. All refugees who are accepted under the program initially attend a six-week orientation program at Man-gere Refugee Reception Centre in Auckland. The delegation actually visited that reception centre. I think it is fair to say that the delegation was quite impressed with the facility. We are very interested in meeting the individuals who run the place. As I am running out of time, I would briefly like to mention the meetings that we had with New Zealand’s peak ethnic councils, which were of benefit to the committee.

I conclude by saying that it certainly was an extremely busy program in New Zealand. We also visited Wellington in the course of our visit. I would like to thank all the New Zealand parliamentarians and government and non-government officials that we met. I thank them for their time and for the information they provided to us. I would par-ticularly like to thank our counterpart committees in New Zealand, the Foreign Affairs, Defence and Trade Committee and the Transport and Industrial Relations Committee. I would also like to thank my colleagues who travelled with me: Mr Don Randall MP, the chair of the committee; Mr Laurie Fergus-
son; and Senator Stephen Parry. Finally, I would very much like to thank Dr Kate Sul-
livan for all her assistance. Whilst we were on the delegation she was always cheerful and a great deal of assistance to us all.

Question agreed to.

DEFENCE LEGISLATION AMENDMENT BILL 2006
First Reading
Bill received from the House of Representatives.

Senator SANDY MACDONALD (New South Wales—Parliamentary Secretary to the Minister for Defence) (4.38 pm)—I move:

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

Question agreed to.

Bill read a first time.

Second Reading
Senator SANDY MACDONALD (New South Wales—Parliamentary Secretary to the Minister for Defence) (4.38 pm)—I table a revised explanatory memorandum relating to the bill and move:

That this bill be now read a second time.

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

Leave granted.

The speech read as follows—
DEFENCE LEGISLATION AMENDMENT BILL 2006

In October 2005, in his speech tabling the Government response to the 2005 Senate report into the effectiveness of Australia’s military justice system by the Senate Foreign Affairs, Defence and Trade References Committee, the previous Minister for Defence, Senator Robert Hill, commented that the Australian Defence Force does a truly magnificent job in defending this nation and its interests. He also added that the government was committed to providing the best equipment and conditions of service to ensure that the ADF is a modern fighting force and that hand in hand with this, is a determination to provide a military justice system that is as effective and fair as possible.

The Government continues to express its admiration of defence personnel undertaking important and often dangerous activities in Australia and on overseas operations.

The Government is also committed to reforming the military justice system to address the concerns of defence personnel, the parliament and the community, by continuing its commitment to the objectives outlined by Senator Hill. Therefore, this bill is designed to make significant enhancements to the military justice system, which in turn will facilitate a confidence in that system among those who it serves.

As Senator Hill commented, the changes are intended to provide for and balance the maintenance of effective discipline and the protection of individuals and the rights of Australian Defence Force members.

The bill introduced today creates a permanent military court to increase confidence in the military justice system among those it serves. The new Australian Military Court will operate independently of the chain of command. The essence of this judicial independence is reflected in the bill through the principles of security of tenure, security of remuneration, and administrative independence. However, the new Australian Military Court must still meet the unique requirements of the ADF, such as the ability to deploy quickly and sit in an operational theatre.

The intent of the bill is to continue to demonstrate the Government’s commitment to installing a ‘best practice’ military trial system for Australian Defence Force members and to establish a qualified and experienced ‘military judiciary’ to ensure a fair hearing and natural justice, in the context of the enduring need of the Australian Defence Force to maintain effective discipline, and through that operational effectiveness.

In meeting this unique mix of requirements, the bill must reflect good practice from both a legal and military perspective, particularly in relation to:

- the essential military character and status of the Australian Military Court;
- the structure of the court to meet its predominant case loads, and in exceptional circumstances the capacity to deal with the most serious offences;
- the attractiveness of the military judge appointments to the optimum pool of candidates;
- the maintenance of levels of experience among the military judges; and
- the rigour of the military jury decision processes.

The features of the Australian Military Court will include the following:
- the statutory appointment of military judges by the Governor General, including a permanent Chief Military Judge and two permanent Military Judges. These will be selected from all the available qualified full or part time legal officers;
- a part-time Reserve panel of judges, selected from all the available qualified Reserve ADF legal officers;
- security of tenure (10 year fixed terms);
- remuneration of military judges to be independently set by the Remuneration Tribunal;
- military judges to be eligible for an automatic ‘mid term’ promotion during his or her tenure;
- military judges, to sit alone or with a military jury. The concept of a military jury is a new one. A trial by military judge and jury will be akin to a trial by court martial and a trial by military judge alone will be akin to a trial by a DFM;
- the size of a military jury to be aligned to the constitution of a military jury with a class of offence. For example, for a class 1 offence, a jury of 12 members will be required. A class 2 or 3 offence will require a 6 member jury. The determination of questions (by unanimous or majority verdict) will be by a unanimous or alternatively, by a five-sixths majority. This will reduce the potential for a ‘hung jury’ and allow for the examination of jurors where unanimous agreement cannot be reached. The effect of these provisions will be to increase the rigour of the decision making process;
- fully deployable, able to sit in theatre and on operations. A principal factor of the Australian Military Court that is peculiar to the Defence Force, is the military preparedness requirements and physical demands of sitting in an operational environment. This requires not only the necessary qualifications to perform the ‘judicial’ functions of a military judge, but also to satisfy the medical, training and physical fitness requirements.

The bill also introduces a new concept of Class 1, 2 and 3 offences.

As foreshadowed above, it is intended that offences will be dealt with either by military judge alone or by military judge and military jury. In some cases, the latter will be mandatory (Class 1 offences). Trial by military judge and jury may also occur in respect of Class 2 offences, except where the accused elects to be tried by military judge alone. The accused may opt for trial by military judge alone in certain circumstances. However, whichever mode of trial, it is intended that a military judge will determine the sentence.

For a Class 3 offence, while the default position for trial will be by military judge alone, the accused may elect to be tried by a military judge and jury. All class 1, 2 and 3 offences are outlined in the bill and replicate the current offences in the Defence Force Discipline Act.

As I mentioned above, to better maintain a consistent level of experience on the court and to demonstrate security of tenure, judicial independence and prospect of career progression, the tenure of the Chief Military Judge and military judges is to be for a fixed period of 10 years. However, whilst there is this statutory 10 year period of appointment, a Military Judge may serve a shorter period, for example in the case of
where he or she retires on reaching compulsory retirement age.

Whilst there will be no opportunity for reappointment, there are provisions which allow for automatic promotion and acting appointments in certain circumstances.

The acting appointments will enable a former Chief Military Judge, military judges or civilian judicial officers serving in the Reserve to try a charge and take action certain action where the charge may require specific expertise. It will also encourage the professional development of currently serving (ADF) former military judges, which will in turn maintain the availability of their skills and experience in the future.

The promotion provision will also recognise the status and importance of the appointments and increase the attractiveness of the positions to the Australian Defence Force legal officer corps.

The Australian Defence Force currently has, as Reserve members, serving judges and magistrates from federal, State or Territory courts. The bill will preclude a judge or magistrate from a federal, State or Territory court, appointed as a part time or acting military judge, from receiving remuneration under the DFDA if they receive salary or annual allowances by virtue of their judicial office.

The rationale for these provisions is not only to reinforce the independence and impartiality of judicial office, it is to counteract any perception of financial advantage, incentive, or inducement in the remuneration arrangements surrounding appointment of a part time or acting military judge.

To further demonstrate the independence and impartiality of these positions, it is intended that the Governor General appoint the Chief Military Judge or a military judge, following an independent merit selection process.

As I mentioned earlier, a former Chief Military Judge or military judge or other judicial officers (for example a judge or magistrate of a federal court or a court of a State or Territory serving in the Australian Defence Force) will be able to act as a military judge, in circumstances where the expertise or experience of that person is required in respect of a particular charge.

However, the bill will also ensure that a State or Territory judge or magistrate will not be financially disadvantaged by the operation of the proposed provisions, whereby the Minister can enter into any arrangement that might be necessary to secure the services of such a judge (this also includes the possible reimbursement of a State or Territory by the Commonwealth).

To enhance the status of the AMC, the bill will specify that the AMC is a court of record, noting however that there will be provision to limit the publication of proceedings in the interests of security or sensitivity.

In establishing the Australian Military Court, consequential amendments will also be required to Defence and other portfolio legislation to remove the court martial and Defence Force magistrate trial system with that of the new Australian Military Court regime.

Appeals will be available from the Australian Military Court to the Defence Force Discipline Appeals Tribunal (under the Defence Force Discipline Appeals Act 1955). This replicates the current system of appeals from Court martial or Defence Force magistrate decisions, however, it will be extended to include appeals on punishment (noting that such an appeal may result in an increased punishment).

Proceedings before the AMC are intended to reflect the unique culture and traditions of the Australian Defence Force, whilst not being unduly formal or protracted. That said, to facilitate fair and expeditious proceedings, the bill will introduce the availability of evidence via video and audio links to be accepted in the Australian Military Court.

The basic model of the evidentiary provisions of the DFDA will be retained, however, these provisions will be extended by providing for evidence by affidavit, video link, telephone or other appropriate means, similar to provisions in the Federal Court of Australia Act 1976. The intention of these provisions is to facilitate the most effective and efficient collection of evidence that will enable a fair outcome for the accused and minimal inconvenience to witnesses or parties to the proceedings.
To complete the establishment of the Australian Military Court, further provisions include:

- jurisdiction of the AMC. It’s jurisdiction will be in respect of the same offences as those dealt with previously in a trial by court martial or Defence Force magistrate;
- stamp and seal of the AMC;
- staff of the Australian Military Court;
- procedural matters, for example, rules of court to be made by the Chief Military Judge;
- legal representation for an accused, facilitated by the new Director of Defence Counsel Services, on a national rather than regional basis;
- annual report to be prepared by the Chief Military Judge on the management and administration of the Australian Military Court.

The Judges Pensions’ Act 1968 will be amended so that a military judge appointed to the AMC under the DFDA is not eligible for a pension pursuant to the Judges Pensions’ Act. This will give effect to the intent that as the AMC is a federal court and the proposed term of appointment is for 10 years, an unintended consequence would see military judges being eligible for pensions under the Judges’ Pensions Act 1968, in addition to the military pension scheme that applies to all Defence Force members. In order to correct this anomaly, the bill amends the Judges’ Pensions Act 1968 to prevent the payment of pensions to military judges under that Act.

Another measure in the bill is to amend the Defence Act 1903, to facilitate the creation of a ‘Chief of Defence Force Commission of Inquiry’. The Government agreed in its response to the Senate Report that the Australian Defence Force conduct independent and impartial inquiries into notifiable incidents including suicide, accidental death or serious injury. An independent civilian with judicial experience will be the Commission President.

There will be a need for further amendments to the Defence Force Discipline Act, as additional parts of the government response to the report are implemented in the near future.

A modern and professional force deserves a modern and effective system of military justice. With the reforms contained in this bill, the government will provide a system that will better ensure impartial and fair outcomes and that strike a balance between the need to ensure effective discipline within the Australian Defence Force and to protect individuals and their rights.

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

ENVIRONMENT AND HERITAGE LEGISLATION AMENDMENT (ANTARCTIC SEALS AND OTHER MEASURES) BILL 2006

Returned from the House of Representatives

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

AUSTRALIAN PARTICIPANTS IN BRITISH NUCLEAR TESTS (TREATMENT) BILL 2006

AUSTRALIAN PARTICIPANTS IN BRITISH NUCLEAR TESTS (TREATMENT) (CONSEQUENTIAL AMENDMENTS AND TRANSITIONAL PROVISIONS) BILL 2006

DEFENCE FORCE (HOME LOANS ASSISTANCE) AMENDMENT BILL 2006

MARITIME LEGISLATION AMENDMENT (PREVENTION OF POLLUTION FROM SHIPS) BILL 2006

NATIONAL CATTLE DISEASE ERADICATION ACCOUNT AMENDMENT BILL 2006

HOUSING LOANS INSURANCE CORPORATION (TRANSFER OF
Message from His Excellency the Governor-General was reported informing the Senate that he had assented to the bills.

MEDIBANK PRIVATE SALE BILL 2006
Second Reading
Debate resumed.

Senator ALLISON (Victoria—Leader of the Australian Democrats) (4.39 pm)—I was earlier this afternoon speaking about the savings that Medibank Private has been able to pass on to its members either through reduced premiums or services through its quite aggressive, if you like, negotiations with hospitals and medical specialists. Medibank Private has managed to hold cost rises to just 6.2 per cent when many of its rivals were increasing premiums by eight or nine per cent. It did not need to be privately owned to drive down premiums or get better deals for its members, and the government has not explained why it needs to be privately owned now.

The bill does of course allow for existing assets of the fund, assets that were built up from contributions of existing policy holders, to be turned over to the new shareholders. That ignores the matter of whether the government is entitled legally or morally to sell off assets that have been built up by contributions from those members. The AMA in its media release on 5 September said:

The AMA, while not wishing to comment on the legality of the situation, doubts the morality of the sale given that much of the value of Medibank Private is in its financial reserves which were not contributed by the government but rather, extracted from the members in compliance with regulatory requirements. This does not imply any criticism of the regulatory requirements. Reserves are necessary for proper prudential management of private health funds.

There are of course legal concerns. The Parliamentary Library research brief notes this in September. It said that there were legal doubts about the ability of the government to sell Medibank Private without compensating members. The government was quick to get its own advice that contradicted that. The Library subsequently provided in the Bills Digest a complete rebuttal of the advice the government was given.

The bill includes a clause specifically anticipating the risk of a compensation claim and allowing for the taxpayers to pick up any compensation tab. We say selling Medibank Private to existing members would not only seem to be the more just option but also seem to mitigate any risks of future compensation claims. The AMA endorsed this idea. It said:

If the Government no longer wishes to be involved as an operator of a private health fund, there is a strong case for mutualising Medibank Private and retaining the equity with those who have contributed to it, namely the members.

But, when it comes down to it, this sale is about filling the government’s coffers. The government will stash away from this sale about $2 billion, and there is nothing in this bill to tell us what will be done with that money. The government says it will give $500 million of the proceeds to the National Health and Medical Research Council for research grants but that is not guaranteed in this legislation. It could well turn out to be a non-core promise.

The Democrats would support more funding for medical research, and how good it would be if the government redirected some of the $2.5 billion that it spends every year on private health insurance rebates into re-
search but, sadly, not likely. Even if the government does give $500 million to health research, there is still another $1.5 billion. The outstanding issue therefore is what to do with that extra money, and we have heard nothing from government on that.

The sale of Medibank Private does not do anything to address the health needs of the community but, at the very least, all of the money from the sale should go towards better health care. We do not oppose privatisation per se, as I said earlier today, but we do not support it without justification either. The government has provided no compelling reason to sell Medibank Private, and there are many uncertainties about the effect of the sale. Wanting to get their hands on the $1.5 or $2 billion that will come from the sale is not a good enough reason to sell off an asset that has been built up by members.

I foreshadow my second reading amendment, which has been circulated on sheet 5144 revised. It says:

At the end of the motion, add: ‘but the Senate is of the view that prior to the sale, the Productivity Commission be required to conduct an inquiry into the private health insurance industry, with specific attention to enabling an efficient, competitive and viable private health insurance industry’.

That amendment would at least tell us about the industry and about what needs to be done in order to make it viable, efficient and competitive rather than having this sort of knee-jerk approach that the government has taken and any sense that this sale might actually do that.

**Senator CAROL BROWN** (Tasmania)

(4.45 pm)—The Medibank Private Sale Bill 2006 represents yet another ideological attack on public institutions and the rights and welfare of Australian citizens. At stake is a public interest of the highest importance—access to affordable health care, regardless of the state of residence and the level of medical risk. In pursuit of this public interest, Australia has evolved a unique health system in which private and public operators play complementary roles. It is not without its shortcomings, particularly evident in the relatively poorer mortality and morbidity of Aboriginal and Torres Strait Islander citizens, but it delivers overall health outcomes which are superior to those of the United States at a fraction of the cost.

The evidence indicates quite clearly that Medibank Private has played an important role in the success of our system. It was introduced in order to restrain health insurance premiums and to ensure that ordinary Australians would have access to a basic health insurance package. In recent years it has achieved a reputation for innovation in cost management whilst continuing to meet the expectations of members. Its earnings enable it to explore innovative new services for members and to pay out levels of benefits to members that are generous by industry standards.

Medibank Private, a not-for-profit corporation, is and has been for some time the industry leader, despite the fact that it faces the same restrictions and pressures that apply to other private health insurance organisations. As a reward for its outstanding performance, the Howard government now proposes to throw it out of the public sector because it cannot see or will not acknowledge the public interest that is served by retaining it as a publicly owned, not-for-profit organisation, and because it cannot see or will not acknowledge the probable impact of its sale on the members and employees of Medibank Private, on ordinary Australians and on our health system.

As we sit in this house of review we enjoy the privilege and responsibility of examining, on behalf of our constituents, the claims made by the government for introducing this
bill. I propose to analyse each of the reasons advanced by the government in favour of the bill before looking at some of its broader implications. The first of the reasons for sale is set out in the explanatory memorandum. It says:

There is no sound policy reason, nor market failure reason, for the Commonwealth to continue to own a health insurance business.

In other words, competition in the private health insurance market is so strong that taking out the major player, which happens to be not-for-profit, and changing its primary focus from members to shareholders will make no difference to the prices of premiums, range of products, value for money of health insurance, and its accessibility to ordinary people. Most people would find this hard to believe.

The government should not pretend that this is a perfect market where market forces are the best guarantee of consumer interests. In fact, private health insurance shows many classic signs of market imperfection, particularly asymmetric information and adverse selection. This is a market where the government subsidises prices to the tune of nearly $3 billion per annum through its rebates on health insurance premiums. Moreover, it is a market which needs government intervention to ensure adequate promotion of a public interest—that of keeping people healthy by ensuring that they have access to affordable, quality health care.

An assessment that this public interest was not being well served by existing private health insurance arrangements led to the introduction of Medibank Private by a Liberal government in 1976. Why, at a time of increasing cost pressures, increased use of expensive new diagnostic techniques and equipment and increased prevalence of costly health conditions such as obesity and diabetes, not to mention demographic ageing, would the market in private health insurance do better without the countervailing force provided by Medibank Private? Cost pressures are increasing, but the cost of failing to provide access to quality health care becomes clearer every year too. Recent research has highlighted, in particular, the importance of ensuring good health care to expectant mothers and young children as a way of reducing health risks and costs in the future.

If you want to look at what happens in a strongly privatised health system with a focus on for-profit medical service providers and insurers, then look at the United States. It spends more than any other country on health care, but its spending is not evenly targeted. Many people cannot afford health insurance and have no access to publicly funded health care systems. The community rating system, whereby higher risk or higher service clients cannot be discriminated against, is patchily applied with the result that in some states the people who most need healthcare insurance cannot get it or cannot maintain access to it.

For other OECD countries, health outcomes are generally related to the level of health expenditure—the more you spend, the better the outcomes in, for example, life expectancy at birth, infant mortality and infant birth weight. But not in the US. According to OECD figures published in 2005, the US spent 15 per cent of GDP in 2003 compared with Australia’s 9.3 per cent in 2002. Life expectancy at birth in the US was 72.2 in 2002, compared with Australia’s 80.3 in 2003. The difference in reference years indicates how difficult it is to undertake cross-country comparisons. But it is safe to say that there are significant differences in costs and health outcomes between Australia, with its carefully balanced public-private health-care system, and the US, with its overreliance on market medicine. These differences
are clearly in Australia’s favour and should discourage us from pursuing an American model.

A related public interest argument for retaining public ownership of Medibank Private is its effectiveness as a virtual regulator of the industry by adhering to its charter focus on members’ interests and by demonstrating the sort of leadership and creativity that have attracted positive comment from conservative market analysts such as Standard and Poor’s. Medibank Private obviates the need for certain types of regulatory intervention on the part of government. It sets a positive performance standard in operations and member benefits for other providers.

Moreover, Medibank Private is the only national private health insurance organisation. It is by far the largest fund, with nearly three million members across Australia—nearly 30 per cent of the entire private health insurance market. It is No. 1 or No. 2 in each and every state or territory. In my home state of Tasmania there were 77,696 individuals covered by Medibank Private in 2005. What guarantee is there that the fund would retain its national coverage if it were sold off?

The second of the government’s stated reasons for wishing to sell Medibank Private, as expressed in the explanatory memorandum, is:

Economic modelling has found that a privately-owned Medibank Private Limited would become more efficient. This will come through lower management expenses and also through an increased ability to expand into other business areas—such as other forms of insurance and other financial products—and through this expanded business, be a more efficient operation. More efficient operations will help restrain premium growth for the benefit of the contributors to the Medibank Private Fund.

To support this claim, the Department of Finance and Administration commissioned a report from a consulting company, CRA International, which, according to its website, represents the ‘gold standard for business consulting and litigation support’. I wonder whether its report for DOFA represents this ‘gold standard’. DOFA says that the report was commissioned on 23 October 2006 and completed on 31 October 2006. You would be right in considering eight days to be a very short period of time in which to undertake an analysis of the comparative efficiency of Australia’s public health insurance organisations. I am not aware of any aspect of public health with a reputation for being easily amenable to analysis. Nevertheless, CRA managed to prepare, in this very tight time frame, a 12-page report entitled The impact of privatisation of Medibank Private on private health insurance premiums.

Its major conclusions can be summarised as follows. Firstly, expected changes in health markets and population demographics over the next 20 years indicate that the real costs in Australia of providing private health insurance, and thus premiums, are likely to rise, all else being equal. Secondly, even if Medibank Private persisted with the sorts of improvements it has demonstrated in recent years, these would be insufficient to enable it to avoid premium increases. Thirdly, modelling of health fund performance indicates that there is scope for a privatised Medibank Private to increase its efficiency by an estimated five to seven per cent, of which only one percentage point would be required in the form of a pre-tax market return on capital, leaving four to six percentage points for the benefit of members.

The account of the modelling undertaken in this report is very spare indeed, but what is clear is that this is yet another example of the government obtaining advice to order. There is no market for the provision of impartial advice to this government—far from it. The government is scrupulous in following Sir Humphrey’s advice: never ask for
advice or hold an inquiry without knowing what the result will be.

The model used by CRA is not one with transparent assumptions that would be agreed by a panel of independent experts. On the contrary, the assumptions which drive the outcomes of this econometric model are ones that reflect the ideological prejudices of the government. Change the assumptions; change the outcomes. Economic models are no better or no worse than their assumptions and the machinery used to construct them. Is this model robust and reliable? Has it ever been used to predict something with tolerable accuracy? That seems unlikely.

Even if we try to take the CRA report document at face value, it is puzzling. It asserts that population growth will place increased pressure on average premiums, apparently on the grounds that efficiency falls as the client base grows. This seems counter-intuitive. The report equates performance and efficiency with financial performance relative to competitors. It notes that in order to realise a potential increase in efficiency of five to seven per cent—that is, cost cuts of between five and seven per cent—a privatised Medibank Private might need to engage in ‘rationalisation of management, call centres and customer service delivery mechanisms’. The report asserts—once again, counterintuitively—that these cuts would not necessarily result in any reduction of customer service standards. This must be the magic of the private sector at work! I am sure that the current staff of Medibank Private would be very keen to know how these customer-friendly savings would be achieved. I am also sure that the absence of pressure from demanding shareholders would not prevent them from implementing beneficial changes on the spot. But they know, and we know, that in practice so-called efficiency improvements of this type are just about cutting jobs and services.

Finally, the report suggests several strategies for diversification and innovation that would be open to a privatised Medibank Private but fails to explain why some, if not most, of these strategies could not be pursued either under current arrangements or under the revised regulations foreshadowed by the government that would provide further flexibility to all funds.

The impact of the sale of Medibank Private on premiums is an important issue. The CRA report hedged its bets in a sense by predicting that all funds would experience irresistible upward pressure on premium levels. The government has evidently undertaken more work on the impact of Medibank privatisation on premiums in scoping studies which it has decided not to share with us. Whenever the government decides not to release the results of research conducted on its behalf, I assume that they were not favourable to the government’s public position.

The majority report of the Senate Standing Committee on Finance and Public Administration’s inquiry into this bill advanced two further reasons for selling. The first of these was similar to the ‘no good reason not to’ rationale set out in the explanatory memorandum, but with the addition of the idea that the market for private health insurance should now be considered ‘mature and competitive’. How can that claim be tested and what is the relevant evidence? It seems to be just another of the many assertions made by the government which have the right sound but prove to be content free. The majority report makes what it has termed ‘a related point’ on a possible conflict of interest that arises with the government owned business operating in a market substantially regulated by the same government. I can do no better than concur with Professor John Deeble when, in his submission, he wonders how a government could be described as having a conflict of interest with itself.
The continued presence of Medibank Private as a large not-for-profit player in the market may well conflict with the interests of parties who might stand to profit from its sale or from its removal as a competitor, but the only conflict of interest for this government is one of ideology. The continued retention of Medibank Private in the public sector offends the government’s commitment to privatisation. It has, by all reports, been on the hit list for some time. In fact, Medibank Private presents no conflict of interest to the government. On the contrary: it seems to me that there is a unity of interest between public health goals and the goals of a publicly owned Medibank Private.

As a reason for sale, the majority report also espoused ‘the importance of maximising competition in the private health industry with the consequent benefits of containing premiums. There is no evidence at all to justify this claim. The AMA, Professor Deeble and the Community and Public Sector Union all considered the converse to be true. In making up our minds, we should recognise that there is now abundant research that demonstrates that privatisation is neither necessary nor sufficient for improving the efficiency or the effectiveness of government enterprises. To insist otherwise is disingenuous at best.

Up until now, I have been examining the reasons in favour of privatisation provided by the government and their supporters in this chamber. I believe that no reason or evidence that has been advanced so far can withstand even the most sympathetic scrutiny. Instead of yielding benefits, it seems evident that privatisation is most likely to increase costs—first, for Medibank Private members and, second, for other fund members. Ultimately, the costs will flow through to the rest of the community, as the balance between the public and private sectors in our health system will be upset.

Now I would like to talk about those who would face losses of various sorts as a direct result of privatisation. First among them are the members of Medibank Private. The government got the legal advice it paid for, which said, essentially, that it was free to sell Medibank Private and that members were entitled to nothing. But the government has not been able to rely on this advice. To ensure that the bill would not fail to clear a certain constitutional obstacle to government theft, it contains provisions for some sort of compensation for members. I regard the proposal to sell the fund without first distributing its surplus funds to members as morally obnoxious and legally questionable. How could such a proposal be consistent with respect for the rule of law?

The independent advice provided by the Parliamentary Library on this question is clearly more reliable. It says that Medibank Private members have a beneficial interest in the surplus assets of the fund. The government not only proposes to rob members of their current entitlement to share in the profitability of the fund but also proposes to undermine their reasonable expectations about continuity of service levels and product range. What about national access? What about current employees and their prospects of job security after privatisation? What about the benefits such employees stand to lose if they are not guaranteed continued access to government superannuation schemes such as the CSS?

Beyond that, what about Australian ownership? The government proposes to retain a privatised organisation in Australian ownership for only five years. There can be no guarantee that Medibank Private would continue to exist in any recognisable form after that. It is noteworthy that the government has chosen to legislate to exempt Medibank Private’s proposed change of registration from the normal requirements under section 78 of
the National Health Act 1953. This means
that the change would occur without being
subject to normal parliamentary scrutiny and
without the need for the Minister for Health
and Ageing to review the likely impact of a
change of registration on members, on pre-
miums and on the public interest.

What does the government stand to gain?
First, it would gain any net proceeds from
the sale of Medibank assets. However, I am
persuaded by the independent advice of the
Parliamentary Library that members would
be entitled to seek compensation if the fund
were sold and it was converted to for-profit
status. The fact that the government has
made some provision for compensation in
this bill lends credence to this view. Any sale
price would also need to be discounted by
the usual substantial fee to a private consult-
ant for managing the sale, further diminish-
ing the reserves available to compensate
members.

Second, a privatised for-profit Medibank
Private would provide a flow of tax revenue
on its profits to the government. Finally, pri-
vatisation would satisfy this government’s
strong ideological bent. The government is
determined to flog off Medibank Private,
notwithstanding the indefensibility of its po-
sition on the legal and moral rights of Medi-
bank Private members and notwithstanding
the absence of reliable evidence that the pri-
vatisation would benefit the community. The
government is steadfast in ignoring the role
that a well-run public body can have in lead-
ing the market. Just think how often a cer-
tain— (Time expired)

Senator POLLEY (Tasmania) (5.05
pm)—I rise to speak on the Medibank Pri-
ivate Sale Bill 2006. One could be forgiven
for feeling a sense of deja vu in this place:
here we are yet again debating the sale of
another public asset, the sale of which, just
like Telstra, will be detrimental to the Austra-
lian community and, most significantly, to
the Medibank Private members. That is right:
yet again we are seeing this arrogant gov-
ernment attempting to force legislation
through this place that is going to be detri-
mental to the Australian people.

During the second reading debate on this
bill in the other place, we saw the debate
guillotined and the bill declared urgent. That
was despite the government not intending to
go through with the sale until 2008—until
after the next election. And why were mem-
bers in the other place refused the opportu-
nity to speak on this bill? It was because the
Howard government does not care about par-
liamentary process, it does not care about
ensuring that legislation is debated and it
does not want the Australian public’s atten-
tion to be drawn to this debate to help them
see the truth about this bill.

In short, this is a government that does not
care that it is forcing bad legislation through
parliament. This is a government that does
not care about the effect of such legislation
on Australia or its effect on the Australian
people. This bill needs to be looked at ex-
actly for what it is, as does the reasoning
behind it—and that is the sale of Medibank
Private. The government’s reasons are illogi-
cal and flawed. It has asserted repeatedly that
it wants to sell Medibank Private for the
benefit of members and to create lower pre-
miums but, during estimates hearings, Sena-
tor Minchin released a CRA report that
stated:

Medibank Private’s premiums will have to rise
irrespective of who owns Medibank Private.

The opposition senators’ report in the inquiry
of the Senate Standing Committee on Fi-
ance and Public Administration into the bill
also noted that the report stated:

... that, if privatised, Medibank’s technical effi-
ciency could be improved and that this could re-
sult in lower premiums.
The opposition senators’ report went on to say:

... the report fails to mention that, as a ‘for profit’ fund, the benefit of any efficiencies would also be directed to shareholders, and not to members, as is currently the case.

Hence, we need to step back and ask: is this bill and the resulting sale of Medibank Private going to improve the situation of those with private health insurance and those who will require private health insurance in the future and is it going to be better for Australia? The answer to all these questions is, ‘No, of course it’s not.’ It is not going to be a better situation for Medibank Private members, for prospective members or for Australia.

The sale of Medibank Private will undoubtedly drive up premiums, and this is at a time when the government should be doing whatever it can to encourage Australians to invest in private health insurance. But, yet again, this arrogant government is doing nothing to plan for the future. It has no thought for any time except the present and no thought at all for Middle Australia. It is the mums and dads out there who are going to be hurt by this bill.

There are three million Medibank Private members at present. That represents 29 per cent of the private health insurance market in this country. Medibank Private was created in 1976 by the then Fraser government with the aim of it contributing to a viable and competitive health insurance industry. The Prime Minister first raised the possibility of its privatisation 20 years ago as part of his comprehensive privatisation agenda—the results of which we have all witnessed repeatedly in this place and again today. Make no mistake: this is an agenda driven by one man’s ideology.

The Australian Medical Association has repeatedly warned that premiums will go up if Medibank Private is sold. This is a view that has been shared by highly respected and well-known economic commentator Terry McCrann, who has said that premiums will have to go up because Medibank Private shareholders will expect a dividend on their investment. Mr McCrann also raised the point that the private health insurance market is largely not-for-profit and Medibank may struggle as a for-profit health insurer or its privatisation may trigger a trend in the private health insurance sector to be geared towards money-making rather than doing the job it should be doing.

There is no doubt that it is the Prime Minister’s intention to push this legislation through the parliament and, should Mr Howard and the coalition win the next election, they will sell Medibank Private, even though, according to a recent AC Nielsen poll, 63 per cent of people are against the sale. Is it any wonder when in 2001 the Prime Minister promised the Australian people that his election policies would ‘lead to reduced premiums’ and, far from that, private health insurance premiums have actually gone up by almost 40 per cent on average since 2001?

In the Tasmanian electorate of Bass, 38.4 per cent of people had private health insurance in 2005, down from 40.3 per cent in 2004. The Tasmanian electorates of Braddon, Franklin and Lyons all also recorded decreases in the percentage of private health insurance holders. In fact, Denison was the only electorate to record an increase in the proportion of the population covered by private health insurance. With the pressures that are on the public health system, the government should be doing its utmost to encourage people to purchase private health insurance. Selling Medibank Private is not the way to boost consumer confidence in the private health sector, especially when the Minister for Health and Ageing, Mr Abbott, has stated that he will not hesitate to approve premium
increase requests from the private health insurance industry.

All of this flies in the face of the government’s public reasoning behind the sale. When announcing the sale, Senator Minchin said the sale of Medibank Private would increase competition in the private health insurance sector and therefore put ‘less upward pressure on premiums’. That is going to be quite a hard tale for the Australian public to swallow when, on the day after the sale of Medibank Private, there will be exactly the same number of private health insurers and no increase in competition.

As noted in the Bills Digest by the Parliamentary Library, this bill contains the provisions necessary to facilitate the sale of Medibank Private. The digest notes that:

... a sale that does not adequately account for the interest of members in the Medibank Private fund may result in a liability to pay compensation to members. The Government has indicated that it intends to offer some form of benefit to members, but is yet to specify details. This Bill contains no provisions for such benefits. The Bill contains various ‘safety-net’ compensation provisions, making it unlikely that it would be found to be constitutionally invalid in the event that it was found to acquire the property of members. Any redress available to members in such circumstances is likely to be limited to a claim for compensation.

In trying to swing public opinion in its favour, the government has stated that it would give Medibank Private members special rights in the float, yet it has failed to outline exactly how members would be treated. The Bills Digest also notes that the bill contains safeguards directed at securing the Australian character of Medibank Private, with the intention of ensuring diversified ownership. However, these provisions will expire five years after the sale of Medibank Private. Medibank Private is worth over half a billion dollars, and one could argue that the three million Medibank Private members would have a right to be compensated if it were to be divvied up and sold off. If there is any doubt at all that Medibank Private members will be ripped off, the sale should not take place.

The opposition senators’ report also stated that, if there is a chance that taxpayers may be required to meet the cost of compensation claims arising from the sale, supporting the bill is impossible. Labor is against the sale of Medibank Private, it is against this legislation and, while the government will use its powers in this place to force this bill through, a Labor government would rip up this legislation and keep Medibank Private in public ownership, which is in the best interests of all its members and all Australians.

Senator HOGG (Queensland) (5.15 pm)—In rising to speak on the Medibank Private Sale Bill 2006 I declare that I am a card-carrying member of Medibank Private, and that appears on my register of interests. I say that so that no-one is in any doubt as to where I stand on this debate. Having declared my interest in this, I must say that I am opposed to the sale, which should come as no surprise to the people opposite. For a long time—not just over years but over decades—my family were members of another fund, which will remain nameless. It isn’t strange that there is very
much a similar situation in the superannuation industry, where we have large industry funds that are not for profit? Over a long period of time, they have kept the for-profit sector of the superannuation industry very honest, in my opinion. Without that, the for-profit funds would have gone ahead in leaps and bounds in terms of charges and, having been uncompetitive, would then have seen their popularity with contributors wane. But that has not been allowed to happen because of the substantial hold of the industry superannuation funds.

I will not speak for a long time on this bill this evening. My main purpose is to declare my personal circumstances. But I want to take a couple of minutes to peruse some of the opposition senators’ report and some of the second reading speech—that is another gem, but we will come to that in a few moments. I want to draw the Senate’s attention to the opposition senators’ report at paragraph 1.3, where it talks about the late decision by the government to release the CRA International report. Paragraph 1.3 says:

Later that afternoon, the Minister for Finance and Administration released the CRA report, which stated that ‘Medibank Private’s premiums will have to rise irrespective of who owns Medibank Private’.

It seems to me that that is a fait accompli. The report goes on:

… if privatised, Medibank’s technical efficiency could be improved and this could result in lower premiums.

Let us not mince words; technical improvement is generally a euphemism for sacking people and reducing labour. Beyond that, there is not much by way of efficiencies to be made, and that is the only way in which lower premiums could result. The opposition senators’ report goes on to say:

However, the report fails to mention that, as a ‘for profit’ fund, the benefit of any efficiencies would also be directed to shareholders, and not to members, as is currently the case.

Hence I drew the analogy with the industry superannuation funds, where there is no for-profit concept within the industry superannuation funds. All the benefits that accrue do not go in high salaries and high charges and fees and do not go back into providing a dividend to corporate shareholders; they go back directly to the members. Of course, once Medibank Private becomes a public company, it has a distinct imperative whereby it must return a dividend to the shareholders; otherwise, why exist? If it is operating efficiently, the only way to return the dividend is invariably to cut staff. That is the last thing we need in this environment. No case is given by the government as to why this should be and why it needs to be privatised. In paragraph 1.4, the opposition senators’ report says:

The Government asserts that the sale will increase competition in the private health insurance market. Again, because it is allegedly contained in the scoping study, evidence to support this contention has not been produced.

Isn’t that a surprise? You make a bland statement that privatising it will lead to increased competition, but when the evidence is called for, the evidence, sadly, is missing. Then at 1.6 the opposition senators’ report says:

The Government also asserts that privatisation will liberate the fund from administrative requirements associated with government ownership. Currently, these requirements include an annual corporate plan and statement of intent. A float would not lessen these reporting requirements but require the fund to report to the market rather than the minister.

The conclusion of the opposition senators was that this was not going to change the status quo. All it was going to do was to change the perception of how it looked and operated. The claim that it was going to free
it from administrative requirements was not found to be true. Medibank Private is still going to be required in effect to have an annual corporate plan, a statement of intent and, of course, if it becomes a public company, it will be subject to the rigours of the ASX. I am not going to, as I say, delve into the full content of the opposition senators’ report but I think that the statements that were made are compelling indeed.

I want to take a couple of minutes to look at the spin that was placed once again in the second reading speech by the Special Minister of State. I have commented about a few second reading speeches on a couple of bills in recent times. I really think the government needs to take a look at getting someone to write better second reading speeches than are being trotted out in this parliament. There is generally no intellectual rigour to the second reading speeches. They comprise a number of bland statements and, because those statements are made, ipso facto they become facts of themselves. This is, for me, quite an unacceptable way in which legislation should be handled in this place. Let us look at the second reading speech. On the first page it said:

Members will be aware that my department and the Department of Health and Ageing are consulting industry on a range of reforms to the private health insurance industry.

These reforms are aimed at:
• making private health cover more affordable;
• improving customer access to information about health insurance products, to help customers make decisions about the cover they need; and
• streamlining the regulation of the industry while maintaining the benefits of competition and strong prudential oversight.

This is a very nice motherhood statement but nothing that really goes to the core of providing a better service to people in their health-care cover in Australia. It is very easy for the government to say they are looking at a range of reforms that are making private health cover more affordable, but when you dig into the second reading speech you cannot find out how this proposal in any way leads to that outcome. There might be a hypothesis that this happens but there is nothing there that sustains the claim that is made.

I do not know how this bill is going to improve ‘customer access to information about health insurance products, to help customers make decisions about the cover they need’. I am quite comfortable with the cover that I have had with Medibank Private now over a number of years. Privatising it does not seem to me to be going to make one iota of difference to my access to information about health insurance products. The information about health insurance products is already out there on the web and in a number of different forms and I can access it at my desire. The last dot point, about ‘streamlining the regulation of the industry while maintaining the benefits of competition and strong prudential oversight’, is questionable indeed. Undoubtedly, the prudential oversight is going to be the same whether it is a public or a private company. The second reading speech then went on to say:

There is no sound policy reason for the Australian government to continue to own a health fund. That is just a bland statement. There is no reason that the Australian government cannot continue to own a health fund either, so making a simple statement like that does not of itself justify the sale. One would expect that they would then try to justify that statement. But the minister made no attempt whatsoever. It went on:

Competition between funds is the best way of keeping a lid on premiums.

Again this is a bland statement. It is a throwaway line without any justification. There is
nothing to say that the sale of Medibank Private will go in any way to lessening the competition between funds and thereby keeping in an already existing state the lid on the premiums that we pay. One of the things that people constantly complain to me about is the ongoing increases that seem to take place annually, as they can, on adjustment of the premiums that people pay to these health funds. Again, I think that is very much a throwaway line in a second reading speech without any justification. Then the minister’s second reading speech goes on to say:

The private health insurance industry will also benefit from the largest health fund being privately owned and competing on a level playing field.

I would have thought that they might have attempted to try to explain that but there is no attempt at all. Again, it is another very bland statement for which there is no justification. So something has to happen with the speechwriters from the government’s side to at least lift their game and put some intellectual rigour into the second reading speeches. The minister’s second reading speech at page 2 went on to say:

Decisions about implementing the sale of Medibank Private will be made in the context of the Australian government’s objectives for the sale …

There were a list of dot points and I am not going to go through all of them. But the first was:

• to contribute to an efficient, competitive and viable private health insurance industry …

Again there is no substantiation of that at all from what I can see. It is again a bland comment that we are supposed to accept because the government have made this statement that it is going to happen. The next dot point said:

• to maintain service and quality levels for Medibank Private contributors, including— and this is the normal throwaway line—

• in regional and rural Australia …

So you have to bring regional and rural Australia into it somehow, somewhere to make this justifiable. But, again, there is no evidence to sustain what the minister’s second reading speech says. Last but not least of the five dot points is where they say:

• to ensure the sale process treats Medibank Private employees in a fair manner, including through the preservation of accrued entitlements …

That is big hearted indeed. But there is no justification beyond the sale as to what the future of Medibank Private employees will be—none whatsoever. They are just being treated as one would reasonably expect them to be treated in the transmission of a sale: fairly and equitably. You cannot ask for more than that. But to give this as a reason justifying the sale beggars belief. Then in the minister’s second reading speech it says:

Claims that the sale of Medibank Private will somehow be the cause of an increase in premiums for health cover are unfounded.

I would think that if one is taking away the not-for-profit operation of the fund then there are going to be increased costs in the fund by returning a dividend to the owners of the fund. Unlike a mutual fund, where the dividend is returned to the contributors to the fund, this would no longer apply. After all, the owners of Medibank Private would want a dividend—and, if they do not, they are commercial idiots. That is the only term I could use to describe them. But under that paragraph the minister says:

Competition for members between funds is the best way to limit premium increases. Consumers, and the industry as a whole, will benefit from the largest health fund being privately owned and competing on a level playing field.

My golly gosh—what a group of words that ends up being! It gives no justification. I am glad to see you agree with me over there.
There is no justification whatsoever, no substantiation—just again a throwaway line that this is going to limit premium increases. Some people might believe in the tooth fairy, the fairies at the bottom of the garden or a number of other mythical creatures—but I do not. And I do not believe that any justification has been given in the minister’s second reading speech that will show that this will happen. Purely and simply because the minister states it does not mean it is going to happen. Then it says:

Consumers, and the industry as a whole, will benefit from the largest health fund being privately owned and competing on a level playing field.

It was bad enough to say it once, but they have repeated it. So it looks as though the justification for anything in a second reading speech is not to say it once but repeat it twice or three times and that, if you repeat it often enough, it becomes the truth. Simply put, there seems to be no justification in the minister’s second reading speech for this sale, other than that it fits in with the ideological disposition of this government to get rid of this valuable service that is provided to a large number of Australians—and, for a large number of Australians, at a price that they can afford. It would not be the largest fund if it were not a competitive fund. And there is nothing to say that, by its transmission into being a privately owned company, this will in some way magically change the competitiveness of this company or put pressure on the marketplace to keep premiums low. I would say that what is not broken, leave alone. Leave it where it is: in the hands of the public and under the scrutiny that it is currently subject to. There seems no reason for this sale to be rushed through this parliament at this stage. It has been advocated that the sale will take place for some time well into the future, so leave what is not broken alone at this stage and let us see this bill signed to the backlogs for quite a while into the future.

Senator KIRK (South Australia) (5.35 pm)—I also rise this afternoon to speak on the Medibank Private Sale Bill 2006. As a number of speakers have said, this bill will mean that the nation’s largest health insurer, Medibank Private, will be added to this government’s long list of unnecessary and ill-considered privatisations. Consistent with Labor’s longstanding policy of opposition to the continued privatisation of this country’s iconic assets, I along with other Labor senators will be opposing this bill.

In April this year the announcement was made of the Commonwealth government’s intention to introduce legislation to permit the sale of Medibank Private. Medibank—or Medibank—has been government owned and controlled since 1976. The sale as we understand it will be conducted by share market float and will occur in 2008, assuming that this government is re-elected. The government has conceded that it will not sell Medibank Private until after the election—so, as other speakers have asked, I have to ask why it is that we are being asked to pass this legislation this week, before Christmas 2006.

The committee that inquired into this legislation, the Senate Standing Committee on Finance and Public Administration, reported on 27 November this year. It had a very short time frame in which to report, which is the usual practice these days. It did in fact leave unresolved a number of issues. There are three matters that I would like to refer to in the time that I have available today: the legal question of who owns Medibank, what effect its sale will have on premiums—as Senator Hogg referred to—and how such a massive privatisation will affect the private health insurance market more generally.
I will begin with the issue of whether or not the government is entitled to sell Medibank and what rights current members have to the Medibank Private fund. At this point, even though I have declared it on the senators’ register of interest, I should indicate that I hold Medibank Private health insurance. The Parliamentary Library earlier this year released a research brief that was entitled *The proposed sale of Medibank Private: historical, legal and policy perspectives*. This brief challenges the government’s claim to sole ownership of the fund. One conclusion that is reached in this brief is that it is arguable that members have the right to the benefits of the existing surplus assets of the fund and that a sale of Medibank, if it were to adversely affect those rights, could give rise to a compensation claim against the Commonwealth. The beneficial ownership of the Medibank fund arguably lies with those who have the right to control Medibank Private and are entitled to its residual earnings.

As I mentioned, this was a brief prepared by our Parliamentary library. Shortly after the release of this brief, the *Sydney Morning Herald* reported that the Medibank board had received legal advice some five years ago that raised questions about whether the Commonwealth was the sole owner or whether its 2.8 million members also had ownership rights. After 30 years of contributions, Medibank members have accumulated close to $1 billion in assets, cash and equity. The only equity that belongs to the Commonwealth government is a cash injection of $85 million, which it made in 2005. After contributing so much for so long, it is most certainly the case that members deserve at least a say in Medibank’s future.

In response to the Parliamentary Library research brief, which was released by Labor on 1 September, by 4 September the Department of Finance and Administration had somehow managed to get legal advice from Blake Dawson Waldron claiming that the parliamentary research brief was wrong. The conclusion of the government’s legal advice unambiguously rejected any suggestion that the members of Medibank could be entitled to compensation upon any sale. A response to this, released by the Parliamentary Library, again raised the question of whether the proposed sale of Medibank Private could leave the government open to legal action from existing policy holders. This is clearly a matter on which legal advice differs. As I understand it, the committee determined that this matter still remains unresolved.

I think the issues of whether Medibank Private members have any beneficial interest and whether there could be compensation claims following the sale are important matters. Despite the stand that the government has taken on the legal advice that I have just referred to, it has, as I understand it, now committed itself to including some entitlement for existing members in the eventual sale—meaning that the government has at least recognised that its legal advice may not have been absolute.

Another important issue that I would like to refer to in the time that I have today is the impact that the sale will have on health insurance premiums. As we well know, private health insurance premiums are a real issue for a large section of the Australian community. Private health insurance costs approximately three to four per cent of the average family income. We know that Medibank Private is currently a not-for-profit fund, and under the National Health Act 1953 the fund is prohibited from giving dividends to shareholders or any financial return to members. This means that every cent of any surplus is reinvested into the fund for the benefit of its members.

This legislation that we have before us today, the Medibank Private Sale Bill 2006,
proposes to allow the Commonwealth to modify the constitution of Medibank so that it can operate on a for-profit basis. In its submission to the Senate Finance and Public Administration Committee in October this year, the Community and Public Sector Union explained that for-profit insurers need to provide dividends for investors, and the dividends would need to be high enough to attract investors. In this scenario shareholders are going to become very important—probably more important than members—with the result being less service and higher premiums. Cost-cutting measures would be implemented in order to maximise profits and dividends. Higher premiums would be inevitable as the new owner would seek to maximise returns to shareholders.

One important variable in all of this is the level of membership. The government is relying on the current level of membership in Medibank remaining the same. But there is no guarantee that the current membership levels will be maintained. If a significant number of members choose to opt out of the fund, premiums for remaining members would undoubtedly, inevitably increase.

At the very least, the sale of Medibank by float will increase the cost of health insurance to cover the cost of such things as dividends for investors, ‘the sweetener’—as you might call it—for current customers to become investors, and brokerage for the sale. Respected economic commentators have concluded—it is not simply my conclusion—that this will mean higher premiums for Australian families, who are already under pressure from rising interest rates.

Given that Medibank private is Australia’s biggest health insurer, once it becomes a for-profit company this will inevitably have implications for the private health insurance sector at large. If the market leader’s premiums go up then other insurers will surely follow. There may also be reduced competition, depending on whether the new owner is a new or existing player in the sector, which would drive up premiums.

In making its case for the sale, the government has asserted that government-owned companies are inefficient. It claims that ‘a privately owned fund would be able to be more efficient’ with the possibility that this may lead to ‘less upward pressure on premiums’. On the contrary, in October this year Medibank Private announced a record profit of more than $200 million, up 53 per cent on the 2004-05 result. You have to wonder: if it is producing that kind of profit, how can there possibly be much inefficiency in the way that the company is currently operating?

Medibank’s running costs are below industry average and below the majority of private funds. At the same time, the health fund paid out a record $2.45 billion in benefits. This very strong financial performance ensures that Medibank Private can continue to protect its members and gives it the ability to reduce premium growth. Millions of Australians could expect a smaller rise in their private health insurance premiums after this record profit.

The government argues that the privatisation will reduce administrative requirements. This is certainly not true. Whilst government business enterprise reporting requirements would no longer exist, the privatised Medibank would need to regularly provide comprehensive reports to its shareholders, as do all the other private health insurers.

One out of every three Australians covered by private health funds is covered by Medibank Private. Medibank is the leading insurer in New South Wales, Victoria, the ACT and the Northern Territory, and the No. 2 provider elsewhere. This size and dominance allows Medibank to negotiate in the market and put downward pressure on the
cost of hospital services in Australia. As a not-for-profit fund, Medibank is only ever negotiating on behalf of its members. As the current owner of Medibank, the Commonwealth therefore has substantial influence within the industry, including in relation to premium levels and contract bargaining. Medibank also has a broader role in the community in providing informed analysis and advocacy on health and community issues, based on principles of universality and equity. In many ways Medibank is seen as the conscience of the health insurance industry. If Medibank is privatised, this voice will be lost.

The Howard government has promised more competition through the sale of Medibank. On the contrary, the Doctors Reform Society argues that, as a profit driven company, Medibank Private ‘will emerge to tell patients what their treatment will be, where they will have it, and which doctors will deliver it, irrespective of the quality of care’. This is the way that the Americans do it; this is the way their system has gone—and this is the way our system is going to go as well, if this government succeeds in enacting this legislation and goes ahead with the sale. Americans currently face an unregulated private market for private health insurance, where premiums are increasing at a rate of five times the increase in wages. This should be a wake-up call for this government. A health sector dominated by the private market forces does not promote greater efficiency or better health outcomes.

The private health insurance market is an oligopoly by nature. Although there were 40 funds registered as at the end of June 2005, the six largest funds then commanded 77 per cent of the coverage of private health funds and, in the 2004-05 financial year, three-quarters of the total contributions to health funds. This gives the large funds considerable market power which they wield against both consumers of care—that is, the members of the funds—and the providers of care.

The government continues to promise more competition by the sale of Medibank, but can it guarantee that existing health funds will be prevented from purchasing Medibank Private, so that anticompetitive aspects of the sale are minimised? It does not take an expert to understand that the sale of Medibank to one of the large existing health funds is highly anticompetitive. It would have the potential not only to reduce premium competition, which I have been talking about, but also to reduce competition in terms of the insurance products on offer. For example, Medibank Private offers both ‘known gap’ and so-called ‘no gap’ products, but MBF and HCF do not offer the former. The history of the private health funds is that they use their market power against both the providers of care and the consumers of care.

Community sentiment and expert opinion are strongly against the sale of Medibank Private. Australians do not want to see the continued privatisation of this nation’s assets. The sale is extremely unpopular in the community. A recent Newspoll showed that 63 per cent of Australians oppose the government’s plan to offload Medibank Private, with only 17 per cent supporting it. In addition, a huge majority of Australians, some 74 per cent, said the sale would lead to higher premiums and only a tiny group, three per cent, said it would lead to a drop in premiums. This represents overwhelming opposition to the sale of Medibank Private. Premium rises will make private health insurance unaffordable and lead to people dropping their cover and heading for public hospitals when they are sick. This is bad news for private hospitals, where demand will decrease, and very bad news for public hospitals, which are already struggling to cope with the patients that they have. The last thing public hospitals want is an increase in
patient numbers. This will put an even greater workload on an already overloaded system.

The bill is ambiguous in relation to ultimate ownership of Medibank. The government has talked about foreign ownership of Medibank. There is no permanent restriction on either full or partial foreign ownership. The harsh reality is that Medibank could shortly cease to be an Australian company with an Australian head office. The government is also unable to give any assurance that current Medibank employees will not lose their jobs. The sale could well mean that Australian jobs are lost. Labor has consistently argued against the sale of Australia’s largest not-for-profit national health insurer.

The Senate Standing Committee on Finance and Public Administration has released its report on the bill. Opposition senators are concerned that the government’s stated reasons for selling Medibank have been asserted rather than demonstrated or substantiated. The opposition senators’ report urges the Senate to reject the bill. A for-profit Medibank Private would focus solely on bottom-line profits and the interests of shareholders, as I have tried to emphasise here today. This would be to the detriment of the fund members, health fund workers and the broader community. For these reasons I urge senators to oppose this bill.

Senator FORSHAW (New South Wales) (5.52 pm)—I rise to oppose the Medibank Private Sale Bill 2006, which would lead to the sell-off of Medibank Private. In doing so, I endorse the opposition senators’ report, as part of the report by the Senate Standing Committee on Finance and Public Administration into the Medibank Private Sale Bill. Indeed, I am a signatory to the opposition senators’ report, being the deputy chair of that committee. I do not want to take up the time of the Senate this evening by going through in detail the arguments advanced in the opposition senators’ report: they are there, they are straightforward, I believe they are persuasive and I would ask that senators read that report. I believe that, if they read it in good faith, they will understand the reasons that this bill should be opposed. However, I think it is important to comment upon a number of the key issues in this debate—issues that have been addressed in the opposition senators’ report.

The first one is that there is serious doubt about the government’s right to sell Medibank Private. This question has been debated at some length and in some detail. The fact that that debate has occurred demonstrates that this is not a straightforward issue. The government would have it that Medibank Private, the health fund, is owned by Medibank Private Ltd and, further, that Medibank Private Ltd is a company which is wholly owned by the government. Therefore, they being the sole shareholder, they can sell off the asset or the company. That is a neat argument, but it has some serious flaws. The first flaw is that it misrepresents the real nature of Medibank Private.

I think Senator Kirk, in her excellent speech a moment ago, addressed this aspect when she referred to the fact that Medibank Private is a not-for-profit health fund. It is Australia’s largest health fund. It was established many years ago by a Labor government as an integral part of the holistic approach to health coverage in this country: you have Medicare—or its predecessor, Medibank—and you have Medibank Private. I know that the previous Liberal government under Malcolm Fraser was involved in the reconstruction of the original Medibank, but the real position is that Medibank Private, together with Medicare, provides a system of health coverage for a large number of Australians. So Medibank Private had its genesis in the changes in the Whitlam government
years. It brought about a system of universal coverage of health costs for Australians.

Being a not-for-profit health fund, the issue arises as to who the owners are. On the one hand, the government say they own the company that holds the shares and therefore they are the sole owner—and therefore they can sell it. But, when you look into it more deeply, you have to take account of the fact that the very foundation of Medibank Private is its membership. As I said, it has the largest membership of any health fund in this country. And what are the assets of that fund? The assets of that fund are its revenue derived from premiums and its revenue that is held in reserve. In that context, it is important to understand that—as the opposition senators’ report sets out—the beneficial owners of Medibank Private are the members. They look to that fund and to the reserves of that fund to continue to provide them with the coverage of their health costs that are not covered by Medicare, particularly, obviously, hospital insurance coverage and ancillary cover.

I should say at this point that I am a member of Medibank Private. I have family coverage in the fund and I have been a member of Medibank Private for many, many years—pretty much from the time when I was at an age and of a status that I needed and decided to take out health insurance. My point in this debate is, as the opposition senators’ report points out, that when you look at the structure of Medibank Private, in reality, rather than owners being the shareholders of the company Medibank Private Ltd, the owners are the members of the fund. The reserves are there if they are needed to be called upon to cover the contingency for future claims against the fund. This is a not-for-profit fund. This is a not-for-profit company. It does not set out to make a profit. It does not set out to declare a dividend. In that context, for the government to blandly state that ‘on paper we are the owner because we hold all the shares in Medibank Private Ltd and we can therefore sell this company off’ is to disregard the interests of millions of Australians and their families.

At the very least, the members have a beneficial interest. They certainly have, I believe, at law an equitable interest—and there is conflicting advice as to the legal status of this sell-off. The government relies upon advice from the department of finance that they can sell, but alternative advice has been put forward by reputable persons and organisations that that is not the case. That is a question that I believe is unresolved and that may well have to be tested at law if this legislation passes this chamber and the parliament. I will leave it at that point, but I think it is not appropriate—it is starting out from the wrong premise—to pass a law that has a serious legal question hanging over it. It may well be for the courts to determine that issue if this legislation is passed.

The second point I want to make in regard to this sell off is to actually pick up on a couple of the interjections that were made by the Minister for the Arts and Sport, Senator Kemp. The argument is always put by the government whenever we debate legislation that deals with privatisation—it was said when we debated Telstra—that the Labor Party in government sold Qantas and they sold the Commonwealth Bank. I have responded to that argument on previous occasions, and I will do so again tonight. The test as to whether or not it is good public policy to privatise government owned assets or government owned services—and I stress the word ‘services’—is whether or not it is appropriate in the market that that government owned corporation or service operates. Of course the big distinction here is that Medibank Private operates in a market which is about delivering health insurance, which is essentially a not-for-profit system.
As has been said by Senator Kirk and others, Medibank Private is a not-for-profit fund. This is not a market where even the other private funds that operate in the health sector do so on the basis of endeavouring to make profits and deliver profits back to shareholders. That is why nearly all of them are mutuals or companies established under similar arrangements. That stands in stark contrast to the situation that operated for the Commonwealth Bank and Qantas.

The government can try to score cheap political points on this, but I have always maintained that, when it came to Qantas, it was operating in a market that was essentially providing a service to a small proportion of the population—those that chose to fly on aeroplanes either domestically or overseas. I think that probably accounts for about five per cent of the population. They were competing against private sector companies that were operating for a profit, both domestically and internationally. The same was true of the great Commonwealth Bank. It was set up by the Chifley government but at the time that it was sold it was operating in a market where it was competing against all those other banks that were operating for a profit to deliver returns back to shareholders. Again, it was operating in a market where it did not necessarily have, by the time it was sold, a huge advantage over the other banks. My recollection is that it was actually not the biggest bank in Australia by that stage. It was certainly being challenged by the National Australia Bank and by Westpac.

I always point out that there is a distinction between the privatisation of those two government owned entities, as they were at the time, and entities such as Telstra, Medibank Private and Australia Post—which I believe could well be the next cab off the rank if this government wants to continue down this road—because in each of these latter cases the government owned entity has provided a service which is either delivered to just about every Australian and their family or, in the case of Medibank Private, delivered in a not-for-profit sector.

The health of all Australians is not a market that operates like all other markets. It does not operate as a for-profit market. The biggest financial contributor to the health of all Australians is government. It underwrites the cost of health care in this country through Medicare, through the PBS, and through the budgetary expenditure on all those other aspects of health such as hospitals and so on. That is the market that Medibank Private operates in.

You cannot argue that somehow Medibank Private can be sold off like other government-owned entities in the past, such as the Commonwealth Bank and Qantas. It is a totally different scenario. On that basis I think there is a special case here—just as there is with Australia Post and just as we argued with Telstra—that at the end of the day the nation and the Australian people benefit from government ownership of these enterprises.

I will mention a couple of other points. The government claim that the sale of Medibank Private will have a beneficial impact on premiums. Frankly, there is just no evidence for that whatsoever. It is simply a belief of the government. I do not even think they necessarily believe it. I think the motivation here is more ideological rather than anything founded on a firmly held belief. It is a mere assertion.

The government has a pretty poor track record when it comes to making assertions about what will happen in the health sector in this country. We should remember that it was this government that told us that the Medicare safety net was affordable. The Minister for Health and Ageing, Mr Abbott, put his hand on his heart and said that it
would never have to be altered because it was affordable and that all those arguments put about that it would lead to a blow-out in costs were just, in his view, nonsense. Of course, he was proved dramatically wrong. Within a short space of six to 12 months he was proved totally wrong and had to apologise to the Australian people—probably one of the few apologies this government has ever made to the Australian people—and introduce changes to the Medicare safety net scheme because of the blow-out in costs.

Equally, the government has stated over the years that its 30 per cent rebate scheme for private health insurance premiums would constrain premium increases in private health insurance. That has not happened. Since this government came into office and since the 30 per cent rebate scheme was introduced, premiums have continued to increase. It has reached the point where the government no longer seriously considers whether or not it should approve an application for an increase; it pretty much ticks it off. So each year, despite this massive subsidy to private health insurance, premiums continue to rise. It is not just premiums that continue to rise but the other ‘under the table’ change that has occurred is that the funds themselves have found ways to reduce the level of refund and put extra restrictions upon their members to obtain those refunds. As a member of Medibank Private I have seen that occur.

The final point I make is this: the government has put this little caveat in the legislation which says that there cannot be any foreign ownership of Medibank Private for five years once it is sold. Big deal! What does that really achieve? That is just a signal to say that, in five years time, this fund can be sold off to any foreign owned investment bank, company, corporation or whatever. We know that there are major multinational companies and investment arms that are eagerly eyeing off this business, if it is sold, and they will wait five years if they have to. That, frankly, is a meaningless caveat.

I believe that we should take note of the comments made by Dr John Deeble to the Senate Standing Committee on Finance and Public Administration. He was the architect of the original Medibank, which is now Medicare. He is a person who understands and contributed so much to the development of our universal health coverage system. We should also take note of the AMA’s serious concerns about this sell-off. We should oppose it.

Senator FIELDING (Victoria—Leader of the Family First Party) (6.12 pm)—Family First believes the government is selling out Australian families by selling Medibank Private. Private health insurance is important to Australian families, where take-up rates are highest amongst couples who have children. Private health insurance is important as it gives families a sense of security and peace of mind. Private health insurance has become an essential service for many families who want access to quality hospitals at affordable prices. Private health cover is the only option for many Australian families. The government is partly responsible for this situation. It has forced many Australians into health insurance by offering discounts for cover and by punishing families, if they sign up later on, with high premium fees. Families will be worse off if Medibank Private is sold, as its sole focus would then be profits for shareholders. Profits for shareholders, rather than service to members, would become the priority. Family First believes the needs of Australian families must come first; profits should not come before families. Instead, the government has turned its back on families by putting forward the Medibank Private Sale Bill 2006 to sell Australia’s largest health insurer. Not only that, the government
The government did have the option of making Medibank Private a mutual fund so that it was not for profit and kept its focus on the needs of members rather than shareholders, but it rejected that option in favour of one where Medibank's priority will be for profit. The values of the market are more important to the government than the need of families for good value health insurance.

Medibank is not a mutual fund but, as a not-for-profit government owned business, it has a characteristic similar to a mutual's of putting members' interest before profits and shareholders. The sell-off of Medibank Private is yet another example of the government’s so-called ‘family friendly’ policies being nothing more than market friendly.

Family First has launched a national grassroots campaign to pressure the government to abandon its plans to sell Medibank Private. This includes distributing ‘Hands off Medibank Private’ bumper stickers. Family First will continue this campaign to help the government change its mind and do the right thing by Australian families. The government eventually realised it was not doing the right thing with Snowy Hydro and stopped the sale. The government should also change its mind and stop the sale of Medibank.

Who benefits from the sale of Medibank Private? Not the people who own health insurance policies with Medibank. The government will benefit by flogging off another asset. Investors may benefit and those who have some extra cash to buy the shares might also benefit, but everyday Aussie families will miss out on the spoils and have to deal with higher costs and reduced benefits.

A privatised Medibank Private would first and foremost have to make money for its shareholders—lots of money. Its top priority would be profits—delivering maximum returns to shareholders. This would lead to increased premiums and reduced services. Australian families are already struggling and will be worse off with a privatised Medibank Private motivated solely by its profits and the bottom line and helping to lead the private insurance industry down this path.

Family First has a fundamental disagreement with the government over the aims of Medibank Private. The objective of Medibank should be to provide a service to its members at the best possible price, not to make as much profit as it can. As health insurance has become an essential service for many Australian families, there is a legitimate role for government to provide this service to satisfy members rather than profits.

Professor John Deeble, a former commissioner in the Health Insurance Commission over the 14 years that the commission managed Medibank, explained to the Senate committee looking into this bill that it was set up to provide an affordable service rather than to make money. Rather than focus on providing a good service, the government has decided that Medibank should be a competitive for-profit business listed on the share market.

The government issued a report by consultants CRA International which made claims of how much better Medibank Private would operate as a privatised listed company. But the CRA report was written from the perspective of market ideology, where an organisation is defined as efficient if it can turn a profit for its shareholders. To make that profit, Medibank will have to cut benefits to members. This is part of a strange notion that a company that provides poorer service and charges higher premiums is the better company because it provides better returns to shareholders! The AMA pointed out that the CRA International report cites MBF
as a more efficient fund than Medibank Private on the grounds that MBF pays lower benefits.

The issue comes back again to a fundamental disagreement over what the overall objectives of Medibank Private should be: to make profit or to service members. Family First believes Medibank Private’s main objective should be to serve members. The government argues that privatising Medibank would put downward pressure on premiums. Family First believes this is complete nonsense, as there is already competition between health insurance funds. Privatising Medibank Private would in fact put upward pressure on premiums because it would face the extra pressure of having to make more money in order to satisfy both the tax office and shareholders. A privatised Medibank would have to earn 30 per cent more just to cover the loss of tax-exempt status. It is that tax-free status that helps keep premiums down, not the incentives in a for-profit structure.

The other significant cost of privatisation is that Medibank Private would have to provide a return to shareholders, which is money it previously did not have to find. The best way to ensure families can afford health insurance is for the government to be a player in the sector to keep everybody honest. If the government no longer has a financial interest in the industry, how long will it be before its role of regulating premiums will become nothing more than a rubber stamp? How long will it be before an increasingly profit focused industry pressures the government for higher and higher premiums? Just last month, the chief executive of NIB Health Funds admitted the Medibank sale would cause a ‘tsunami’ of change in the industry with ‘fewer and larger players’. NIB is also considering following Medibank’s lead by demutualising and floating the company.

Private health insurance is important to Australians. More than one in two adults have made the financial sacrifice to take out insurance, with the largest rates of private health insurance being among couples with children. However, two-thirds of those who do not have health insurance say it is because it is already too expensive. Given the significant government investment in health insurance, it is vital that the government continue to ensure access to private cover is affordable and accessible to as many Australian families as possible.

If the government is serious when it claims to care about Australian families, it should ditch its plans to sell Medibank Private, which will lead to higher premiums and reduced services. Family First believes the government should retain ownership of Medibank Private for the public good, to ensure affordable health insurance and quality health services for all Australian families.

Senator McLUCAS (Queensland) (6.22 pm)—The Medibank Private Sale Bill 2006 clearly defines the differences between the Howard government and a future Labor government. The difference in this instance is that ideology is the government’s only motivation for privatising Medibank Private whereas in the Labor Party know that the sale of Medibank Private is poor policy for Medibank Private policyholders, for all in the private health industry sector and for the health of Australians generally.

We all know of the Prime Minister’s visceral opposition to Medibank and then Medicare, and that opposition now extends to Medibank Private Ltd. The Prime Minister has a hatred of anything Medibank or Medicare, and the Medibank Private sale is simply a result of this hatred. The sale of Medibank Private is totally ideology driven. The evidence for this is that any of the defences that the government has mounted for its sale can-
not be substantiated. The majority report of the Senate Standing Committee on Finance and Public Administration, of which I was a participating member, cites as a reason for the sale the ‘lack of sound public policy ground for the continued public ownership of a private health insurance provider in a mature and competitive market’. But it does not attempt to clarify or put forward any arguments in support of the statement; it is simply a bald opinion which is left hanging without any evidence to support it.

In contrast, Labor has outlined a series of reasons why, in the interests of public policy, the sale of Medibank Private Ltd is not in the public interest. Firstly, in the opinion of many, premiums will rise. But we rely here not just on common sense. Common sense says that, if a not-for-profit private health insurer turns into a for-profit entity—with a statutory responsibility to return profits to shareholders, not policyholders—there simply have to be increases in premiums. But, as I said, you do not have to rely simply on common sense—which I think all Australians understand. Dr John Deeble, who is undisputedly the Australian with the most knowledge and understanding of the economics of private health insurance, stated very plainly during the inquiry that there are sound public policy reasons not to sell Medibank Private. He said:

In fact, the policy interest in private health insurance is now far greater than ever before. Why would this not include a public presence in the private insurance market? There are at least two major arguments for that presence. The first is the conventional one that it would not only be a competitor in financial terms but could also lead in developing products of benefit to its members in terms of healthcare outcomes, not simply money.

…

The second and in my view much more important argument, is that MPL’s presence affirms the broader public interest in private health insurance.

I have always believed that Medicare is a national system of health care financing which includes the private sector and its insurers, not just a Commonwealth scheme of benefits for medical care and public hospital treatment. The two parts are complementary in ways which go beyond the market place, although there are vested interests with a reason to argue otherwise.

Further, he identified that the change in tax status to a for-profit private health insurer will do nothing for private health consumers. It simply stands to reason that a not-for-profit entity which is not taxable will have to find the funds to pay its tax liability. Dr Deeble said:

How could this outcome be seen as more in the public interest than the present? The Treasury would certainly gain from the privatisation of MPL but the customer would not … The only logical conclusion is that it is the tax-exempt status of the non-profit funds which has held premiums down, not the incentives of for-profit operation.

The AMA, too, supported this position during the inquiry. As I said, one does not have to rely on common sense—although common sense in itself should be sufficient—to realise that premiums simply have to rise. Even former Prime Minister Malcolm Fraser recognises that keeping Medibank Private in public hands will reduce the pressure for premiums growth.

The government has asserted that the sale of Medibank Private would put downward pressure on premiums—though, interestingly, it did not assert that in the majority report of the committee. Until the release of the CRA International report, of which many speakers have spoken, the government had failed to release any evidence of that claim. The government previously told Labor that the scoping study included modelling which came to this conclusion. But, as we know, the government has repeatedly refused to release that scoping study, saying it is not its policy to release details of any asset sale.
scoping study. But some days later, at the estimates hearings for the Department of Health and Ageing, the head of the private health insurance industry branch said quite clearly that you could not indicate that premiums would rise or fall, and that any commentary on what would happen to premiums was pure conjecture and speculation.

We would all recall that, later that afternoon, the Minister for Finance and Administration released the CRA report. The CRA report says that, irrespective of who owns Medibank Private, premiums will have to rise. It also states that, if privatised, Medibank Private’s technical efficiency could be improved and that this could result in lower premiums. However, the report fails to mention that, as a for-profit fund, any benefits from these so-called efficiencies would be directed not to members’ interests but to the interests of shareholders.

Sitting suspended from 6.30 pm to 7.30 pm

Senator McLUCAS—Before we broke for dinner, I was commenting on the government’s CRA report. Apparently, it provides evidence that there will be downward pressure on premiums; however, the AMA, the Australian Medical Association, and Dr Deeble questioned the methodology that CRA used to undertake its inquiry. Dr Deeble quite eloquently, I think, and perhaps bluntly, said:

My criticism of the CRA report is the method that they have used, which is dressed up in all sorts of academic gobbledygook which I know—or should know, anyway. The methodology they have used there has been misapplied.

So there are certainly questions about the ability of the CRA report to make any proper analysis of the potential sale of Medibank Private.

The government also asserts that privatisation will liberate the fund from administrative requirements associated with reporting to the shareholder minister. Currently, those requirements include an annual corporate plan and a statement of intent. Could I suggest to the government—and I know that Medibank Private actually agrees with this—that producing those sorts of corporate reports is a common practice in business and in any private health insurer and does not constitute an onerous burden on a large company. Those reporting requirements do not appear to have had any impact on Medibank Private’s ability to keep its expense ratio below 10 per cent and lower than those of MBF, HCF and HBF. To suggest that by privatising this fund we will somehow liberate it from administrative requirements is just a furphy.

The government also asserts that the sale will allow entry into other insurance markets. As we know, Medibank already offers insurance products in other markets. We know that it offers travel insurance policies under the Medibank brand. To suggest that public ownership of Medibank Private stops it from entering other markets, and therefore maximising profit margins in that sector of the market, is completely false. Insurance products not related to private health insurance products must be underwritten by another company, and that has no bearing on Medibank’s ownership; it is a feature of industry regulation. It was basically confirmed by Medibank Private at the hearings that they are able to venture into the travel insurance market. They simply have to get approval from the minister.

The majority report of the committee of inquiry also suggests that there is a possible—and I underline the word possible—conflict of interest arising from a government owned business operating in a market substantially regulated by the same government. They say that ‘privatising Medibank removes such a risk’. Once again, there is no
elaboration in the report and no enunciation of what the apparent risk is. It is, again, a bald statement, hanging without supporting argument. There is no justification for the claim. In June 2003, the ministers for finance and health jointly issued a press release that said that the minister for finance would become the sole shareholder minister of the fund to ‘provide a clear distinction between the Commonwealth’s roles as regulator and owner’.

That brings me to the assertion that privatisation will liberate Medibank Private from government regulation and bureaucracy and thus increase potential dividends. As I said earlier, that is absolute rubbish. Medibank Private Ltd knows, the whole private health insurance sector knows and the government knows that Medibank Private will continue to be regulated in exactly the same way that it is currently—the same way that every private health insurer in this country is regulated. To suggest that a privatised Medibank would have fewer reporting requirements is a hollow claim. Instead of reporting to the minister, Medibank Private will report to the shareholders with, in all probability, far more rigorous scrutiny than they currently receive.

The second assertion from the government is that the sale of Medibank will maximise competition, with the resultant benefit of containing premiums. The government has indicated that the sale will be by way of a float rather than a potential takeover by existing private health insurers. So the out-and-out reduction in competition, which would have been the direct result of such a sale model, is not in front of us. But to suggest that a sale by float will increase competition is plain silly. The day after the sale occurs, if it does, there will be the same number of private health insurers in the market that there are currently. It will be the same market and the same number of insurers, with the same motivation to attract customers to their products.

That brings me to the timing of the sale and the timing of the passage of this legislation. As we know, the bill indicates that the minister will determine when the sale will occur. We also know that the government intends to sell Medibank Private after the next election, should it be elected. Why then, I ask, are we proceeding with this legislation now? Why did we have to invoke the cut-off to expedite this legislation? The answer to that is simple: the government knows that the Australian public opposes the privatisation of Medibank Private.

It is the government’s political plan to quickly deal with the electoral impact of this decision this year, before Christmas, in the hope that the public will forget the fact that this government intends to sell Medibank Private with no rationale or positive public policy result, simply on the basis of ideology. It does not want to have the debate that we are having now in an election year, but the government needs to be assured that Labor will make sure that Australians are very aware of the government’s intentions towards Medibank Private.

There are a number of other issues that my colleagues have canvassed that I would like to touch on. There is the residual risk question and the question of compensation, and there remains a question about the potential liability for compensation relating to the capital generated prior to sale. The government has tabled legal advice from Blake Dawson Waldron which states that the government will not be liable for compensation, but this differs from advice from the Parliament Library which concludes:

It is arguable that members of Medibank Private could be entitled to compensation if the terms of any sale do not adequately account for their rights to the benefit of fund assets.
At best, the situation is uncertain for the government and for Medibank Private members but, at worst, given that the government continues to withhold access to the scoping study, there is a significant financial risk to the government and therefore to taxpayers. If the scoping study found that the sale would be trouble free and would not adversely affect premiums, then why has it not been released and made available for public scrutiny? The other question is on the impact on employees. The government cannot give any assurance that current Medibank Private employees will not lose their jobs. This is no comfort to those in the current workforce and is cause for extreme concern for Labor senators.

The bill limits foreign ownership for five years. It says that the directors of Medibank Private must be Australian and that its headquarters have to be in Australia for those five years. But the question remains: what happens then? What surety do we have that Medibank Private, a company now owned by Australians, owned by this government, will not then move—as BUPA did, for example—into overseas ownership?

Finally, I want to make some comments about the lack of cooperation from government departments during the inquiry. In saying this, I make no reflection on individual public servants, who I believe were simply doing the bidding of their ministers as they had been directed. My view is that these public servants were directed to be less than cooperative. The Senate required the report to be presented on Monday, 27 November. In a letter received on that day, although dated 24 November, the chief of staff to Senator Minchin said, ‘The minister has asked that I respond on his behalf to confirm that he does not intend releasing the legal information that Senator McLucas has requested. The minister also confirmed that he does not intend to make a submission to the committee on the bill.’

There was no submission made to this inquiry by either the Department of Finance and Administration or the Department of Health and Ageing. When I questioned public servants from both departments, I think it is fair to say that both sets of bureaucrats seemed somewhat sheepish. I think it was quite unusual for a committee inquiring into the sale of a publicly owned asset, potentially worth from $1.5 billion to $2 billion, for no submission to appear from either of those departments.

As I said earlier, the sale of Medibank Private is motivated solely by ideology. There is no good public reason for its sale; there is no public benefit to be derived. It is clear that premiums will rise for not only Medibank Private insurers but all private health insurers. The risk associated with the potential compensation question may play out in the courts and the negative impact on both the private and public health sector is known. We note that Senator Fifield was the only government senator prepared to attempt to defend the indefensible. Labor senators will oppose this bill for good public policy reasons and keep Medibank Private in public hands. (Time expired)

Senator LUDWIG (Queensland) (7.42 pm)—I rise to speak on the Medibank Private Sale Bill 2006. This bill is the Howard government’s latest attack on the prosperity and pocketbooks of Middle Australia. The legislation before the Senate this evening will give the government the power to sell Medibank Private and it will reclassify the organisation as a for-profit fund. Let me provide a brief overview of this bill. This bill does a number of things. The first schedule of the bill provides for the sale of Medibank Private, it amends the Health Insurance Commission (Reform and Separation of
Functions) Act 1997, with the effect that the Commonwealth is no longer required to retain ownership of shares in Medibank Private, and it also allows for Medibank Private to distribute profits that it accumulated while it was operating as a not-for-profit entity.

The second schedule of the bill contains a range of conditions relating to the sale of Medibank Private. Firstly, it provides for a range of schemes under which the fund may be sold. It also alters the status of Medibank Private, changing it to a for-profit corporation which may distribute profits. Finally, it puts restrictions on the ownership of Medibank Private and ensures that it must retain its Australian identity for the next five years.

But let us get this clear. This bill is being rushed through. What this government now specialises in is rushing legislation through this Senate without proper scrutiny. In fact, it is making it an art form in this place and should be condemned for it. Despite the fact that the government has made the decision to sell Medibank Private, and despite the fact that it is rushing through the legislation to give it power to sell, the government has indicated that it does not intend to sell the fund until 2008 at the earliest. You immediately have to ask yourself why the government is so keen on pushing the legislation through at this point in time. Have we nothing better to do? Isn’t there other legislation we could consider? These are all good questions that need an answer, but I am sure we are not going to get one from the government. Instead, we are dealing with this bill some years before it is necessary. Instead of waiting in order to ensure that legal and policy questions are decisively answered, we are going to continue with this bill.

There are significant legal issues that have been raised in this sale—and they have been raised not only in the research brief by the Parliamentary Library. But let us go to that point first. These legal issues were raised in a paper produced by the Parliamentary Library earlier this year, titled The proposed sale of Medibank Private: historical, legal and policy perspectives. I am sure that senators are aware of the comprehensive issues raised in this paper, so I will not dwell on them in detail. However, to briefly recap, the library raised the issue that members of the fund may hold certain rights to surplus assets of the fund. If the fund were sold by the government, there may be some claim by the members for compensation. I note, of course, that the government was quick to table legal advice from Blake Dawson Waldron that purports to show that the members of Medibank Private would not be entitled to compensation.

Two interesting points arise out of that. Firstly, the government do not often table legal advice—in fact, I have asked for it to be tabled at estimates and here many a time in order to get a standard response, but it is not the government’s practice to do this—but, in this instance, we see them rush it out in response to a library brief. That in itself is an unusual position: to respond not to the politics of the day but to a library brief. At that point, it was not even a committee report, a government report or an issue raised here. Be that as it may, this point remains unresolved. There is no conclusive decision of a court to which you can point to say that it has been finally decided. Subsequent publications of the Parliamentary Library have also picked up on some matters in the advice that still remain open to interpretation. I have yet to see another piece of legal advice from the government about those matters, but it may find its way forward through the minister and be tabled here. If not, I am sure the shadow minister will take up the matter in the committee stage.

While it is not my role to adjudicate on the competing advices that have been pro-
vided by the library and Blake Dawson Waldron—I am not in a position either to say that Blake Dawson Waldron is the correct and preferable choice—I urge the government to step back and make sure that we get it right. I would have thought that the more important thing to do would be to ensure that we avoid a situation where we might be locked in litigation for years because of the government’s rush to sell off or—perhaps I could use a bold phrase—because of the government’s eagerness to sell off this asset without ensuring sufficient time to allow those matters to be at least comprehensively dealt with and proper legal advice obtained and to ensure that the market is not left hanging in this respect. If the government is in such a rush to sell off this asset, we have to ask why it does not add further relevant legal advice and table that to ensure that there is certainty in the marketplace and that these matters are properly resolved or wait to ensure that they are resolved.

I think there is another string to the government’s bow. Not only are they keen on selling assets; they are also keen on their ideological approach. However, when you look at the government’s plan to sell off Medibank Private, when you depack it, it should not be seen as anything other than a pure ideological bent towards an economic rationalist agenda that is out of line with average Australian families. The basis of the sale was summarised neatly by Ms Julia Gillard from the House of Representatives, who quoted the Minister for Health and Ageing as basically stating, ‘What we do as Liberals is to sell things.’ So there you have it: this is a decision based on the ideological rhetoric of the minister for health. I cannot even hold Senator Minchin accountable for that! They are Liberals and they sell things—that seems to be their catchcry. Perhaps I can ascribe that to Senator Minchin eventually, but not now.

It is no wonder that they are forced to use such a simple argument in favour of their scheme. There is no evidence that the sale will reduce premiums or increase competition. As I have noted above, in the past, Medibank Private has even argued against this position. The Howard government cannot guarantee that the sale will have a positive impact on members. Some of the statements and arguments put forward in the House pointed to a Howard government broken promise in 2001. The promise was that his election policies would lead to reduced premiums; instead, premiums have risen by almost 40 per cent since that time.

This is a government that, with its control of the Senate, is becoming more arrogant each day we sit. This is another example of the Howard government’s growing arrogance. Since the Howard government seized control of the Senate, we have seen one ideological attack after another, firstly on conditions, such as those attacks in the Work Choices legislation on Australian families, where the government is committed to its agenda of driving down the working conditions of ordinary Australians. We have seen the sell-off of Telstra but we have not seen a commensurate increase in the service to rural and regional Australia. We have seen what could only be described as an ideological bent—and perhaps I can ascribe this one to Senator Minchin—with the introduction of the voluntary student unionism legislation. We are seeing it again with this bill.

Labor is opposed to this bill. It is an extreme position just like the coalition’s IR agenda, just like their voluntary student unionism legislation, just like their ability to sell-off Telstra without considering the wider ramifications. There is no need to sell Medibank Private now. There is no evidence that the sale will reduce premiums and increase competition. The government argue for two main points: efficiency, which will engender
greater competition—it is a sort of Milton Friedman argument—and, coupled with that, the idea, ‘We also might have a conflict of interest and therefore we need to sell it.’ When you unpack those two arguments, they are not supported enough to warrant the sale of Medibank Private. If those arguments won out on every occasion, that would mean, in all instances, that there is no public-private debate to be had—the private must always be more efficient than the public. That is a ridiculous argument. There are reasons why in the public domain it is better to have private enterprise, and competition results. There are other competing interests which dictate that it is better for some things to remain in public hands. Of course that is an ongoing argument that can be had on another day but it is not an argument that rationally could be put up in this debate.

The fact is that this bill will have very little impact on the ability of Medibank Private to operate as a private company. It will make no difference in terms of the operation of the National Health Act, but it will now no longer be required to provide reports to the shareholder minister. However, what it will do is to vastly increase the percentage of the healthcare fund market that is for profit as opposed to not for profit. All this means, in truth, is that Medibank Private would be entitled to distribute profits. It will not lead to increased competition. The bill before us will not introduce a single new health insurer into Australia. That is the essence of increasing competition in a marketplace. In fact, in the past Medibank Private has actually made the argument that it would increase the premiums. In a submission to the 1996 Productivity Commission inquiry into private health insurance, it stated:

A situation where a for-profit 'middleman' … is also involved … will unnecessarily escalate the premium … for private health insurance.

So even Medibank, in the past, has argued that this form of reform will not make premiums any cheaper.

There is also a serious concern about the manner in which the government is ramming this bill through parliament. Even with the bill through, the government, as I have said, is not expected to sell Medibank Private until 2008. It really is incumbent on this government to convince the Senate of the need for the piece of legislation now rather than in 2007 or 2008, depending on the timing of the sale.

This is particularly salient when one considers that there is substantial concern surrounding some of the legal aspects of the sale—such as the ownership of the assets, which I have already touched on. So where is the rush? Why doesn’t the government put aside the legislation for the time being and make sure that all of these issues are resolved before continuing? It is not to argue that you should never act; it is about ensuring that if you do think the market is the place then you also must think the market must have certainty. To have certainty, you should ensure that what you are doing will provide certainty and will not create uncertainty in the marketplace.

Let us be clear: the Howard government’s extremist agenda for Medibank Private is not one that is based on any rational assessment of the benefits of the policy. It is not based on community sentiments. It is based on their own extreme ideological viewpoint, and—I will say it again—their growing arrogance and contempt. It is based on the idea that they are Liberals and they like to sell things.

But, fundamentally, it is the product of a government that is growing more and more out of touch with Middle Australia each day. It is a product of a government that has seen health insurance premiums rise by 40 per
cent since 2001. This bill is yet another peg in the Howard government’s plan to drive down the conditions of Middle Australia. John Howard no longer governs for ordinary Australians. He now governs—and we have said this again and again—for the big end, for those who sign up to the banner that ‘we are Liberals and we sell things’. The bill before us today is really about an ideology that is now out of touch and extreme and should be voted down.

Senator MINCHIN (South Australia—Minister for Finance and Administration) (7.59 pm)—Can I conclude this debate on the Medibank Private Sale Bill 2006 by thanking all those who have participated. I do not know where to start with Senator Ludwig’s contribution. Perhaps I should leave it to just sit on the record, because it is hardly worthy of response. It is extraordinary to hear the government being criticised for selling things when his own Labor government in Queensland is busy selling energy retailers—as it properly should—and privatising government businesses, as other Labor governments around the country are busy privatising government businesses and as his own federal Labor Party in government privatised any number of government businesses. In the 21st century there is hardly a civilised and sensible government in the Western world that is not either in the practice of or contemplating the privatisation of government businesses, because most of us have been mugged by the reality that governments should not own and operate commercial businesses. But apparently the federal Labor Party has not caught up with the 21st century, as evidenced by its industrial relations policy, which is also a back-to-the-future policy.

The decision we have made that Medibank Private Ltd, a private health insurance business, should be floated is part of a wider package of reforms that the government has determined to proceed with to help ensure the sustainability and viability of the whole private health insurance industry in this country. It is all about helping improve the affordability of private health insurance, something that our government is committed to and which the Labor Party has very questionable credentials on. The Labor Party for many years railed against the 30 per cent private health insurance rebate. While it now professes not to oppose the private health insurance rebate, we will be urging Australians at the next federal election not to trust the Labor Party on that issue. So the Labor Party speaks with great cant and hypocrisy on this question of affordability of private health insurance, given its track record on the question of the rebate for private health insurance.

Unlike the Labor Party, we are very strongly committed to a viable and competitive private health insurance industry, affordable for Australians, with the government playing a proper role as the regulator of that industry. So it is the case that the government, if re-elected at the next election, will offer shares in this company to the Australian public by way of an initial public offering, as the legislation prescribes, with a shareholder limit of 15 per cent for the first five years of its sale.

It is of course disappointing to us that, unlike the coalition in opposition, where we supported the Labor government on the sale of Qantas and the Commonwealth Bank, the opposition has taken a knee-jerk, negative view of this matter. In our view, opposition speakers have made absolutely no case as to why this business should remain in public hands. That really is the test these days. We are in the 21st century. We have learnt a lot through the 20th century as to why governments should not run commercial businesses, as evidenced by the collapse of a variety of government owned state banks at enormous
cost to taxpayers. Now the onus is on those who say that individual businesses should remain in government hands. That onus is not being met by those in this chamber who have argued that the business should remain in government hands. They have not made the case as to why Medibank Private should remain a government owned business.

Medibank Private Ltd is one of 38 private health insurance businesses in this country offering their services to ordinary Australians, in an industry that the federal government has the responsibility to regulate—and it is a significantly regulated business. It is exactly the same case as Telstra. Once Telstra was opened up to competition, and a whole range of telecommunications companies came into the industry—an industry for which the federal government has responsibility for regulation—the case for government ownership evaporated. And that is the case with respect to private health insurance. There is no longer any case for the government owning one of 38 private health insurance businesses in this country. It is our strong view that taxpayers should not have their funds tied up in a private health insurance business of this kind. Private health insurance is now a highly competitive business and is not a place for governments.

It is a fact that this business, Medibank Private Ltd, lost no less than $175 million in 2002 on its operations. That was a cost borne by taxpayers. Flowing from that, taxpayers, as the shareholders in this business, were required to make a capital injection of some $85 million in 2004 because of the risks of being in this business and the need for a proper capital adequacy ratio. I give, and have given on many occasions, great credit to the current management for restoring the fortunes of this company. But that history, which highlights as in any commercial business the risks of operating that business, does demonstrate why taxpayers should not be involved in this industry.

The opponents of the sale have made, as they always do with these issues, a series of wild and unsubstantiated claims. Can I start with the first—that is, that premiums will go up as a direct result of the sale. There is absolutely no basis for that assertion. There has been no evidence adduced to support that wild and unsubstantiated claim. Indeed, we have on the contrary produced evidence to demonstrate that, if anything, it is likely that there will be less upward pressure on premiums as a result of us exiting ownership of this business.

And of course the opponents of the sale conveniently ignore the fact that, as Minister Abbott and I announced back in April, the government will retain its authority over the question of whether premium increases will or will not be approved. So we retain that ultimate authority over any proposal to increase premiums. In any event, to the extent that premiums increase—and we all know why private health insurance premiums increase—with 38 businesses in this industry, customers are free to select another private health insurer if they believe the premium escalations are unwarranted.

There is also this wild and unsubstantiated claim that the government does not actually own Medibank Private Ltd. No-one actually believes that proposition but it is peddled in this place. We have tabled and presented clear legal advice that demonstrates that of course, as anyone would ultimately understand, the government does own Medibank Private Ltd. The ALP, the opposition, implicitly accepts that proposition by arguing that it wants to keep Medibank Private Ltd in government ownership. By definition, it therefore accepts that the government does own the business.
We believe this sale is a very important and very timely step in the development of the private health insurance industry in Australia. This will be the first Australian private health insurance business listed on the Australian Stock Exchange and, therefore, for the first time all Australians will have the opportunity to invest in a private health insurance business. We think that is quite a critical and important step. A listed Medibank Private Ltd will then be able to raise capital, expand the business, move into other business areas and offer more services to its customers—developments which, almost by definition, as a government owned business, remain very difficult, if not impossible, for it to pursue at the moment.

We very strongly believe that the whole private health insurance business will benefit from the largest company in that industry being privately owned and competing on a level playing field. It means that the government—as in the case of Telstra—can concentrate solely on its role as the regulator, and not as the owner of one of the businesses in that industry or an investor in that industry. We have already announced that as a result of our proposed disinvestment in this industry we have put $500 million extra into medical research grants in this country. We have also announced a $170 million commitment to establish a medical research fellowship scheme. These are much more sensible uses of taxpayer funds than having them at risk, at large, in a commercial private health insurance business.

There have been questions adduced as to why the government is legislating now for the sale when we have stated that the sale itself will not occur until 2008. We have made it clear that, based on the commercial advice available to us in relation to T3, to have announced that Medibank Private Ltd would be floated in this term of government could have had significant implications for the T3 float. Therefore, before the formal T3 float, we ruled out Medibank Private Ltd being sold in this term—that is, before the end of 2007—in order to ensure that we gave clear air to the T3 float.

I am glad we did that because, as is now evident, the T3 float was highly successful. But we then announced that although the float would be delayed for those reasons we would, nevertheless, seek to have the parliament approve the sale of this business now to enable the government to press ahead with the significant and comprehensive sale preparations which are involved in any float. Yes, it is a lot easier to do a sale through a trade sale. It is more complicated to do it through an IPO but, for the reasons enunciated, we do not believe it appropriate to sell this business through a trade sale. We want to enable all Australians to buy shares in this business through an IPO, and that does take a significant amount of preparation to effect.

There are a number of things which we will now, subject to passage of this legislation, proceed with—for example, moving the business to a fully commercial footing, undertaking the detailed vendor due diligence process and determining the share offer structure, including our proposal to have a special entitlement for current MPL customers. Of course, we will be going through the process of engaging a full advisory and implementation team.

I will allude briefly to Senator Murray’s proposed second reading amendments to this bill and, in doing so, thank Senator Murray for his considered report on the Medibank Private sale in the Senate Standing Committee on Finance and Public Administration report on this bill. He has given it a lot of thought. I welcome the fact that he has made the point that a strong public case has not been found for retaining this business in public hands. I welcome that position adopted by
Senator Murray—and a lucid and practical position it is—but Senator Murray has proposed a second reading amendment and specific amendments to the bill. They essentially go to the question of the method of the sale. Of course we treat them seriously but the premise upon which we do not accept Senator Murray’s amendments is that we reject out of hand the proposition that somehow the government does not own this business—which, as I have said before, is nonsense—and we are not going to do anything to suggest that that proposition has any legitimacy whatsoever. As I said, the ALP, by implication, rejects that proposition by arguing that the business should remain in government hands.

As I said before, we think that this business should be sold by way of a public float. We think that is good for the industry. We do not believe there is a sufficient market available to sell this business via a trade sale, so it should be offered by a public float. We therefore think that all Australians should have the opportunity to buy a share in this business. We think it should be conducted by the normal comprehensive public float, which enables a mix of institutional and retail investors to ensure this business is able to establish itself on a proper commercial footing.

It is a fact that, in Australia, having a certain proportion of shares owned by institutional investors is quite important to the stability and future of a business. To say that only customers of this business should be able to buy shares is quite wrong. It would be as though only customers of Qantas could have participated in the Qantas float, or only customers of the Commonwealth Bank could have participated in the Telstra float. Nevertheless, as is the case with Telstra in respect of shareholders in T3, we have said that we will offer some form of entitlement to Medibank Private Ltd customers, but only in the sense that they are customers and have shown a loyalty to this business, which we want to recognise. We are not doing so in any respect with regard to this false assertion that there is some proprietary interest held by customers of this business. That has been categorically rejected by the government and its legal advisers.

When you buy a service from Medibank Private Ltd, in effect you are buying insurance. You are entering into an insurance contract, as you would with any normal insurance company. You are not acquiring some proprietary interest in this business. On that basis we reject out of hand the amendments proposed by Senator Murray, while acknowledging the thoughtfulness of his position that a public case has not been found for keeping this business in government hands. We think all Australians should have the opportunity to participate in the float of this business.

The ACTING DEPUTY PRESIDENT (Senator Crossin)—The question is that the second reading amendment moved by Senator Murray be agreed to.

Question negatived.

Senator ALLISON (Victoria—Leader of the Australian Democrats) (8.15 pm)—I move my second reading amendment, which is on sheet 5144 revised:

At the end of the motion, add:

“but the Senate is of the view that prior to the sale, the Productivity Commission be required to conduct an inquiry into the private health insurance industry, with specific attention to enabling an efficient, competitive and viable private health insurance industry”.

Question negatived.

Senator NETTLE (New South Wales) (8.16 pm)—I move my second reading amendment, which is on sheet 5130:

At the end of the motion, add: “but the Senate is of the view that any funds raised by the sale of
Medibank Private should be directed to public health care.”

Question put.
The Senate divided. [8.16 pm]
(The Acting Deputy President—Senator PM Crossin)

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AYES
- Allison, L.F.
- Brown, B.J.
- Murray, A.J.M.
- Siewert, R. *

NOES
- Bernardi, C.
- Calvert, P.H.
- Colbeck, R.
- Faulkner, J.P.
- Ferris, J.M.
- Fierravanti-Wells, C.
- Forsyth, M.G.
- Humphries, G.
- Hutchins, S.P.
- Kirk, L.
- Ludwig, J.W.
- Macdonald, I.
- McEwen, A.
- McLucas, J.E.
- Moore, C.
- Patterson, K.C.
- Polley, H.
- Santoro, S.
- Stephens, U.
- Troeth, J.M.
- Watson, J.O.W.
- Wong, P.

* denotes teller

Question negatived.

Senator O’BRIEN (Tasmania) (8.24 pm)—I seek to declare that my family holds a membership in Medibank Private. I need to declare that before taking part in any voting on this matter.

Original question put:
That this bill be now read a second time.
The Senate divided. [8.28 pm]
(The President—Senator the Hon. Paul Calvert)

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AYES
- Abetz, E.
- Bernardi, C.
- Brandis, G.H.
- Chapman, H.G.P.
- Eggleston, A.
- Ferguson, A.B.
- Fierravanti-Wells, C.
- Heffernan, W.
- Johnston, D.
- Kemp, C.R.
- Macdonald, I.
- McGauran, J.J.J.
- Murray, A.J.M.
- Parry, S. *
- Santoro, S.
- Troeth, J.M.
- *

NOES
- Bartlett, A.J.J.
- Brown, B.J.
- Calvert, P.H.
- Colbeck, R.
- Crossin, P.M.
- Eggleston, A.
- Ellison, C.M.
- Ferguson, A.B.
- Fielding, S.
- Fifield, M.P.
- Fielding, S.
- Forshaw, M.G.
- Hurley, A.
- Johnston, D.
- Joyce, B.
- Kemp, C.R.
- Minchin, N.H.
- Murray, A.J.M.
- Payne, M.A.
- Scullion, N.G.
- Troeth, J.M.
- Troed, R.B.

PAIRS
- Adams, J.
- Barnett, G.
- Campbell, I.G.
- Cooman, H.L.
- Mason, B.J.

- Evans, C.V.
- Conroy, S.M.
- Stott Despoja, N.
- Ray, R.F.
- Campbell, G.
Vanstone, A.E. Brown, C.L. Watson, J.O.W. Bishop, T.M.
* denotes teller

Question agreed to.
Bill read a second time.

In Committee
Bill—by leave—taken as a whole.

Senator COLBECK (Tasmania—Parliamentary Secretary to the Minister for Finance and Administration) (8.31 pm)—I would like to place on the record that my family has an interest in Medibank Private by virtue of a policy that we hold.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (8.31 pm)—I would like to take this opportunity to make a similar declaration.

Senator BARTLETT (Queensland) (8.33 pm)—I declare that my family has an interest in Medibank Private.

Senator FORSHAW (New South Wales) (8.34 pm)—I declared that I was a member of Medibank Private in my speech in the second reading debate. I am happy to do so again if it is formally required.

The CHAIRMAN—You do not need to, Senator Forshaw. I appreciate your honesty in this though. Are there any further declarations?

Senator NETTLE (New South Wales) (8.34 pm)—I declare that I do not have private health insurance because I support the public health system in this country.

The CHAIRMAN—Thank you, Senator Nettle, and that is not an appropriate declaration.

Senator MURRAY (Western Australia) (8.34 pm)—In the spirit of levity, I declare that I do not have an interest in Medibank Private. I do have private health insurance and I do support the private health insurance industry, as well as the public health system.

I move Democrat amendment (1) on sheet 5135 revised:

(1) Page 3 (after line 9), after clause 4, insert:

5 Repeal

(1) If the designated sale day has not occurred on or before 1 January 2012, then this Act is repealed on 1 January 2012.

(2) If this Act is repealed in accordance with subsection (1), then each Act that is specified in a Schedule to this Act will be taken not to have been amended by the items in that Schedule at all.

I am dealing with the amendments on sheet 5135 separately because they all attend to different aspects. This first item essentially gives the bill a time period by which the sale has to have occurred, which is by 2012, otherwise the bill is repealed. The amendment has been moved as a result of a query by the Senate Scrutiny of Bills Committee in its 11th report of 2006, published on 29 November. The committee had raised the issue of its concern with provisions that do not commence until an uncertain event occurs—in other words, the bill was open ended as to how long its provisions lasted. The committee said:

Such provisions make it difficult for readers to determine whether the provisions in question have commenced. The Committee prefers to see a time limit imposed on such provisions and seeks the Minister’s advice whether some appropriate time frame might be applied in this case.

The committee judged that problem to be in breach of principle 1(a)(i) of the committee’s terms of reference which refers to personal rights and liberties. This is a very longstanding principle of the Senate Scrutiny of Bills Committee and in my experience it is mostly strongly supported by the Senate. The minister gave a considered response and the committee thanked the minister for the response. Then it said:
The long-standing position of the Committee is that it is properly the role of the Parliament to determine the date upon which legislation ought to commence. Where it is not possible to specify a particular date, the Committee considers that the Parliament should set a defined period of time during which legislation might commence … Provisions such as the one contained in this Act remove that role from the Parliament and place it in the hands of the Executive … The terms of reference for the Committee require that it report such diminution in Parliamentary oversight to the—attention of the—Senate.

I have taken note of what the committee has had to say. I think that if you, Minister, and your government have not sold Medibank Private and wrapped up all the details by 2012 then you do not deserve to have sold it. I have given you a long time in which to do it and I have said that that will be sufficient time. Hopefully, you will have the wisdom to recognise the validity of my arguments and support me.

Senator McLUCAS (Queensland) (8.38 pm)—First of all, I place on the record the reasons that the Labor Party did not support any of the second reading amendments that have not been carried in this place. All three of those second reading amendments contemplated a sale of Medibank Private. The Labor Party totally opposes any sale of Medibank Private, so any support for second reading amendments that contemplate a sale cannot be provided.

Going to the substance of Senator Murray’s amendment, which attempts to resolve the issue that was raised by the Scrutiny of Bills Committee, the point that I have just made about our opposition to the second reading amendments still stands. Labor does not contemplate a sale of Medibank Private. That is why we opposed the second reading, and that is why we have spoken strongly in the chamber about why we oppose the sale of Medibank Private. There are no good reasons to sell Medibank Private. In fact, there are only poor public policy reasons that will eventuate from such a sale. Whilst I understand Senator Murray’s motivation—that is, to try to curtail the minister’s power; if they forget about it, by 2012 they might have to do something—Labor cannot support his amendment. We do not support the sale of Medibank Private; therefore, we cannot support this amendment.

Senator MINCHIN (South Australia—Minister for Finance and Administration) (8.40 pm)—The government does not support the Democrat amendment. It is my experience that it is unprecedented for the parliament to arbitrarily give the executive a time period in which to effect a sale. I am not aware of that occurring with respect to any previous sale of a government business, of which there have been a number.

Senator Murray—I tried to be original!

Senator MINCHIN—I must concede that Senator Murray came up with a novel approach of giving the government some five years in which to effect a sale. Through you, Madam Temporary Chairman Troeth, to Senator Murray: I certainly hope that we will have effected a sale in that time. As I said, it is the government’s clear intention that, if re-elected, a sale will take place in 2008. But, obviously, with respect to taxpayers and our obligations as a government, we would want to ensure that a sale took place in appropriate market circumstances. While that remains our current intention, I am not in a position to rule out the possibility that a sale, for some reason or another, might not occur in 2008. So I think it is rather arbitrary and rather odd for the parliament to set some arbitrary time frame. The parliament should properly consider the question of whether this business should remain in government
hands and make a decision that it gives the executive the authority to sell the business and it should then be for the executive, with that authority, to determine the sale process. The executive is answerable to the people every three years. If a future parliament decides that, in the circumstances, the business has not been sold and that it wishes to repeal this act, then of course that is a matter for any future parliament. But we think it is inappropriate for this parliament to set some arbitrary time frame; therefore, with great respect to Senator Murray, we do not support his amendment.

Senator MURRAY (Western Australia) (8.42 pm)—Of course, I refute the central proposition—that is, that it is not appropriate for parliament to determine what it likes about legislation. I actually regard the parliament as superior to the government and the executive. I regard the parliament as the pre-eminent body, not the government and the executive. So I think parliament is entitled to do what it feels it should. Of course, I recognise that parliament will not decide that matter today. But, more importantly, the difficulty is that the bill does not give a date, and I have attempted to provide a date. The problem with the minister’s answer is that it does not resolve the issue that the Scrutiny of Bills Committee has properly drawn to the attention of the Senate.

As this amendment will be rejected, I therefore have a question for the minister: is it the intention of the government to periodically report on whether and when a sale might occur? Let us take what I think is a silly example, but let me take it because in theory it is possible. If by 2015 a sale had not occurred, it would be a bit odd to have a bill out there which just says, ‘A sale could occur any time up to the 22nd century.’ I know that is a silly example and it is exaggerated to make the point. I am really asking: is there a reporting mechanism whereby the parliament will be aware that an open-ended bill is still out there?

Senator MINCHIN (South Australia—Minister for Finance and Administration) (8.44 pm)—Remember that we are talking about really is removing a legislative prohibition on the executive selling its shares in this business, and for that reason I do not see that it is appropriate to set some time limit on that proposition. But, as a matter of—I would have thought—normal political and public discourse, the executive would feel itself obliged to report to both the parliament and the public on progress with the implementation of the policy. As I said, it will be our policy going to the next election and, if re-elected, a policy which we will seek to implement, as I said, in 2008. If for any reason we deemed that 2008 was not an appropriate year in which to give effect to the policy, then we would keep the public properly informed as to the reasons we were not going to proceed and as to when we might proceed. So I have every confidence that the government in the future would be reporting regularly on progress towards the implementation of this policy. I think Senator Murray could rest assured that future ministers and any future coalition government would be keeping the electorate and this parliament properly informed of progress with the implementation of that policy.

Senator NETTLE (New South Wales) (8.45 pm)—I want to indicate the Australian Greens’ support for this amendment. As I have indicated previously, we are not in support of this sell-off of Medibank Private. Also, we do not think it is the role of this parliament to pass legislation allowing for the government to make significant decisions that will have an impact on a particular industry and then for the government to be able to choose at what point in the electoral cycle it is most convenient for them to en-
gage in the actual sale. Yet that is what we are seeing with this legislation.

The government announced their proposal to sell off Medibank Private. There was a negative response in the community from those people who had lived through the experience of the privatisation of a range of different institutions in Australia—be it the Commonwealth Bank and the impact of that on the closure of rural bank services or the sale of Telstra and the impact of that on telecommunications in regional areas. People have had a whole range of negative experiences of privatisation, and that was the response that this government got when it made the announcement that it intended to sell Medibank Private. Then, sometime down the track, we had an announcement to say, ‘Oh no, we’ll do that in 2008; we’ll do that after the election,’ the government having had a negative response from the community at the time when this sale was announced. So we are happy to support this amendment being put forward. As I have previously indicated, it is all in the context of not supporting the sell-off of Medibank Private but, nonetheless, we are prepared to support this amendment.

The TEMPORARY CHAIRMAN (Senator Troeth)—The question is that amendment (1) on sheet 5135 revised, moved by Senator Murray, be agreed to.

Question negatived.

The TEMPORARY CHAIRMAN—We will now move on to more Democrat amendments, on sheet 5135 revised.

Senator MURRAY (Western Australia) (8.47 pm)—What I propose to do with amendments 2, 3 and 4 on sheet 5135 revised is ask the chair to deal with them separately, but I will speak to the three together, if that is acceptable to the chamber, because they are linked in theme, although they have a different effect. Firstly, I move amendments (2) and (3):

(2) Schedule 2, page 10 (line 11), at the end of paragraph (2)(a), add “with existing members of Medibank Private having the right of first refusal for that transfer”.

(3) Schedule 2, page 10 (line 19), at the end of subitem (3), add “which must provide as the first method of sale the sale of Medibank Private to its existing members.

I think the minister may have misapprehended my views a little in his speech in the second reading debate. I put on record in the committee hearing, in my minority report and, indeed, in my speech in the second reading debate, that I accept the essential proposition that the library has put—but not just the library, of course; many others have put the proposition—that the government does have the right to sell Medibank Private. I think, though, in line with the others, that there is a risk with respect to possible compensation. I will quote to the minister the specific section of the library brief—which I agree with—which is on page 11 of the Bills Digest. There it says:

... it is arguable that members of Medibank Private could be entitled to compensation if the terms of any sale do not adequately account for their right to the benefit of fund assets. It was not asserted in the Research Brief, and is not asserted here, that this means that Medibank Private is owned by its members, or that members could block the sale.

I agree with that. I agree that Medibank Private is not owned by its members. I agree that they cannot block the sale. I agree that government is entitled to sell it. But I agree with the research brief that there is the potential for a claim against the fund assets. That is entirely different to a claim against the entity or over the shares of the entity.

I made the point that I think the government has accepted that position. I know you strongly reiterated in your own speech in the
second reading debate that the government does not accept that there is any risk, but the point is that the bill itself has that risk covered off in a specific clause which states that, in the event of a claim for compensation, the Commonwealth will be liable. Under questioning, the department answered, ‘That’s a standard liability clause’, but my answer to that is: ‘If there is no risk you don’t need a liability clause—it’s a circular argument—and there could be no claim in the courts for compensation.’ So I do not think the government can have it both ways. I think there is a claim for compensation.

That has led me down the path to believing that the one sure-fire way to avoid any potential class action for compensation is, of course, to sell it to the members, because you cannot claim for compensation if you end up owning it. Then I had to look at these questions: ‘Is that practical?’ and ‘Would it realise the same moneys that the government would want?’ Of course they would realise the same moneys the government would want, because you would ask them for the amount of money you wanted to sell MPL for. And if members did not take it up, you could sell the residue elsewhere.

The second issue in my mind was whether it would be a lower cost option. Yes, it certainly would. The third issue was whether it would it be fair to do so. What could be fairer than to offer an entity like Medibank Private to its members? So I think you cover off risk and so on very successfully with this route.

You have specifically said you do not accept these propositions—and I am sure you are unlikely to change your mind—but the three amendments before you are of a very different character. The first amendment I am discussing in this little dissertation is:

(2) Schedule 2, page 10 (line 11), at the end of paragraph (2)(a), add “with existing members of Medibank Private having the right of first refusal for that transfer”.

A right of first refusal, as you know, is not an exclusive option—it just says you have the first option—and that is very consistent with my reasoning and my approach. The second amendment is a much tougher one which, in view of your views, I think you might find difficulty in supporting. It states:

(3) Schedule 2, page 10 (line 19), at the end of subitem (3), add “which must provide as the first method of sale the sale of Medibank Private to its existing members.

It essentially says that you have to sell it to the members—and I can understand that, with your attitude, you will not want to do that. The third amendment, which hopefully you will reconsider, essentially opens up the options to a future government—whether it is a coalition government or a Labor government. It says:

(5A) Without limiting the generality of this Part or the operation of subitem (6)—it does not affect that long list you have at schedule 2, after subitem (5)—a Medibank Private sale scheme may involve:

(a) mutualisation of Medibank Private; or
(b) private float of equity in Medibank Private; or
(c) private placement of equity in Medibank Private; or
(d) any other method the Commonwealth considers appropriate.

The difficulty that I have with the minister’s position is that he is actively saying to the public at large and to the parliament, ‘I’ll only sell this on a public float basis.’ Yet the bill is silent on the matter—I think it implies a direction in that matter. What I am specifically saying to the government is that you should be indicating an open mind. How can you be sure that in 2008 you will not in fact
think mutualisation, private placement or a float might be better? I think you should have a more open mind than you are exhibiting right now as to how much money you want to raise, how you propose to sell it and at what cost and on what basis you will sell it. It is difficult to throw principles at people, but I have understood the Liberal Party to be a party that talks about choice, and I think you should leave yourself an open choice in these matters.

So I have spoken to those three items. I do not intend to speak much more on this in the debate. I have covered these matters in far more depth in my minority report and, to an extent, in my speech in the second reading debate.

Senator McLUCAS (Queensland) (8.55 pm)—Like Senator Murray, I will speak to all three proposed amendments. The amendments canvass different areas but I would like to go to the question of mutualisation in a general sense. The government afforded to the Senate Standing Committee on Finance and Public Administration one day of hearings for the inquiry into the sale of Medibank Private. The number of submissions made to this inquiry into what was in the community a huge potential sale was quite limited. It is no wonder that we did not go to the question of whether mutualisation was an option.

In another life, with a different balance of power in this place, I would imagine that such a significant proposal from the government of the day would not be referred to a legislation committee—as it was—but to a references committee. Whilst we are dealing with a piece of legislation, in my view the principle is that it would have been referred to a references committee by agreement of the senators who sit on this side of the chamber. If we had done that, we would have had a much broader inquiry which would have allowed these sorts of questions to be teased out. Senator Murray’s questions around first right of refusal and mutualisation might then have been answered.

But the government referred this bill, which will potentially bring it revenue of up to $2 billion, to a one-day hearing within a very truncated period. The submissions that were made were very specifically on the question of the legislation. That would not have happened prior to the last election. We would not have managed a policy proposal in this way. So the Senate inquiry does not inform the three amendments that Senator Murray has spoken about. We did not have a community view about mutualisation. It is referred to fleetingly in some of the submissions but there is no full discussion of whether mutualisation is an appropriate way to go.

Senator Murray, when Labor wins the next election we will not need this advice, but thank you very much anyway. The Labor position is very clear: we will not be selling Medibank Private Ltd. Thanks for the offer, but you will not need to provide Labor with options on how we might sell it, because we will not sell it. It is very kind of you to think of us in the future. There is a very clear choice for electors at the next election: if you want to keep Medibank Private in public ownership, vote Labor, but if you are happy with the ramifications of the sale for health generally, for the private health sector and for Medibank Private itself, then I suggest you vote for the Howard government.

We know what the community thinks. The community is quite clearly opposed to this privatisation. As I said in my speech in the second reading debate, we will make every effort in the next campaign to remind people of Labor’s position on this matter. Thank you for thinking of us, Senator Murray, but Labor will not be supporting your amendments.
Senator MINCHIN (South Australia—Minister for Finance and Administration) (9.00 pm)—I am interested that the Labor Party is now, under its new leadership, so cocky that it says ‘when’ Labor wins the next election. We note that with great interest. We are much more humble and are prepared to concede that it is possible that we could lose the next federal election. But we will be working hard to ensure that that does not occur.

Senator McLucas insisted that this should have been sent to a references committee. I have been wondering whether the Qantas or Commonwealth Bank sale legislation was referred by the then Labor government to a references committee; somehow, I doubt it. It is normal for legislation in this place to be referred to a legislation committee. It is then open to the whole community to submit as many submissions as they like to that committee for it to consider the submissions put before it. This bill has been dealt with in a perfectly normal and appropriate fashion, albeit I note that Senator McLucas is not actually supporting Senator Murray’s amendments.

With respect to Senator Murray’s arguments in relation to his amendments, the government is not in a position to support those amendments. I outlined a number of the reasons for that position in my speech on the second reading. We have thought about Medibank Private for any number of years within the coalition. We do genuinely have an in principle position that modern Western governments should, prima facie, not really be running businesses in competitive industries when they have the role of regulating them. We have been talking about and thinking about Medibank Private for many years and have been generally of the view that there is no public policy case for the government owning a private health insurance business. We have been the ones most profoundly committed to having a viable private health insurance industry, unlike the Labor Party and certainly the Greens. But, given our support for that industry, we do not see the need for the government to own one of those businesses. That has been our strong view.

In the course of our discussions, we have of course talked as a government, and as a coalition, about what the future ownership arrangement should be. After much advice and much consideration, we came to the view that the most appropriate method of sale is a public offering, as was the case with Qantas, the Commonwealth Bank and Telstra—other major government businesses which were properly sold to the Australian public by way of public floats. We think that is the appropriate method of sale in this case. In those cases, there was no contemplation of selling those businesses either at all or in the first instance to their customers, and we do not think that is the appropriate arrangement with Medibank Private. As I said before, we do not accept in any respect the false assertion that somehow when you take out an insurance contract with Medibank Private you acquire some proprietary interest in the business. That is simply not a valid argument.

Of course we have, as advised by our lawyers, allowed for every single theoretical possibility. As Senator Murray himself noted, the evidence before the finance and public admin committee was that it is standard practice, whether it is our government or any other government, based on the best legal advice, to allow for all of the most theoretical possibilities. And of course it is the case that you cannot, in a democracy like ours, and with a judicial system like ours, stop people either asserting that they will make various claims or indeed making claims. It is our strong position than any such claim with respect to Medibank Private has no standing and would not succeed.
But it is proper and appropriate as a responsible government to draft legislation to allow for theoretical possibilities. We have done that before and other governments have done that before, and that is the case with this legislation. But we do not concede that that argument holds any water; nor do we propose in the sale legislation and in the method of sale to concede that argument. We think, if you are going to have a public float, having decided that that is the best method of sale, that therefore the sale should be offered on the widest possible basis for every Australian to participate in, albeit acknowledging, as we have done with other sales, that there should be some form of entitlement to recognise the loyalty of Medibank Private’s many customers. On balance, and having considered Senator Murray’s amendments properly, we, given our policy position with respect to the method of sale, see no advantage to be gained by accepting those amendments.

Senator NETTLE (New South Wales) (9.05 pm)—I wanted to indicate that the Greens are happy to support each of these amendments on the basis that they provide a range of options about how anyone may proceed with this bill. As I said at the outset, the Greens are opposed to the sale of Medibank Private.

I think there are some interesting issues that have been raised in the discussions. One of those issues was about how the Senate committee process has dealt with this legislation. I have been part of that debate previously to say that the one-day hearing—the bill being sent to a committee that considered this as nothing more and nothing less than a sell-off of public assets—did not allow for the same level of discussion about the health consequences of the sale of Medibank Private. That is the issue that has been the focus of the Greens concerns around this legislation and around the second reading debate.

The next two amendments, which I will move later in the committee stage, are about the health consequences of this legislation, which we think would best have been dealt with in a different way than by the one-day hearing that they received under this government.

I want to talk about the financial position of Medibank and the issues that have been raised about the rights of existing Medibank Private members. I am sure everybody can find the section in the bill that deals with this issue; it is the compensation for acquisition of property section in part 8 of the bill. That is, of course, an acknowledgement by the government that this is a concern, regardless of what Senator Minchin may say to us in this chamber and on other occasions.

In regards to the contributions that members have made to Medibank Private, it is also worth pointing out that they are not the only people who have contributed to Medibank Private. Amongst those contributors is, of course, the Commonwealth, because the financial position of Medibank Private during the past 20 years has varied. It generated a loss in 2001-02 of $175 million, which resulted in the Commonwealth injecting into it $85 million in public funds. I suppose that comes to the issue of any role the public has in this particular asset and is central to the many reasons why the Greens are not supporting this particular sell-off. Given that these amendments seek to deal with ways that these issues may proceed, we are happy for there to continue to be discussion on how that may occur. Another issue that has been raised in the debate by Senator Minchin is that of a conflict of interest. The Parliamentary Library pointed out that the government has not provided any evidence of the likely forms of such a conflict of interest.

The final point I want to make is that Senator Minchin raised the view, as he has
on many occasions, that there is no policy reason for the government to continue to own a health fund. I think this is the second time today that I have pointed to a former Prime Minister from the Liberal Party, Malcolm Fraser, who is opposing this sale. His opposition to this sale and the role that he has played in Medibank Private indicate that the Liberal Party of the past clearly had a policy reason for owning a health fund, and that is notably different to the views of the current Liberal Party.

With those comments, I indicate that the Greens are happy to support these proposals as options in the context of us not supporting the sale of Medibank Private and wishing primarily to deal with the health consequences of that, which have not been part of the way the government has sought to manage this sale or the Senate inquiry into this legislation, and hence the second reading amendment that the Greens moved and the next series of amendments that I shall move on behalf of the Greens in this committee stage.

The TEMPORARY CHAIRMAN (Senator Troeth)—The question is that amendment (2) on sheet 5135 revised, moved by Senator Murray, be agreed to.

Question negatived.

The TEMPORARY CHAIRMAN—The question now is that amendment (3) on sheet 5135 revised, moved by Senator Murray, be agreed to.

Question negatived.

Senator MURRAY (Western Australia) (9.10 pm)—I move:

(4) Schedule 2, page 10 (after line 24), after subitem (5), insert:

(5A) Without limiting the generality of this Part or the operation of subitem (6), a Medibank Private sale scheme may involve:

(a) mutualisation of Medibank Private; or
(b) private float of equity in Medibank Private; or
(c) private placement of equity in Medibank Private; or
(d) any other method the Commonwealth considers appropriate.

I want to make a couple of brief remarks to add to those I made earlier. One remark I want to make in passing is that I do not respond well to calling the members of Medibank Private customers because I think ‘member’ has an entirely different meaning to ‘customer’. I think you would find that, in law, members of Medibank Private, by virtue of their payment system and the way in which they use products and services, would be considered different to, say, a customer who pops in and out of a retail shop. I am not likely to fall in easily with the minister’s terminology.

What I really want to say about this amendment is that I would have liked to see the mutualisation area discussed more. One of the difficulties we face is that there are claims about the effects on competition, price and products as a result of this sale through a public float. The strong view held both in the market and by most of those who made speeches in the second reading debate and who were part of the committee process is that, if there is a public float, the shareholders will want a return on their investment. There are a few things attached to that. The government refused an earlier amendment designed to ask it to ask the Productivity Commission to do work to recommend to the government ways in which the private health insurance market could be made far more competitive, because the government will not do that when it sells Medibank Private. It will sell it into an environment where the market is singularly imperfect—it is rigid, it is not mobile, there is a low level of
portability and there is a low level of comparability. That is a danger. There is the potential for price gouging of members to occur.

Further, when you shift from a not-for-profit status to a for-profit status, you lose tax concessions which apply to not-for-profit entities. When moving to a for-profit status, shareholders will want a set return on investment, which is determined by the price they pay and the measures they use to determine what they want in return. Mutualisation is also a lower cost option. When you sell through a public float you pay the fee takers and the commission makers a vast sum of money. That will not happen to the same extent in a mutualisation process, in my view. You would not have the same demands on return if the members were to own their own outfit. In many ways, mutualisation is better from the point of view of product, service, price, cost and the competition that exists in the market. However, I know the minister has a closed mind on that particular option, which is unfortunate, but I did want to add those remarks in moving this amendment.

Question negatived.

Senator MURRAY (Western Australia) (9.14 pm)—I move Democrats amendment (5) on sheet 5135 revised:

(5) Schedule 2, page 51 (after line 4), at the end of the Schedule, add:

63 Hypothecation of revenue

(1) A fund, to be called the Medibank Sale Health Fund, is established.

(2) The net proceeds of any sale which takes place under this Schedule must be placed in the Medibank Sale Health Fund.

(3) Funds in the Medibank Sale Health Fund may only be appropriated for the purpose of advancing health in Australia.

Amendment (5) relates to the hypothecation of revenue, which is unusual for me to contemplate because I am not generally a great fan of hypothecation; I think it unnecessarily restricts the government. But I bring to bear the assessment I made in my minority report—that is, as the minister outlined, I do not think the case has been adequately made for keeping Medibank Private in public hands. What the minister did not mention is that I also think the case has not been adequately made for Medibank Private not to stay in public hands. I think the case needed to be made better. If that is so, you are talking about the question of realising funds as the principal attraction of sale.

I happen to think that when Labor were selling assets whilst they were in government to some extent they were distressed sellers; they needed the dough. The shadow minister is welcome to contest that view but I think there was a far different environment for government budgets at that time. They needed the money and, to some extent, that is what is driving sales in the states, I might say—a sense that they need money. But quite often in the states, particularly in my own, they sell assets because they say that the opportunity cost of keeping an asset of one kind is such that they would rather take that money and put it into different forms of infrastructure that they think are more in the public interest. I appreciate that sort of argument, because sometimes you are invested in one thing but you would be better off invested in another. Essentially that is my view.

If there is not a very strong a case for either selling or keeping Medibank, and therefore the greatest attraction is the amount of money you can raise, then you have to say what you are going to use the money for. I can see only three possibilities, although perhaps there are others. One option is to tip it into general revenue, which as a policy man, a finance man, I find very unattractive as a matter of principle—I think it is the
wrong thing to do. The second option, and what I understand is the government’s preferred option, is to tip it into the Future Fund. While I can see the long-term benefits of putting a couple of billion dollars into that, it is not really attractive to me. The third option is to spend it on infrastructure in health itself, where I think there are some great needs. As people know, the Democrats have been on about the needs in the mental and dental areas for many years. It is not because we are all mad with bad teeth; we think these are areas of great concern. However, I have not gone so far as to say that the government of the day would have to be told where it puts its money. I have simply said that it should go into a Medibank sale health fund. That would be the most desirable use of the money based on the opportunity cost principle.

Senator McLUCAS (Queensland) (9.18 pm)—I understand Senator Murray’s explanation of the motivation for amendment (5), but it underlines the lack of faith by the Democrats in the government’s commitments, as I understand them—and I will wait for Senator Minchin to clarify this—for a significant portion of the money to be used to fund medical research. I understand Senator Murray’s lack of faith, if in fact that is what it is—

Senator Murray—It’s not $2 billion worth of research, is it?

Senator McLUCAS—No. You are correct; it is not that amount of money, and I am sure the minister will explain. The indication was some $500 million, but we will get that clarified. I understand why Senator Murray has little faith in the government saying that this is what they are going to do with the proceeds of something and then it not occurring. Whilst it is not exactly the same, I do recall, prior to my entering this place, that the Democrats had some understanding with the government prior to the passage of the GST legislation, and certain funds were to be allocated to the environment in certain ways. Assessment of that agreement shows quite clearly that funds were not allocated in the way that that agreement stipulated. It is very clear that that agreement did not deliver what those members of the Democrats were interested in achieving back in 1999.

It is clear that the Democrats do not have any faith in the commitment the government has made, and that is the motivation for this amendment. However, as I have stated on a number of occasions this evening, the Labor Party does not contemplate the sale of Medibank Private, so any support of an amendment that contemplates the proceeds of the sale cannot be supported. I look forward to the minister’s response explaining how Senator Murray can have faith that the commitments that have been made will actually be delivered.

Senator MINCHIN (South Australia—Minister for Finance and Administration) (9.21 pm)—I put on the record that, after due and proper consideration, the government are not in a position to accept this amendment. Like Senator Murray, we do not believe in hypothecation. I think it is a very bad principle of government and one to be resisted at all costs.

One of the principal reasons for selling Medibank Private is that we do not think taxpayers should have moneys at risk in this business. It should be seen as an investment, as Telstra was. Taxpayers had huge sums of money tied up in a telephone company and, at the moment, taxpayers have a not insubstantial amount of money tied up in a private health insurance business, which, at least in theory, is at risk. And, as Senator Nettle reminded us, it is a business that lost money and required taxpayers to improve its capital adequacy two budgets ago. That is the fun-
The fundamental reason: we do not think that money should be invested in a private health insurance business; it should be used elsewhere.

We also strongly agree with Senator Murray, unlike the former Labor government, that proceeds of assets sales should not be used for recurrent expenditure. That was what the former Labor government did with the proceeds of the asset sales it presided over: it stuck them straight into recurrent revenue. That is like selling the silver to go out to dinner. It is a completely and utterly irresponsible approach. Up until now, we have used the proceeds of asset sales to reduce government debt. Rather than put it into recurrent expenditure, we have used asset sales to get rid of the debt we were left. That was the appropriate and responsible action on the part of the government: to reduce the debt burden facing future generations and reduce the annual interest payments upon the debt, which were the equivalent of the expenditure on defence when we came into office.

So we are now in the luxurious position, rare among Western governments around the world, of not having any net government debt. We have the luxury of considering what to do with the proceeds of asset sales because we have been so successful in removing the debt, which had been the repository of previous asset sales. We have said that, with respect to the Future Fund, sources of future deposits into the Future Fund will be made on a discrete basis. A discrete decision will be made on an annual basis with respect to surpluses and on an individual basis with respect to asset sales as to whether those proceeds should go into the Future Fund. On the face of it, the appropriate place to put future surpluses and proceeds of asset sales is indeed into the Future Fund, up until the point where we believe it has the requisite deposits, in order to ensure it can meet the unfunded superannuation liabilities which we all know exist.

But we will make that decision as and when we have proceeds available. We have made that decision with respect to the proceeds of T3—all of those proceeds are going into the Future Fund. With respect to Medibank Private, we will make a discrete decision as and when the proceeds materialise. However, in the meantime, and as a direct consequence of the government’s policy to sell this business, we have announced that, as a result of this sale in this year’s budget—which seems to have passed the notice of some senators present—we have appropriated additional funding of $500 million over four years for research grants for the National Health and Medical Research Council. That was a formal government decision and was part of the appropriation bills, which have been considered by this chamber. So that is in law, in writing, a done deal, a decision made by this government as a direct result of the decision to sell Medibank Private. In anticipation of the proceeds of the sale, we have enhanced medical research to the tune of $500 million over the next four years.

In addition to that we have, in anticipation of sale proceeds, in the budget this year provided $170 million over nine years for the establishment of an Australian health and medical research fellowship scheme. I do not describe that as hypothecation per se but I do proudly proclaim it as a decision made by the government because we have made the decision that we will sell this business and not have whatever it is worth tied up in that business. It therefore gives us the opportunity to make these additional investments in health and medical research. These are decisions we would not have made if we had made a decision to hang on to this business. So, while it is not hypothecation, it is a decision to invest additional funds into medical...
research that do flow from the government’s anticipation of proceeds from the sale of this business.

The actual proceeds, as and when they materialise, will be the subject of a separate and discrete decision, which of course will be reported in full to the parliament and the public and the subject of public defence and justification. But we will not use the proceeds for recurrent expenditure, which, as Senator Murray properly pointed out, is not a good policy.

I would just say in relation to infrastructure per se that the Commonwealth government does not own any health or medical infrastructure directly. We do not own or operate hospitals. We do not own or operate medical research institutes directly. We do fund, on a recurrent basis, the states in their ownership and operation of hospitals and we do fund, on a recurrent basis through the National Health and Medical Research Council, private and public health and medical research institutes but we do not own any infrastructure. So there is no infrastructure of our own that we can invest in. So, as I say, we should look at the proceeds of the sale as an investment.

I for one will certainly want the cabinet to consider seriously these proceeds going into the Future Fund because I do think the most important responsibility we have is to ensure the unfunded liabilities that face the nation are met. The Future Fund is the way in which to do that. The fund is supported by this parliament and prima facie that is, in my view, the appropriate place for the proceeds of this sale to go, but that will be a decision made by the government at the time the proceeds materialise. So for those reasons we are not in a position to support this amendment.

Senator NETTLE (New South Wales) (9.28 pm)—This is a very similar amendment to the second reading amendment I moved on behalf of the Australian Greens which said that if Medibank Private were sold it was the view of the Greens that the money should be spent on public health care. That was slightly different in that this amendment indicates health care in general. The intention of the Greens is that, if Medibank Private is sold, we would like the money spent on public health care. We think that position is covered in this amendment and therefore, whilst our position was slightly more refined than that, we are of a view to support this amendment.

Question negatived.

Senator NETTLE (New South Wales) (9.30 pm)—by leave—I move Greens amendments (1) and (2) on sheet 5161:

(1) Schedule 1, page 6 (after line 13), at the end of the Schedule, add:

Private Health Insurance Incentives Act 1998

8 The whole of the Act

Repeal the Act.

(2) Schedule 1, page 6 (after line 13), at the end of the Schedule, add:

Taxation Laws Amendment (Private Health Insurance) Act 1998

9 The whole of the Act

Repeal the Act.

These two amendments are amendments that the Senate has seen on several occasions from me. They are amendments that are designed to abolish the private health insurance rebate. It has been a long-held position of the Australian Greens that the over $3 billion of public funds each year that the government puts into subsidising those Australians who have private health insurance—predominantly wealthier Australians, incidentally, in Liberal held electorates—should not be going to subsidising that private health insurance. The Greens say that over $3 billion of public funds each year should be invested in our public health system.
I have spoken on many occasions about the reasons why the Greens are supportive of our public health system and about the way we recognise, as indeed the community recognises, that it is the best and most efficient way to ensure that health care is delivered to those Australians who most need it, regardless of their capacity to pay. There are many examples that I can go into where we have a more heavily privatised system that relies on private insurance. We see in the United States the outcomes of that. People’s health is not looked after as well as it is in this country when you compare Australia and the United States. And we spend far less money than they do in the United States, where they have gone down this path. All of those figures are there in recent studies by the Australian Institute of Health and Welfare and recent OECD reports, all of which point to the inefficiencies of the US style privatised healthcare system and why the Australian Greens defend our public healthcare system.

I have spoken previously today about the challenge this presents for the opposition and for the new team in particular. When Mr Rudd speaks about social justice, this is a key and fundamental social justice issue: should we be investing public funds in the public healthcare system, or should we be pouring public funds into the pockets of insurance companies in such a way that the poorer members of Australian society—incidentally, many of whom are in Labor held electorates—end up subsidising the private health insurance of those people who live in wealthier Liberal held electorates such as that of the health minister, Mr Abbott? I have indicated this before.

One aspect of this that truly astonishes me is the level of subsidy that is provided to the private health insurance industry. There is no other industry that is given this level of government support. We see subsidies across the board going to a whole range of different industries. The Greens would support substantial subsidies going from this government to the renewable energy sector, for example. But what we see is that the subsidies from this government to the private health insurance sector are above all of the other subsidies that exist. For no other industry does the government use its taxation system to penalise people who do not take out the services of that particular industry. That is what this government does. This government, through its taxation system, chooses to penalise people who do not take out private health insurance. There may be a variety of reasons—perhaps their support for the public health system.

There are subsidies and there are subsidies, but this is the mother of all subsidies. The government is saying, ‘Not only will we give you a 30 per cent private health insurance rebate’—that is the over $3 billion per annum that this government takes from the public and puts into the hands of private health insurance, on top of a range of other subsidies that come from this federal government—‘but we will use our taxation system such that, if people do not take out the services, we will penalise them through the taxation system.’ There is no other industry I know of where that occurs. If Senator Minchin would like to enlighten me about others, I would be interested to hear that. But, in looking at this issue, as I have been for some time, I cannot think of another industry that gets that level of support from the federal government. I think that is just a clear indication of this government’s support for the private health sector and its lack of support for the public health sector. We see it time and time again in the way in which this government operates.

Last month there was an article in the Sydney Morning Herald indicating that this government had approved a six per cent rise in private health insurance premiums in the
past year whilst only allocating a 2.1 per cent increase to the public health system. The same article went on to point out that private patients received benefits worth an extra $500 million from the federal government compared with its contribution to public hospitals. That was according to the former federal health chief Dr Stephen Duckett. So I think it is quite clear and on the record that this government supports the private health sector and we do not see anywhere near the level of support that should be there, in the view of the Greens, for the public health system. The Greens position is also clear: we want to see the federal government taking on its responsibility in investing in public services in this country, and in this instance we are talking about the public healthcare system.

The challenge is there for the opposition and what they choose to do with this over $3 billion of public funds each year—we are not talking a one-off; we are talking each year. This whole sale of Medibank Private is worth $2 billion—that is the figure people are bandying about. That is not what I am talking about. I am talking about the over $3 billion every year that this government—and the current position of the opposition is the same—puts into the pockets of the insurers, the wealthier Australians in Liberal held electorates who take out private health insurance, and that is subsidised through the contributions of taxpayers across the board.

So I have moved these two amendments together. What these amendments do is inject some social justice into the system. We do not want to see a redistribution of wealth from all Australians to the wealthier Australians who choose to take out private health insurance; we want to see a good public health system. It is that simple. If we were looking to fund the public health system further, and of course we all are—well, on this side of the chamber we are—then, looking around, the elephant in the room is that over $3 billion. It is health money. It is being collected by the government and it is not being spent on health services. And it is not being spent on health services in the sector that delivers them most efficiently and to all Australians—that is, our public health system, a public health system that we should be supporting and where we want to see quality services.

One would anticipate that a party with a new leader talking about the values of social justice would see this as a fundamental social justice issue: do we want to invest in public health care or not? Here is the opportunity for the opposition to say: ‘Yes, we do. Let’s take this money that the public pay to the government for investing in public services and put it into public health care.’ That is the option today and I call on all senators to support it.

Senator MURRAY (Western Australia) (9.37 pm)—Over many years, I have consistently supported means testing of the private health rebate. I recall that the Democrats have, at least a couple of times, moved amendments to implement means testing—and I am relying on memory—at about the level of $100,000 income. I do not believe the wealthy should get this tax concession, but neither do I believe that the entire private health rebate scheme should be withdrawn, because I believe it is a useful additional support for lower and middle-income Australians. I should mention that, for as long as Medicare does not cover off areas like dental health, private health insurance has an enormous role to play. I do agree that it should not apply to the wealthy. However, I cannot support the Greens amendments.

Senator McLUCAS (Queensland) (9.39 pm)—Labor also will not be supporting the Greens amendments which would abolish the private health insurance rebate. We have
been consistently of that view and have repeatedly voted the same way when the Greens have moved those amendments. You have to remember that Australia’s health system historically has been a mix of the public and private sectors. Basically, since our health system began, in whatever form that was, it has always been a mix of the public and private sectors.

There is a role for private health insurance, private hospitals and private practitioners, along with the very important role of the public system of delivery of health in Australia. Therefore, there are good policy reasons that we need to make sure that each of those important parts of our health system are maintained in a robust way.

I would like to refer Dr John Deeble’s comments when he talked about what he believed Medicare to be. He said:

I have always believed that Medicare is a national system of health care financing which includes the private sector and its insurers, not just a Commonwealth scheme of benefits for medical care and public hospital treatment. The two parts are complementary in ways which go beyond the market place, although there are vested interests with a reason to argue otherwise.

Dr Deeble was making a comment there about why you need to have public involvement in the private health insurance sector. I do not believe I am misquoting Dr Deeble on that point, but I think his explanation of Australia’s health system adds to our understanding of the mix of public and private interest in the way we deliver health in this country.

Senator MINCHIN (South Australia—Minister for Finance and Administration) (9.41 pm)—The government strongly opposes these amendments but we welcome the fact that the Greens have again placed on the public record their clear policy to abolish the private health insurance rebate. They are reaffirming that it is Greens policy, essentially, to make private health insurance unaffordable for ordinary Australians. Their policy is to make sure that ordinary Australian families can no longer afford health insurance.

In the lead-up to the next federal election, we intend to make sure that all Australians understand with great clarity what the Greens policy is on this issue. It is a completely unacceptable policy. I welcome the Democrats opposition to the amendments. I welcome the Labor Party’s latterly found opposition to these amendments. We are not quite sure that the Australian people should trust the Labor Party on this issue, given their hostility in the past to the 30 per cent rebate, but I am happy to accept on face value what Senator McLucas says in the context of this debate.

It is extraordinary that the Greens continue to adopt the view that only the wealthy should be able to afford private health insurance and it is extraordinary that they seem ignorant of the clear fact, now recognised by other parties, that to effectively demolish private health insurance in this country would put a completely unsustainable load on the public health system.

I do not want a long debate tonight; I do not think anybody wants a long debate tonight about this issue. I welcome the fact that other parties oppose this amendment, but we note with great interest the policy that the Greens have adopted on this matter.

Senator NETTLE (New South Wales) (9.43 pm)—I am very proud to be the health spokesperson for the Australian Greens. One of the things that makes me most proud of the responsibility that I carry out is the way in which the Greens inject social and economic justice—one of our four founding principles—into this area. This issue—almost unlike any other in the health arena—about whether the public should spend its funds on subsidising insurance companies or whether it should spend them on delivering
public health services, addresses that very question. Right now the social justice that needs to be injected into the system is just not there. Right now the system takes funds from Australians across the board and delivers them to those people who have been scared by the government into taking out private health insurance.

That is why we have seen people take out private health insurance. It is not because of the rebate, and Senator Minchin knows that. The reason why so many Australians have been scared by this government into taking it out is that this government, as I indicated before, has used its taxation system to financially penalise people who have not taken out the services of this particular private industry. This is a subsidy that the private health insurance industry enjoys—like no other industry.

On top of the other subsidies, this government uses its taxation system to penalise people who do not take out the services of this industry. That is why Australians have signed up—not because of this rebate or the $3 billion that the government pours down the drain in this way each year that could be spent on public health services. No! Time and time again we look at this issue. Many Australians have been scared by this government, which chooses to invest its money not in ensuring there is a quality public health care system for all Australians to access but in subsidising its own constituents in wealthy electorates who choose to take out private health insurance.

The Greens have done the analysis on this work and we understand. The figures are there and the research has been done time and time again. Health economists around this country tell us that, when you analyse private health insurance membership, you find that Australians in less affluent, predominantly Labor-held electorates—and, indeed, National Party-held electorates—subsidise the private health insurance of the wealthier Australians that we find in Liberal-held electorates like, for example, the health minister’s electorate. The highest rate of private health insurance ownership is in the health minister’s electorate. I think around 86 per cent of people in his electorate of Warringah have private health insurance. They all get access to this over $3 billion of public funding, but—

Senator Abetz—Yes, and it takes the pressure off the public system!

Senator Nettle—We will get to that issue, Senator Abetz, but let us look at Lawler electorate. In Lawler, 36.3 per cent of residents have access to this over $3 billion of funds that we are waiting for here. That is the choice that the opposition makes on this issue: their constituents should subsidise the private health insurance of the people in Mr Abbott’s electorate in the northern beaches of Sydney.

I go to the issue that has been raised by Senator Minchin and Senator Abetz: this folly that the government puts forwards that somehow or other the private health insurance rebate has reduced pressure on public hospitals. Where are the facts? Where are the figures? Where are the numbers? Where is the reduction in work being done in public hospitals?

Senator Abetz—What?

Senator Nettle—You cannot point to it, Senator Abetz, because it is not there.

Senator Abetz—What?

Senator Nettle—We have not seen any reduction in the pressure that exists in public hospitals around this country. Senator Abetz can say ‘What?’ as many times as he likes. He has not looked at the figures. I have. For 4½ years I have been speaking in this chamber about how your private health
insurance rebate has not reduced the pressure on public hospitals. But if we invested this over $3 billion of public funds each year into our public hospital system that would do it. That would do it, Senator Abetz: that would ensure that we had a quality public health system that all Australians could access regardless of their capacity to pay. But that is not the choice that this government takes.

This government have decided that they want to run down our public health system. They want to take the taxpayers’ funds that it is their responsibility to invest in public services and funnel that to their mates who take out the private health insurance that they have scared people into taking—and they penalise people through the taxation system if they do not take it out. That is the way the system works.

I am proud to say that the Greens believe that this over $3 billion of public funds should be invested in our public health system. The money is there and needs to be invested. We hold the view that it is the responsibility of government to look after all Australians through our public health care system to ensure that they can get access to quality health services. I am proud to stand here representing the Australian Greens and saying, ‘We want to invest in our public health system.’ That is the position of the Australian Greens. That continues to be the position of the Australian Greens. I think this is the fourth time that I have sought to say to the parliament: ‘Let’s take that money that taxpayers have contributed to ensure that they can access quality public health services and let’s invest it in our public health care system.’ I want to make sure that Australians, regardless of their capacity to pay, can access good public health care—

Consideration interrupted and progress reported.

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**ADJOURNMENT**

**The ACTING DEPUTY PRESIDENT**

_Senator Crossin_—Order! It being 9.50 pm, I propose the question:

That the Senate do now adjourn.

**Greater Western Sydney**

_Senator PAYNE_ (New South Wales) (9.50 pm)—On that happy note, following the debate on the Medibank Private Sale Bill 2006, this is probably a good opportunity for me to mark for the record that I am very pleased to have the chance, thanks to the federal government, to work in what is one of the boom areas of Australia in many ways—that is, the area of greater Western Sydney. I have to say that I think Senator Nettle omitted from her remarks, castigating governments in relation to health systems, a passing castigation of the New South Wales state government, which would be a very good place to start, as they say in the classics, as it is the state we both represent.

It is true that, in terms of the economic conditions in Australia, one would not want to be looking to the New South Wales government for leadership. But, federally, since October 1996—not a bad date to begin looking at these sorts of figures—almost 1.9 million new jobs have been created in this country, including 165,000 under Work Choices, which was meant to be the end of the world. I think that was what we were told by a number of participants in the debate in this chamber. Our unemployment rate is currently at 4.6 per cent—the lowest in 30 years. The OECD expects Australia’s GDP to grow to 3.4 per cent in 2008, and we as a government have not shied away from making the tough decisions on the economy and the tough decisions for reform, whether it is in the workplace, welfare, taxation or health, as has been discussed in the chamber earlier this evening, or whether it is about investing in Australia’s future in the establishment of
the Future Fund to offset enormous superannuation liabilities down the line.

But, in direct contrast, in my own state of New South Wales there are actually economists talking about recessionary trends. The fact that this state—my state—has the lowest growth, the highest unemployment, the lowest building starts since World War II and the worst affordability, coupled with a $700 million deficit, shows that the New South Wales state government should not be trusted on economic management, just for starters. Unemployment remains above the national average—it is 5.1 per cent, I believe, compared to 4.6 per cent on the October national figures—and they have managed to reduce economic growth to 1.1 per cent.

And let us not look past the daily travails of individuals in New South Wales trying to do basics, like get to work in the transport system; the repetitive, almost by now annual announcements of completion of things like the north-west rail link; or the inability of the government to even contemplate alternatives like light rail, including their inability to plan for the future. Their neglect of the energy needs of New South Wales meant that, as I understand it, in the last couple of sitting weeks of the New South Wales state parliament the lights even went out in Parliament House in Macquarie Street, Sydney. One expects that their 12 years of underinvestment, underresourcing, mismanagement and excuses mean that the lights will probably go out all over New South Wales in summer. It does not matter whether you are talking about water management, urban planning, state taxes, health and hospitals or schools; it has all been let go.

That is why I started my remarks tonight by talking about greater Western Sydney: because, notwithstanding those challenges—and there are many which pertain to the greater west—it remains a significant economic hub for Australia, particularly supported by the efforts of the Australian government to promote the area. In fact, greater Western Sydney produces around $61 billion in economic output annually, which makes it the third largest economic region in Australia after Sydney and Melbourne. The Western Sydney Regional Organisation of Councils spent some time compiling those statistics. It is a strong economic force both domestically and further afield. It is one of the reasons that Austrade has a Parramatta office which operates as the Export Centre. It has been open since 1993 as a one-stop shop for Western Sydney exporters. It is a gateway to Western Sydney for Austrade and, in 2005-06, that office directly assisted over 250 new and potential exporters and assisted 39 exporters to make their first-ever export sale. It is really taking Western Sydney and its producers to the world.

Some of the most important growth industries in the region which are driving these economic numbers are information technology and communications, tourism and recreation, and particularly business services. We have also benefited significantly from the construction of the Westlink M7 motorway, which was jointly funded through the private sector and $356 million of Commonwealth funding. That has added significantly to the region’s economic prospects. It has improved warehousing and distribution capacity. It is a very important factor in our capacity to grow that part of Sydney and New South Wales. As a user of the motorway, I can certainly attest to its value.

One of the most significant parts of the vitality of the region is the diversity of the communities of greater Western Sydney. It does not matter whether you are talking socially—politically, even—professionally or culturally, that diversity brings both challenges and opportunities to the people of Western Sydney. Population growth has
brought us this fantastic diversity. It makes it a very exciting place in which to work and live, but it has also brought significant environmental and social challenges. On a day-to-day basis, much of the responsibility for managing those challenges, both the good and the bad, goes to state government, but there are areas in which the federal government can assist.

I particularly want to note the efforts of Anglicare Sydney, and similar agencies, in trying to alleviate homelessness in the area. Recently the Prime Minister, in support of those efforts, announced some Commonwealth funding—$100,000—to help Anglicare plan for the future by establishing a foundation that they are going to use to help provide funding certainty. That foundation is going to support Anglicare Sydney’s Street Outreach Program, which has been running since 1991—well in excess of a decade—to provide support for homeless youth and youth at risk of becoming homeless. It is now to be extended to Parramatta. That is a very good example of partnership between a non-government organisation like Anglicare and the federal government, with its support.

Things like homelessness are not the only challenges that face those in New South Wales. For example, the University of Western Sydney, an excellent academic institution, recently released research which showed that over one million people in greater Western Sydney have difficulty accessing key, basic services in the area, such as hospitals and things like that, through public transport. Even the Deputy Premier of New South Wales, the transport minister, John Watkins, has said that the transport system is dysfunctional—and it is: big concession!—but the problems that are outlined in this academic research are in fact daily problems for the people and residents of Western Sydney who are victims of the state government’s lack of planning. In fact, as Leah Godfrey, the executive officer of the Western Sydney Community Forum, rightly pointed out:

I think the cancellation of the train line from Epping to Parramatta was a very firm indication that the—

New South Wales—

Government doesn’t have a commitment to increasing public transport in western Sydney. But that is a daily story. That is what the people of this part of Sydney—this growing part of Sydney; this third largest economic hub in the country—have to put up with every single day. Maybe, if we are optimisitic, if we are ‘glass half full’ people, in the next regional strategy, the next state plan or the next development blueprint which is part of the government’s advertising strategy—which, I understand from today’s media, is going to $1 billion—there will be some commitment to improve the situation for that particular project and for better overall transport outcomes for the people of Western Sydney. Hopefully we do not wait in vain.

Another matter concerning this growing part of Sydney that I want to talk about briefly—and, in many ways, this is the lifeblood of Western Sydney—is the University of Western Sydney. I want to talk about some of its growth and the contribution that it is making to the community. I am a member of the UWS Regional Council. We now have close to 35,000 students enrolled at the University of Western Sydney—including, since 2002, an increasing number of overseas students. The very popular fields of study at UWS are management and commerce, society and culture, and health.

The opening of the medical school at the University of Western Sydney is a very important initiative which the Commonwealth has been able to support. In the 2004-05 budget the Commonwealth made a commitment of $18 million to the UWS medical
school. The commencement of construction was marked by the Minister for Education, Science and Training, the Hon. Julie Bishop, in May this year.

Through Backing Australia’s Future places and the Council of Australian Governments’ health workforce package, the university will be looking at 475 medical places by 2011. That is a very important development for Western Sydney. It will be able to create its own home-grown doctors who will hopefully live, work and practise in the area, having received their training from the University of Western Sydney medical school. In fact their first intake of 100 medical students next year has attracted 2,300 applications. This marks its extraordinary popularity and the very important value of this innovation. (Time expired)

Workplace Relations

Senator McEWEN (South Australia) (10.00 pm)—Tonight I would like to speak about young people and work—and it is good to see that Senator Abetz is in here to listen—in particular the effect of the government’s workplace laws on young people, the so-called Work Choices legislation. That in fact offers no choices when it comes to ‘take it or leave it’ AWAs and offers no protection to workers who are sacked unfairly. It is timely to speak about young people and work because it is at this time of the year that many young people get their first jobs as Christmas casuals. It is an exciting time for many of them as they make their first foray into the world of work. We can only hope that the experience for them is a good one, but we know that for some it will not always be what they expected or hoped for.

Unfortunately, too many of Australia’s young people are unemployed or underemployed. We know that nearly 40 per cent of unemployed Australians are under the age of 25. While young Australians aged 15 to 24 years comprise 19 per cent of the total labour force, they account for 38.7 per cent of unemployment. It is true that unemployment has declined since the early 1990s, but Australian youth, particularly those between the ages of 15 and 19 years—teenagers—have continued to experience significantly higher rates of unemployment than older Australians. In fact the teenage unemployment rate is almost four times that of people aged over 25 years. We also know that more than half of the 2.8 million young Australians who were looking for employment in 2005 were not participating in full-time secondary or tertiary education. This is a very worrying statistic. It is indicative of the government’s failure to address the skills crisis and their neglect of tertiary education and education retention rates. However, that is a story for another night.

The fact that there is such a high level of unemployment in the youth sector makes young workers particularly vulnerable to the options available to unscrupulous employers under the government’s unfair work laws. While new jobs may have been created, as the government likes to claim, the fact is that full-time employment for young people has dropped, with more than 309,000 fewer young people in full-time jobs over the last two decades. Part-time work is increasingly the norm for people under 25 years, with 46 per cent employed part time in 2005 compared with 20 per cent in 1986.

A report prepared by Mission Australia—and kindly provided to all members of parliament—notes that, while some commentators claim that the preponderance of part-time and casual work gives young people a ‘foot in the door’ of employment, for the young people concerned the lack of job security and low pay rates actually reduce the motivation to work and make young people feel less valued. Nothing, however, makes young people feel less valued than being
sacked for no reason. And, as we know, employers with fewer than 100 employees can sack workers for no reason under the current government legislation.

As Labor has said time and time again in this chamber, most employers are good employers and most act responsibly and fairly towards their employees. Most employers are as keen as the rest of us to ensure that young people’s work experience is a good one and that young people enjoy their time in the workforce and learn new skills. But not all employers are so responsible, and that is why we need strong workplace laws to protect those who need protection.

In South Australia the Young Workers Legal Service is an organisation that attempts to help young workers who have encountered problems at work. I have mentioned the service previously in this place, and I will keep on giving credit to that service. It was set up by the union movement and is funded by the union movement and the South Australian state government to provide assistance to young workers who are not union members. Most of the work of the service is done by volunteers: young law students who give up their time to assist other young people.

The government endlessly attempts to deflect criticism of its industrial laws by citing job creation statistics and statistics about wage increases which do not tell the whole story. In the case of wage rates, the statistics are distorted by whopping salary increases for high-level managerial and public service jobs and jobs in the booming resources sector. In the case of job creation, as I said before, most of the jobs being created are low-paid casual and part-time jobs. Fortunately, the public does not buy the statistics and the government continues to smart and squirm in the face of the union movement’s relentless campaign. It is not just the union movement campaigning either: churches and community groups are also campaigning against the workplace laws.

The Young Workers Legal Service does not deal in the smoke and mirrors of the government’s statistics. It deals with the hard facts of life in the workplace for some young people. I would like to share with the Senate some real-life examples of what happens to young people under the government’s laws. These are examples provided by the annual report of the Young Workers Legal Service.

Debbie is a 16-year-old high school student. For 18 months she had been working as a casual at a franchise juice bar. She had only worked at one location and with one employer. One day she approached her manager for time off the following Saturday so she could attend a course as part of her schooling. It was the first time she had asked for time off. In Debbie’s words, her manager just ‘blew up’ and said that she should just go home and not come back. She was not allowed to finish her shift. That was the last day that she worked. Debbie had never had any prior warnings and believed that she was a hardworking and dedicated employee. However, as the company that owns the business has fewer than 100 employees, Debbie was prevented by the federal laws from challenging her termination of employment.

Another example is David, who was a third-year apprentice baker completing his training at a franchise bakery. He was asked by his boss whether he would like to have his contract of training signed off early so he could be qualified. David thought about this for a few weeks. When his employer asked him again, David agreed and signed the forms that ended his contract of training that would have enabled him to gain his full qualification. He had worked for his employer for two years, so he believed that he would continue to work, especially as his employer did not say anything to the con-
trary. As soon as he signed the forms, his employer told him that he was selling the business and that he no longer had a job. David did not have any recourse to unfair dismissal as the employer, a constitutional corporation, had fewer than 100 employees. Furthermore, as the process for ending the contract of training and the training relationship was done lawfully and followed all appropriate processes, this could not be challenged either. This was an unfortunate reality under the federal laws as the termination, while unfair, was in effect lawful.

There are many other examples in the annual report, and I recommend it as essential reading for any senator who is remotely concerned with the plight of our young people at work. The Young Workers Legal Service also point out that the workload they have is slowly changing and, as there is an explosion in the use of Australian workplace agreements amongst young people, particularly teenagers, they are receiving more requests from young workers for assistance in negotiating or overturning AWAs that are effectively dudding young people of their rights and entitlements.

Thank goodness for organisations like the Young Workers Legal Service that has been set up by the union movement and thank goodness for the goodwill of its volunteers, who give up their time every week to assist young people who are being treated badly at work. When the government is spruiking its dubious figures in an attempt to cover up the truth about its appalling workplace laws, a tiny volunteer based organisation in South Australia is out there helping the victims of this government’s extreme legislation.

Cluster Bombs

Senator ALLISON (Victoria—Leader of the Australian Democrats) (10.09 pm)—I rise tonight to talk about the problem of cluster bombs. These are munitions that disperse small bombs known as bomblets or submunitions over a very wide area, up to one kilometre away from the initial bomb site. They leave unexploded bombs that act rather like landmines, insofar as they kill and injure civilians. In fact, 98 per cent of deaths and injuries associated with cluster bombs and their submunitions involve civilians, very often children. The problem is that the unexploded bombs act like landmines. They render useless vast tracts of land for decades after the conflict. Ten to 50 per cent of those bombs that are dropped do not actually explode on impact but again, like landmines, they can be triggered by someone standing on them, brushing against them, picking them up or in any way disturbing them.

The big problem is that they are proliferating rapidly around the world. So far, they have been used against 78 countries by the United States, Israel, the United Kingdom, the former USSR, Herzegovina, Eritrea, Ethiopia, Finland, France, the Netherlands, Nigeria, Pakistan, Saudi Arabia, Serbia, Montenegro, Sudan and Turkey—to name just some.

Lebanon was the latest country to have cluster bombs used against it. In Laos, 25 bomblets were dropped for every man, woman and child. In Cambodia, the United States used 540,000 bomblets and in Vietnam an incredible 83 million were dropped. They were also used in Kosovo, Afghanistan, Chechnya, Iraq and the Falkland Islands. The United Nations estimates that Israel dropped between one million and 1.25 million submunitions in Lebanon, most of them in the last 72 hours of the conflict when ceasefire discussions were already under way. Hezbollah is also said to have used a small number, although it denies that was the case.

The big problem is that cluster bombs not only kill and injure people for decades after they are dropped in these places but also...
make agriculture and mobility almost impossible. Imagine a bomb dropping and bombs dispersing from that bomb up to one kilometre away. We are talking about a vast area of land that is rendered useless.

The sick part about cluster bombs is that they are so attractive to children. They are small enough to be picked up by a child and they look deceptively like toys. But of course there is nothing toylike in their application. One cluster bomb is milled in a way that produces very small pieces of shrapnel. Some look like butterflies, some look like balls, some look like oranges and some look like segmented toys. There is a wide variety of shapes and sizes. Some are designed to spin. It is easy to see how they would get caught up in vegetation, long grass, trees and the like, making them very dangerous for people walking through such an area. In Lebanon, since the end of the war, several dozen people have been killed and several hundred injured.

Fortunately, there is some action under way. As with landmines, there is a movement around the world that is saying ‘Enough’ and that we should move to ban these munitions because of their effect on civilians and that we should stop this trade in human misery. An organisation called Handicap International put out a report not long ago entitled *Fatal footprint: the global human impact of cluster munitions*. It reported that 98 per cent of cluster bomb casualties were civilians who were injured or killed while carrying out their normal day-to-day activities in an environment contaminated by unexploded munitions.

On 17 November, state parties to the Convention on Certain Conventional Weapons ended their third review conference with significant developments on the issue of cluster munitions. In the course of the two-week meeting, an ever-increasing number of state parties called for a new protocol to the Certain Conventional Weapons arrangement to address the humanitarian problems associated with cluster munitions.

In the first 15 weeks, 15 state parties joined an Austrian proposal calling for the negotiation of a new international agreement. But the conference was eventually able only to agree to convene a meeting of governments or experts within governments in June next year with a particular focus on cluster bombs. The meeting has no mandate to develop recommendations or negotiate new rules, but it will report back to the Certain Conventional Weapons state parties on its proceedings late next year.

So far, 25 countries—Austria, Belgium, Croatia, Costa Rica, the Czech Republic, Denmark, Germany, the Holy See, Hungary, Ireland, Liechtenstein, Lithuania, Luxembourg, Malta, Mexico, New Zealand, Norway, Peru, Portugal, Serbia, Slovakia, Slovenia, Sweden and Switzerland—have joined in a political declaration committing themselves to a new international agreement to regulate cluster munitions. They called for a new international instrument that would prohibit the use of cluster munitions in concentrations of civilians; prohibit use, production, stockpiling and transfer of cluster munitions that pose serious humanitarian hazards; and assure the destruction of stockpiles of these weapons. Norway announced that it would invite states committed to such an international instrument to a meeting in Oslo early in 2007, with a view to deciding how to pursue that goal.

The International Committee of the Red Cross will also sponsor an informal international expert meeting in March or April 2007. The Red Cross has reiterated its belief that both national policy changes and specific new international humanitarian law rules are urgently needed to address the spe-
pecific problems of cluster munitions. The Red Cross welcomes all efforts aimed at developing adequate national policies and specific new rules for international humanitarian law for cluster munitions.

I did put some questions to our government a month or so ago and I asked about whether Australia possessed any stockpiles of cluster munitions, and I am pleased to advise the Senate that it does not; it no longer has them. It did have them, during the period from the 1970s to the 1990s, and they were tested in Woomera and Karinga. But, according to the Minister for Foreign Affairs, we no longer have them. I was disappointed, however, in the response of the government, who admitted:

Cluster munitions have the potential to cause great harm to civilians, and the Government supports discussions in international fora aimed at placing restrictions on their use.

The government points out:
Cluster munitions are not illegal under any arms control or IHL instrument, and they have— and this is the disappointing part—
... legitimate military utility where properly targeted, are reliable and discriminating, and deployed in compliance with IHL. Defence made a substantial contribution to the funding of a discussion paper for the CCW on the IHL concept of proportionality and its application to the creation of Explosive Remnants of War, including cluster munitions.

Finally, in answer to my question ‘Does the Government condone the use of cluster bombs by Israel in the recent conflict with Lebanon’ the answer was:

The Government is aware of reports of the use of cluster munitions by the Israel Defence Force (IDF) in southern Lebanon in the recent conflict with Hezbollah, and understands an internal inquiry has been announced into the IDF’s use of cluster munitions. Beyond this, the Government is not in a position to comment on the IDF’s use of cluster munitions.

This arises out of a visit that I made to Lebanon a few weeks ago in October, and everyone that I and Laurie Ferguson, who also came on this visit, met raised this matter of cluster bombs. (Time expired)

National Savings

Senator BERNARDI (South Australia) (10.19 pm)—A financial crisis has been developing in our nation for the past 40 years. I am referring to the decline in the personal savings rate in this country and the decline in personal financial know-how. To those who think I am being alarmist in calling this a crisis, I will highlight the fact that our personal savings rate in this country was over 12 per cent in 1965-66. Twenty years later in 1985-86 it was 10.5 per cent, and in 2005-06 it is actually a negative 2.3 per cent.

Australians are now spending $1.03 for every $1 they earn. It is simplistic in the extreme to state that an individual, a business, a family or a nation cannot prosper if it continues to spend more than it earns. Although it is simplistic, it is absolutely true. It is the road to disaster. History is littered with the economic corpses of those who thought this immutable law did not apply to them.

This is an issue of great personal interest to me. I have spent the bulk of my working life helping people to solve their financial problems through savings and investment. A key part of helping people in this regard is to help them understand the nature of money and the benefit of savings. Financial literacy is one of the most important skills that any adult can develop. And it is a skill that can help ensure our nation will remain competitive and strong. Australia is a growing economy; however, as I mentioned earlier, we are no longer good savers. Our international competitors, particularly those in our region, also have growing economies—although one of the key differences is that they are very good at saving. Consider the Chinese econ-
omy. It is growing at around 10 per cent per year and China has a personal savings rate in excess of 30 per cent per year. In India economic growth is around 7½ per cent and personal savings run at more than 20 per cent. The situation is similar in South Korea and in Vietnam.

Changing our national savings habit is a generational issue. You cannot stop a 40-year decline in savings rates with the wave of a magic wand. I feel so strongly about this subject that I wrote a book to help parents teach their kids good money habits—and I am proud to be a part of a government that is stepping up to the plate on financial literacy and education. Developing good money habits from an early age is essential to our future prosperity. It is never too early to start creating these good habits. Just as we teach our children good manners and how to read and count, we must also teach them basic financial skills: how to budget, how to save and how to invest.

I commend the government for its initiative in fulfilling its 2004 election promise to put in place a national strategy to help Australians develop their financial literacy. This promise saw the establishment of the Financial Literacy Foundation. Launched last year, the foundation is actively working to help all Australians to improve their financial skills and to better manage their money. Importantly, the foundation is also working with school children to develop positive money habits. Encouraging these good habits from an early age is essential—and, as I said earlier, it is never too early to start.

The foundation has worked to produce the National Consumer and Financial Literacy Framework in schools for years 3, 5, 7 and 9. Under this framework, children will be taught, through their school curriculum, about basic concepts relating to money, including the difference between a need and a want—which is very relevant in today’s consumer driven world. They will also develop an understanding of the importance of setting financial goals and of how to spend and save their money more wisely.

This framework will complement some initiatives that many primary schools around the country are already implementing. One such school is the Upper Sturt Primary School in my home state of South Australia. Students at this school are learning about financial literacy through their mathematics curriculum. Specifically, these students are learning about the basics of money.

These lessons aim to provide school children with the essential skills to successfully tackle the financial decisions they will face in adulthood. The next generation of adults are facing an enormous array of marketing pressures. At a very young age they are able to get credit on mobile phone accounts, and as soon as they turn 18 they will be inundated by credit card offers.

It is no secret that teenagers and young adults are targeted by marketers. They are being sold everything from iPods to mobile phones, credit cards and in-store finance. There is massive competition for their consumer dollar. The problem is that the debt they incur today in keeping up with their friends must eventually be repaid. If they are financially naive and do not make the repayments on this debt, it can have long-term implications for their personal credit rating.

We need to make sure the next generation of adults are not crippled by poor savings habits and do not become slaves to poor spending habits during their lifetime. It is imperative that young Australians learn how to avoid getting into unmanageable debt. Carolyn Bond, the chairwoman of the Consumer Federation of Australia, has stated: Once you have one debt, you have less disposable income to save, so it means you will be more
likely to use credit again. A cycle forms. If that happens when you are 19 or 20 it can have an impact on you for the next 10 or 15 years.

Parents and the wider public need to be engaged. They need to be re-educated and to pass on good financial habits to their children. More information needs to be made public. The Financial Literacy Foundation is going a long way towards meeting this need. The foundation’s research indicates that most people think managing money is too hard or too boring, or that they are too old to begin learning or too young to be bothered learning. However, just as it is never too early to begin to build good financial habits, it is never too late to learn to implement wise money management strategies. Through the Financial Literacy Foundation, the government has made myriad resources available to everyone. The Understanding Money website contains numerous tools to assist with budgeting, saving, understanding credit, investing and much more.

The government recognises the importance of having a vision for the future financial health of our country. We have done a lot to encourage superannuation savings. The superannuation co-contribution scheme has been overwhelmingly successful, with over 571,000 individual accounts benefiting from the scheme in 2004-05. Our plan to simplify and streamline superannuation will sweep away the current tax complexities faced by many retirees.

However, we also recognise that we need to change the cultural awareness of our children. The education of our next generation in the fundamentals of the prudent use of money is essential to our nation’s future prosperity. The task ahead is a generational one. We cannot neglect it—and this government will not neglect it—because it is a task of national importance.

Senate adjourned at 10.28 pm

DOCUMENTS

Tabling

The following documents were tabled by the Clerk:

[Legislative instruments are identified by a Federal Register of Legislative Instruments (FRLI) number]

Civil Aviation Act—Civil Aviation Safety Regulations—Airworthiness Directives—Part 106—AD/PW500/2—Fuel Manifold Leakage [F2006L03879]*.

Commonwealth Authorities and Companies Act—Notice under paragraphs 45(1)(a) and (c)—Formation and membership of Telstra Sale Company Limited.

Customs Act—

Tariff Concession Orders—
0616186 [F2006L03901]*.
0616284 [F2006L03903]*.
0616373 [F2006L03905]*.
0616375 [F2006L03907]*.
0616669 [F2006L03863]*.
0616811 [F2006L03908]*.
0616877 [F2006L03909]*.
0616925 [F2006L03910]*.

Tariff Concession Revocation Instrument 104/2006 [F2006L03895]*.

Export Control Act—Export Control (Orders) Regulations—

Export Control (Eggs and Egg Products) Amendment Orders 2006 (No. 1) [F2006L03924]*.

Export Control (Fish and Fish Products) Amendment Orders 2006 (No. 2) [F2006L03927]*.

Export Control (Milk and Milk Products) Amendment Orders 2006 (No. 2) [F2006L03928]*.

Export Control (Plants and Plant Products) Amendment Orders 2006 (No. 2) [F2006L03929]*.

Fisheries Management Act—

Southern and Eastern Scalefish and Shark Fishery Management Plan 2003—


National Health Act—Determination HIB 32/2006 [F2006L03858]*.


* Explanatory statement tabled with legislative instrument.

Return to Order

The following document was tabled pursuant to the order of the Senate of 25 March 1999, as amended on 18 September 2002:

Australian Competition and Consumer Commission—Report to the Australian Senate on anti-competitive and other practices by health funds and providers in relation to private health insurance for the period 1 July 2005 to 30 June 2006.
QUESTIONS ON NOTICE

The following answers to questions were circulated:

Defence: Monetary Compensation
(Question No. 1995)

Senator O’Brien asked the Minister representing the Minister for Defence, upon notice, on 8 June 2006:

What is the quantum of payments made as settlements to claims for monetary compensation by the departments and agencies for which the Minister is responsible that are consistent with Legal Services Directions issued under section 55ZF of the Judiciary Act 1903, by financial year, since the first Legal Services Directions were issued.

Senator Ian Campbell—The Minister for Defence has provided the following answer to the honourable senator’s question:

<table>
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<tr>
<th>Financial Year</th>
<th>Quantum of Payments</th>
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<tr>
<td>1999-2000</td>
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<td>2000-01</td>
<td>$18.6m</td>
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<td>2001-02</td>
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<td>2002-03</td>
<td>$17.9m</td>
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<td>$23.5m</td>
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<td>$19.9m</td>
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<tr>
<td>2005-06</td>
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Airservices Australia
(Question No. 2024)

Senator O’Brien asked the Minister representing the Minister for Transport and Regional Services, upon notice, on 15 June 2006:

With reference to the announcement on 13 June 2006 that Airservices Australia has signed a cooperation agreement for commercial business development with German air navigation service provider DFS Deutsche Flugsicherung; can the following details be provided for the DFS Deutsche Flugsicherung contract and all other contracts entered into by Airservices Australia (either directly or through a subsidiary body) to provide products or services outside of Australia: (a) parties to the contract; (b) description of tender process; (c) date the contract was signed; (d) term of the contract, including date of commencement; (e) projected income, including revisions, by financial year; (f) actual income, by financial year.

Senator Ian Campbell—The Minister for Transport and Regional Services has provided the following answer to the honourable senator’s question:

The Memorandum of Cooperation between Airservices Australia (ASA) and DFS Deutsche Flugsicherung GmbH is an agreement to cooperate to develop revenue business in foreign countries and markets and it defines the process by which the resources of the parties will be focussed to achieve this purpose.

(a) Parties involved: Airservices Australia and DFS Deutsche Flugsicherung GmbH
(b) Tender process: Not applicable. The agreement with DFS Deutsche Flugsicherung GmbH is a Memorandum of Cooperation.
(c) Date the contract was signed: 18 May 2006
(d) Term of contract:
- Commencement date: 18 May 2006
- Cooperation on a non exclusive basis to provide air navigation and related services to third parties.
- to share intelligence
- to analyse intelligence
- to select opportunities and
- to develop joint services or proposals

(e) Projected income: This information is sensitive to the parties to the contract and third parties. Release of such information may also be contrary to the conditions of relevant tender processes.

(f) Actual income (financial year): This information is sensitive to the parties to the contract and third parties. Release of such information may also be contrary to the conditions of relevant tender processes.

### All On-going and Completed Contracts

<table>
<thead>
<tr>
<th>Country</th>
<th>Title</th>
<th>Subject</th>
<th>Parties to Contract</th>
<th>Date contract signed</th>
<th>Contract Period</th>
<th>Process for Awarding contract</th>
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<tbody>
<tr>
<td>Germany</td>
<td>Agreement for supply of services</td>
<td>Provide navigation and related services to third parties. Upper airspace management</td>
<td>DFS Deutsche Flugsicherung GmbH</td>
<td>May 2006</td>
<td>Ongoing</td>
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<td>Solomon Islands</td>
<td>Agreement for supply of services</td>
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<td>Govt of Solomon Islands &amp; ASA</td>
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<td>Solomon Islands</td>
<td>Agreement for supply of services</td>
<td>Aeronautical Information Publication Amendment Service</td>
<td>Govt of Solomon Islands &amp; ASA</td>
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<td>Govt of Republic of Nauru &amp; ASA</td>
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<td>Civil Aviation Authority Taiwan &amp; ASA</td>
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<td>Procedures conversion Document No. 4444</td>
<td>Civil Aviation Authority Taiwan &amp; ASA</td>
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<td>Mauritius</td>
<td>Consultancy Services</td>
<td>Review of Aeronautical Charges Lecture</td>
<td>Dept of Civil Aviation Mauritius &amp; ASA</td>
<td>Nov 2005</td>
<td>5 months</td>
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<td>Singapore</td>
<td>Singapore ADS-B Lecture</td>
<td>Standard Instrument Departures/ Standard Terminal Arrival Routes</td>
<td>Civil Aviation Authority &amp; ASA</td>
<td>July 2005</td>
<td>1 day</td>
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<td>Standard Instrument Departures/ Standard Terminal Arrival Routes</td>
<td>Civil Aviation Authority &amp; ASA</td>
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<td>Indonesia</td>
<td>Consultancy Services (AUSAID funded)</td>
<td>Communication, Navigation, Surveillance (CNS)/Air Traffic Management (ATM)</td>
<td>Director General Civil Aviation &amp; ASA</td>
<td>Jan 2006</td>
<td>6 weeks</td>
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<td>Sweden</td>
<td>Consultancy Services</td>
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<td>Lufatssverket &amp; ASA</td>
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<td>Lufatssverket &amp; ASA</td>
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<td>Lufatssverket &amp; ASA</td>
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<td>Air Navigation</td>
<td>Toshiba Plant Systems &amp; ASA</td>
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<td>Subcontract Works Agreement for Bacolod Airport</td>
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<td>Consultancy Services Phase 1</td>
<td>Safety Management System (SMS) Framework</td>
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<td>China Aviation Supplies Corporation &amp; ASA</td>
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<td>USA</td>
<td>Contract Tower Program</td>
<td>Tower ATC Services</td>
<td>Federal Aviation Authority &amp; ASA</td>
<td>Nov 2004</td>
<td>5 years</td>
<td>Tender</td>
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Estimates Training Sessions
(Question No. 2174)

Senator O’Brien asked the Minister representing the Minister for Human Services, upon notice, on 14 July 2006:

(1) What Senate estimates training sessions have officers of the Minister’s departments and agencies attended in the past 3 financial years, by year.

(2) For each of the past 3 financial years: (a) how many officers participated in; and (b) what was the total cost of, training for Senate estimates, by department and agency and by financial year.

(3) Where training has been provided by a private provider, what was the name of the provider and the associated cost.

Senator Kemp—The Minister for Human Services has provided the following answer to the honourable senator’s question:

Core Department

(1) The Department of Human Services was formed on 26 October 2004. No estimates training programmes were attended for the 2004-05 financial year. In 2005-06 three training programmes were attended:

- Budget and Senate Estimates, run by the Department of the Senate;
- Preparing to appear before Senate Committees, run by the Australian Public Service Commission and
- About Parliamentary consideration of the Budget, run by the House of Representatives.

(2) Three SES officers have participated in estimates training sessions. The total cost over the period was $710.

(3) Nil.

Child Support Agency

(1) No estimate training programmes were by attended by Child Support Agency staff in the 2003-04 or 2004-05 financial years. In 2005-2006, two programmes were attended:

- Preparing to Appear before Parliamentary Committees, run by the Australian Public Service Commission and
- Working with Senate Committees, run by the Department of the Senate.

(2) One SES officer and three officers have participated in estimates training sessions. The total cost over the period was $2,330.

(3) Nil.

CRS Australia

(1) Three CRS Australia officers have participated in Senate Estimate Training Sessions, provided by the Department of the Senate, over the past 3 financial years.

(2) (a) 2003-04 – 3 officers.
- 2005-06 – nil.

(b) 2003-04 - $810.
- 2005-06 – nil.

(3) Nil.
Centrelink
(1) ‘Appearing Before Parliamentary Committees’ organised and delivered by the Australian Public Service Commission.
(2) Centrelink is aware of 2 Centrelink employees attending the ‘Appearing Before Parliamentary Committees’ session during the 2004-05 financial year at a total cost of $3130.00. Details of training undertaken by Centrelink employees during the 2003-04 and 2005-06 financial years is not readily available. To obtain this information would be highly resource intensive and I cannot justify the level of expenditure that would be required to obtain it.
(3) Nil.

Medicare Australia
(1) No estimates training programmes were attended by Medicare Australia staff in the 2003-04 or 2004-05 financial years. In 2005-06, one training programme was attended: Senate Estimates Training for SES Officers.
(2) Thirteen SES Officers attended the 2005-06 training sessions at a total cost of $11,990.
(3) Training was provided by Stone Wilson at a cost of $11,990.

Australian Hearing
(1) Nil.
(2) Not applicable.
(3) Not applicable.

Health Services Australia
(1) Nil.
(2) Not applicable.
(3) Not applicable.

To prepare this answer it has taken approximately 12 hours and 4 minutes at an estimated cost of $630.

Environment and Heritage: Travel Entitlements
(Question No. 2220)

Senator O’Brien asked the Minister for the Environment and Heritage, upon notice, on 14 July 2006:
(1) What entitlement do partners or family members of senior officers of the department or agencies for which the Minister is responsible, have to travel at government expense.
(2) If an entitlement exists, by department and/or agency: (a) what process is used to assess whether the travel costs of partners and family members are met by the Government; and (b) who undertakes such an assessment; and (c) who approves funding for partner or family travel.

Senator Ian Campbell—The answer to the honourable senator’s question is as follows:

Department of the Environment and Heritage:
(1) Nil for Senior Executive Service (SES) officers
(2) Not applicable

Bureau of Meteorology:
(1) Nil for SES officers
(2) Not applicable
**Great Barrier Reef Marine Park Authority:**

1. One senior staff employee has an entitlement for spouse-accompanied travel, in association with the employee’s business travel, up to the value of $1,200 per annum.

2. (a) approval is in accordance with Great Barrier Reef Marine Park Authority (GBRMPA) Business Travel Guidelines
   (b) GBRMPA Business Travel Guidelines requires approval by the Financial Delegate responsible for the travel funds proposed to be expended
   (c) GBRMPA Financial Delegate; which in this case is an Executive Director

**The Office of the Renewable Energy Regulator:**

1. Nil

2. Not applicable

**Sydney Harbour Federation Trust:**

1. The Executive Director of the Sydney Harbour Federation Trust (Trust) may be entitled to be accompanied by a spouse or partner for purposes related to official travel as determined by the Chairman of the Trust.

2. (a) the Chairman of the Trust determines whether travel costs of a spouse or partner of the Executive Director are to be met by the government for purposes related to official travel;
   (b) the Chairman of the Trust:
   (c) the Chairman of the Trust.

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**Note:**

1. Overseas travel entitlements for the Secretary of the Department of the Environment and Heritage and the Principal Executive Officers of Parks Australia, Office of the Renewable Energy Regulator and the National Environmental Protection Council are determined by Remuneration Tribunal Determination 2004/03.

2. The Principal Executive Officer of the Great Barrier Reef Marine Park Authority and the Director of the Bureau of Meteorology have no entitlement for partner or family assisted travel.

**Foreign Affairs: Conflict of Interest**

(Question No. 2323)

**Senator McLucas** asked the Minister representing the Minister for Foreign Affairs, upon notice, on 9 August 2006:

With reference to chapter 9 of *APS Values and Code of Conduct in Practice: A Guide to Official Conduct for APS Employees and Agency Heads* dated 2005 relating to avoiding and managing conflict of interest:

1. Does the department maintain up-to-date registers of pecuniary interests and/or gifts related to agency heads, members of the Senior Executive Service (SES) and those acting in SES positions.
2. Did the Minister and the Secretary of the department ensure that details were up-to-date with respect to officers responsible for the provision of advice in relation to the Government’s review of international air services policy.
3. Did relevant declarations include complimentary airline lounge memberships, complimentary upgrades, sponsored travel and/or other gifts from Qantas, Virgin Blue and/or Singapore Airlines.
4. With reference to the requirement under the Prime Minister’s *A Guide on Key Elements of Ministerial Responsibility* dated December 1998 that ministerial staff should not accept gifts, sponsored
travel or hospitality if acceptance could give rise to a conflict of interest or the appearance of such a conflict; has any member of the Minister’s staff accepted complimentary airline lounge memberships, complimentary upgrades, sponsored travel and/or other gifts from Qantas, Virgin Blue and/or Singapore Airlines since the commencement of the Government’s consideration of Singapore Airlines’ request to access the Pacific route; if so, were those interests immediately declared and recorded in a written register; and if, in any case, such interests have not been immediately declared and recorded, why not.

Senator Coonan—The following answer has been provided by the Minister for Foreign Affairs to the honourable senator’s question:

(1) Yes. All Senior Executive Service (SES) employees in the Department of Foreign Affairs and Trade and those acting in SES positions long term have an ongoing obligation to declare whether they or their immediate family have private pecuniary and other interests that would give rise to a conflict of interest, or to the perception of a conflict of interest. Each SES officer is required to complete a Return of Private Interests statement (which include pecuniary items), which is updated annually as a matter of course. New returns are required to be lodged if significant changes occur.

The Australian Public Service (APS) Code of Conduct requires that an employee, including agency heads, members of the Senior Executive Service (SES) and those acting in SES positions, and members of his or her household should not accept gifts or other benefits or advantages that are offered in connection with the employee’s duties, status, power or authority. The Code also requires staff to disclose, and take reasonable steps to avoid, any conflict of interest (real or apparent) in connection with their employment. Any gift received in connection with an employee’s duties remains the property of the Commonwealth until a determination is made by a designated approver. All substantial gifts received, defined as those with a wholesale value of over AUD500 for gifts from government sources and AUD200 for gifts from private sources, are recorded on the department’s Gifts, Benefits and Hospitality Report Form.

(2) Yes. Timely completion of Returns of Private Interest is a condition of SES employment.

(3) Sponsored travel is included in the Gifts, Benefits and Hospitality Report Form and all gifts, except trivial items, must be reported. The department defines sponsored travel as cases where the costs of transport, accommodation and/or living expenses are met from sources other than official funds or an employee’s own resources. The department considers that sponsored travel offered by private companies or commercial organisations is unlikely to be acceptable in any circumstances because of the perception of a conflict of interest that might entail. The department’s policy on gifts and sponsored travel is based on the principles set out in the Public Service and Merit Protection Commission (PSMPC) Guidelines on Official Conduct of Commonwealth Public Servants and the APS Code of Conduct. The department’s Conduct and Ethics Unit regularly provides advice to decision makers to ensure an ethically sound judgement is made with respect to gifts and sponsored travel.

(4) All ministerial staff have complied with requirements relating to them set out in the Guide on key Elements of Ministerial Responsibility.

Perth Airport: Brickworks
(Question No. 2396)

Senator Siewert asked the Minister representing the Minister for Transport and Regional Services, upon notice, on 17 August 2006:

With reference to the proposed BGC (Australia) Pty Ltd brickworks on Perth Airport land, and ‘Conditions of Approval’ attached to the Minister’s Media Release of 15 August 2006:
(1) In relation to the table found at paragraph 1b of the ‘Conditions of Approval’, how were the specified emission limits arrived at for each of the following substances: (a) HF; (b) HCl; (c) NOx; (d) SOx; (e) CO; (f) VOC; (g) CO2; (h) dust; and (i) dark smoke.

(2) What penalties, if any, apply to breaches of these limits.

**Senator Ian Campbell**—The Minister for Transport and Regional Services has provided the following answer to the honourable senator’s question:

(1) The specified emission limits identified in the table at condition 1b of the Conditions of Approval are limits that were specified within the approved Major Development Plan and therefore, limits to which the proponent had committed.

(2) Under sub-section 90(6) of the Airports Act 1996 upon a successful prosecution through the Director of Public prosecutions, a breach of condition 1 would attract a penalty of up to $220,000 per day for a corporation for each day on which the offence was committed.

**Perth Airport: Brickworks**

(Question No. 2397)

**Senator Siewert** asked the Minister representing the Minister for Transport and Regional Services, upon notice, on 17 August 2006:

With reference to the proposed BGC (Australia) Pty Ltd brickworks on Perth Airport land, and the ‘Conditions of Approval’ attached to the Minister’s Media Release of 15 August 2006:

(1) Who is the lead agency with responsibility for management of this development.

(2) Can an outline be provided of the formal responsibility of each of the following agencies and corporations with regard to this development: (a) the Department of Transport and Regional Services (DOTARS) (b) the Department of the Environment and Heritage; and (c) the Westralia Airports Corporation Pty Ltd.

(3) Are the ‘Conditions of Approval’ legally enforceable, if so by whom.

(4) Which business unit or branch within DOTARS has the expertise and/or the competence in regulating industrial developments of this kind.

(5) Are there any other industrial developments of this kind in Australia currently regulated by DOTARS.

(6) What penalties apply for breaches of condition 1.

(7) Which agency and business unit or branch within that agency is responsible for monitoring compliance with condition 1.

(8) Which agency and business unit or branch within that agency is responsible for the enforcement and levying of penalties with regard to condition 1.

(9) What penalties apply for breaches of condition 4.

(10) Which agency and business unit or branch within that agency is responsible for monitoring compliance with condition 4.

(11) Which agency and business unit or branch within that agency is responsible for the enforcement and levying of penalties with regard to condition 4.

(12) With regard to condition 7, can a description be provided of DEH’s formal role in ‘consultation’ on the Flora and Fauna survey?

(13) Does DEH have to formally approve the resulting Flora and Fauna Management Plan?

(14) Will the Flora and Fauna Management Plan be subject to community consultation and public review; if not, why not?
(15) Will the quarterly monitoring results identified in condition 1c(iv) be made public; if so which of the parties identified in condition 1c(iv) will have responsibility for releasing the results to the public?

(16) Why has DEH been excluded from the approval for the ‘construction environment management plan’ (CEMP) as identified in condition 8?

(17) Which business unit or branch within DOTARS has the expertise and / or the competence in assessing the CEMP?

(18) Why has DEH been excluded from the approval of the ‘environmental management system’ (EMS) as identified in condition 10?

(19) Which business unit or branch within DOTARS has the expertise and / or the competence in assessing the EMS?

(20) How does condition 11 address the concerns raised by DEH in part 4.3 (Land Use – Buffer) of the Environmental Assessment Report for the Perth Airport Brickworks?

(21) Is it the case that the separation distances between the closest points of the specified plant components and the boundaries of sensitive land uses as identified in Annexure A will still be inconsistent with the Western Australian Planning Commission’s Statement of Planning Policy no.4.1 State Industrial Buffer Policy (1997) and the 2004 draft revision of that policy; if not, why not?

(22) Will the results of ambient air quality monitoring referred to in condition 12a be made public; if so, on what basis will the data be released; if not, why not?

(23) Will the results of the cumulative impact modelling referred to in condition 12b be made public; if so, on what basis will this modelling be released; if not, why not?

(24) Will the results of the assessment of public health environmental risks referred to in condition 12c be made public; if so, on what basis will this assessment be released; if not, why not?

(25) Why has DEH been excluded from the approval of the Operational Environment Management Plan (OEMP) as identified in condition 13?

(26) Which business unit or branch within DOTARS has the expertise and / or the competence in assessing the OEMP?

(27) Is the Minister aware of any differences between the specifications of the brickworks in the Major Development Plan (MDP) and the brickworks actually proposed to be constructed, as suggested in condition 24; if so, can those differences be identified?

Senator Ian Campbell—The Minister for Transport and Regional Services has provided the following answer to the honourable senator’s question:

(1) BGC (Australia) Pty Ltd has prime responsibility for managing the development. Westralia Airports Corporation Pty Ltd has responsibility as airport-lessee company for Perth Airport. The Department of Transport and Regional Services is the agency with regulatory responsibility.

(2) The requested outline is as follows:

**The Department of Transport and Regional Services** – has regulatory responsibility under the Airports Act 1996 and associated regulations.

**The Department of the Environment and Heritage** - Under s 163 of the Environment Protection and Biodiversity Conservation Act 1999, the Minister for the Environment and Heritage provided advice to the former Minister of Transport and Regional Services, the Hon Warren Truss MP. The advice from the Minister for the Environment and Heritage was taken into account by Minister Truss in making his decision.

**Westralia Airports Corporation Pty Ltd** - has a general duty under Regulation 4.01 of the Airports (Environment Protection) Regulations 1997 to avoid polluting and will manage the lease they
have with BGC (Australia) Pty Ltd (BGC). Westralia Airports Corporation Pty Ltd (WAC) must monitor, in accordance with an environment strategy for the airport site approved by the Minister for Transport and Regional Services, the level of pollution, if any, present in air, water or soil at the airport and the amount of ground noise generated at the airport. WAC must also use all powers available to it to ensure the conditions imposed on the approved brickworks plan are complied with. In addition, pursuant to Section 131B of the Airports Act 1996, WAC has an obligation to avoid any conduct that results in environmental harm within the specified parameters.

(3) The conditions are enforceable under subsections 90 (3) and (6) of the Airports Act 1996. The Department of Transport and Regional Services has regulatory responsibility for the Airports Act 1996 and is responsible for the enforcement of the conditions.

(4) The Airports Branch of the Aviation and Airports Business Division of the Department of Transport and Regional Services is responsible for the administration of the Airports Act 1996 and associated regulations. The Airports (Environment Protection) Regulations 1997 amongst other things, provides for the appointment of Airport Environment Officers. The Airport (Building Control) Regulations 1996 amongst other things, provides for the appointment of Airport Building Controllers. These appointees have specific environment or building construction skills and experience and they regulate all developments on airports. The Department of Transport and Regional Services may engage additional expertise as necessary.

(5) Perth Airport has airport subleases for a gold refinery and an asphalt plant and Archerfield Airport has a concrete recycling facility and a concrete batching plant all of which are regulated under the Airports Act 1996.

(6) Under Section 90 (6) of the Airports Act 1996, upon a successful prosecution through the Director of Public Prosecutions, a breach of condition 1 (and other conditions) would attract a penalty of up to $220,000 per day for a corporation for each day on which the offence was committed.

(7) The Airports Branch of the Aviation and Airports Division of the Department of Transport and Regional Services will monitor compliance with all conditions of approval.

(8) The Airports Branch of the Aviation and Airports Division of the Department of Transport and Regional Services will be responsible for enforcement of all conditions of approval. The level of any penalty imposed will be determined by a court in the event of a successful prosecution through the Director of Public Prosecutions.

(9) As per the answer to question 6.

(10) As per the answer to question 7.

(11) As per the answer to question 8.

(12) Under condition 6, the Department of the Environment and Heritage was consulted on the proposed scope of the flora and fauna survey and agreed to it.

(13) As the flora and fauna survey required under condition 6 did not reveal the presence of any endangered species, a Flora and Fauna Management Plan was not required.

(14) See answer to question 13. The flora and fauna survey conducted by BGC can be viewed at BGC’s website (www.bgcbricks.com).

(15) These matters are yet to be discussed with WAC and BGC. The Minister for Transport and Regional Services supports the public release of this information possibly through a consultative committee being established by WAC and BGC to manage community concerns about the brickworks development.

(16) The Construction Environment Management Plan must be submitted to the Airport Environment Officer prior to commencement of building activity. The Department of the Environment and Heritage does not have a legislated role in the compliance monitoring of the project.
(17) Airport Building Controllers appointed under the Airport (Building Control) Regulations 1996 have specific building construction skills and experience. In consultation with the Airport Environment Officers, they regulate all developments on all leased federal airports including the reviewing of Construction Environment Management Plans for those developments.

(18) The Department of the Environment and Heritage does not have a legislated role in the compliance monitoring of the project.

(19) The Airports (Environment Protection) Regulations 1997 provides for the appointment of Airport Environment Officers. These appointees have specific environment skills and experience and they have the expertise to assess Environmental Management Systems. These officers are part of the Airports Branch of the Aviation and Airports Business Division of the Department of Transport and Regional Services.

(20) Condition 11 prevents the brickworks from being constructed any closer to residential areas or rural residential areas than as described in the approved Major Development Plan.

(21) Yes. However the Western Australian Planning Commission’s Statement of Planning Policy no.4.1 State Industrial Buffer Policy (1997) is a guidance document for preferred practices and outcomes.

(22) As per the answer to question 15.

(23) As per the answer to question 15.

(24) As per the answer to question 15.

(25) As per the answer to question 18.

(26) Airport Environment Officers are appointed under the Airports (Environment Protection) Regulations 1997. These appointees have specific environment skills and experience and they have the expertise to assess Operational Environmental Management Plans.

(27) No. Condition 24 was imposed to identify any differences between the plan and what is to be constructed for assessment of potential impacts on air safety or aviation operation.

**Wilderness Society**
*(Question No. 2413)*

Senator Bob Brown asked the Minister representing the Minister for Agriculture, Fisheries and Forestry, upon notice, on 17 August 2006:

Has the Minister met with representatives of the Wilderness Society in the past 5 years; if so, on what dates.

Senator Abetz—The Minister for Agriculture, Fisheries and Forestry has provided the following answer to the honourable senator’s question:

The Minister for Agriculture, Fisheries and Forestry meets many organisations to discuss issues important to them.

The disclosure of meetings with individual constituents, groups, organisations or individual representatives of those organisations is usually treated as confidential to ensure the protection of privacy considerations.

Therefore, it would be inappropriate to breach privacy considerations. It would also be an unacceptable use of resources to search through diary entries for the past five years to ascertain what meetings may or may not have been held with the Wilderness Society, as many meetings may be included in a diary under a person’s name, rather than the organisation which is represented by that person.
**Airport Security**  
(Question No. 2494)

Senator O’Brien asked the Minister representing the Minister for Transport and Regional Services, upon notice, on 15 September 2006:

1. In what circumstances are airport baggage handlers required to load or unload baggage subject to a bomb or other security threat.

2. Can the Minister confirm that baggage handlers have been required to handle baggage subject to a bomb or other security threat in circumstances where the owner of the baggage has been denied permission to board an aircraft for a security-related reason.

3. On how many occasions since 11 September 2001 have baggage handlers been required to handle baggage subject to a bomb or other security threat at: (a) Sydney Airport; (b) Melbourne Airport; (c) Brisbane Airport; (d) Perth Airport; (e) Adelaide Airport; (f) Darwin Airport; and (g) Hobart Airport.

4. Can baggage handlers refuse to handle baggage subject to a bomb or other security threat; if not, why not.

Senator Ian Campbell—The Minister for Transport and Regional Services has provided the following answer to the honourable senator’s question:

1 and (2) Decisions about the handling of bomb or other security threats are made by infrastructure agencies including airport and airline operators and law enforcement agencies. The circumstances in which baggage handlers, who are employed by airport and airline operators or their contractors, are required to load or unload baggage are matters between the baggage handlers and their employers.

3. There is a range of circumstances where passengers and their checked bags may be reconciled. Some of these circumstances are part of standard operating procedures for checked bag screening and passenger screening. In this first instance such reconciliations are handled by airlines and airports and my Department is not necessarily informed in every case.

4. There is no requirement under the Aviation Transport Security Act 2004 for baggage handlers to handle baggage subject to a bomb or other security threat. The terms and conditions of employment of baggage handlers is a matter between the baggage handlers and their employers.

**Human Services: Legal Proceedings**  
(Question No. 2522)

Senator Kirk asked the Minister representing the Minister for Human Services, upon notice, on 29 September 2006:

1. With reference to the answers to parts (1) to (5) of question on notice no. 1764 (Senate Hansard, 8 August 2006, p. 209): (a) what are the particular ongoing legal proceedings for which privilege is claimed in respect to: (i) legal advice, and (ii) the memorandum or brief requesting the advice; and (b) in what jurisdiction are the ongoing legal proceedings.

2. Does Centrelink have the authority to access the tax file numbers of individuals from the Australian Taxation Office without the permission of the individuals concerned; if so, what is the relevant legislation and/or determination that grants this authority.

Senator Kemp—The Minister for Human Services has provided the following answer to the honourable senator’s question:

1. The legal proceeding for which the advice was sought and for which privilege was claimed in respect to both the legal advice and the brief requesting the advice was the matter of a complaint and
summons alleging offences against section 8WB of the Taxation Administration Act 1953 by Mark Whittaker against Matthew Miller. This private prosecution was commenced in the Cairns Magistrates Court.

(2) Yes, as delegates under section 204(A) of the Social Security (Administration) Act 1999.

To prepare this answer it has taken 4 hours and 56 minutes at an estimated cost of $344.

Transport and Regional Services: Conflict of Interest

(Question No. 2561)

Senator McLucas asked the Minister representing the Minister for Transport and Regional Services, upon notice, on 17 October 2006:

With reference to the answer to question on notice no. 2325 (Senate Hansard, 10 October 2006, p. 126), which in part concerned the requirement under the Prime Minister’s A Guide on Key Elements of Ministerial Responsibility, dated December 1998, that ministerial staff should not accept gifts, sponsored travel or hospitality if acceptance could give rise to a conflict of interest or the appearance of such a conflict: Has any member of the former and/or current Minister’s staff accepted complimentary airline lounge memberships, complimentary upgrades, sponsored travel and/or other gifts from Qantas, Virgin Blue and/or Singapore Airlines since the commencement of the Government’s consideration of Singapore Airlines’ request to access the Pacific route; if so:

(a) can details of those benefits be provided; and

(b) were those benefits immediately declared and recorded in a written register; if not, why not.

Senator Ian Campbell—The Minister for Transport and Regional Services has provided the following answer to the honourable senator’s question:

This question has been adequately responded to by the former Minister’s response to question on notice no. 2325. The response to that question is applicable to current and previous ministerial staff.

Media investment

(Question No. 2587)

Senator Murray asked the Minister representing the Treasurer, upon notice, on 19 October 2006:

(1) In view of the Australia-United States Free Trade Agreement, the closeness of the two countries, and the new Australian media laws, and with respect to foreign ownership of media in Australia and the United States: will an Australian or an Australian corporation wanting to buy a significant media outlet in the United States be subject to the same or similar investment rules as American buyers of Australian media assets; if not, in what circumstances are American media buyers advantaged in buying Australian media, in comparison with Australians buying American media.

(2) (a) As media is formally determined a ‘sensitive market’, and as major media can be bought by foreign private equity funds under the new media laws, will investors in such funds, in particular beneficial owners, appear on a register and be readily identifiable.

(b) Can the Minister outline what powers under the Foreign Acquisitions and Takeovers Act 1975 allow the Treasurer to identify the beneficial owners of private equity funds.

(c) If it is not possible to identify investors or beneficial owners in private equity funds, can the Minister assure the Senate that none of our media could end up controlled by funds that are influenced or backed by criminal money, money sourced from anti-democratic groups, from theocratic or fundamentalist groups, or from proscribed organisations: (i) if the Minister is unable to give that assurance, then what does the Minister intend to do about this matter, and
(ii) if the Minister can give that assurance, can details be provided of the means or measures available to identify beneficial owners or investors.

**Senator Minchin**—The Treasurer has provided the following answer to the honourable senator’s question:

(1) The Australia-United States Free Trade Agreement (AUSFTA) did not significantly affect either country’s rules relating to foreign investment in the media sector. The rules of the United States did not change as a result of the AUSFTA. Similarly, Australia’s AUSFTA commitments explicitly provided for retention of the requirement that all direct media investments and portfolio investments of 5 per cent or more be subject to screening. Australia’s foreign share ownership ceilings relating to commercial television and newspapers were also preserved under the AUSFTA. When they commence operation, the recent amendments to the foreign ownership provisions of the Broadcasting Services Act 1992 will remove foreign share ownership restrictions relating to commercial and subscription television licences, but do not alter existing Australian screening requirements.

(2) (a) As with all different types of foreign entities that invest in Australia, this will depend on the regulatory framework in the entity’s home jurisdiction.

(b) Section 36 of the Foreign Acquisitions and Takeovers Act 1975 allows the Treasurer to serve a notice on any person requiring that person to furnish information or documents relevant to the exercise of the Treasurer’s powers under the Act.

(c) See response to (2)(b).

**Rural Transaction Centres**

(Question No. 2607)

**Senator O’Brien** asked the Minister representing the Minister for Transport and Regional Services, upon notice, on 2 November 2006:

With reference to the Rural Transactions Centres programme: a) will 267 Rural Transaction Centres be operational by June 2007; and (b) of the 239 Rural Transaction Centres approved by June 2006, how many are now operational.

**Senator Ian Campbell**—The Minister for Transport and Regional Services has provided the following answer to the honourable senator’s question:

(a) total of 239 projects were approved under the Rural Transaction Centres programme. The final number of operational centres will not be known until 1 July 2007.

(b) As at 7 November 2006, 211 Rural Transaction Centres are operational.

**Textile, Clothing and Footwear Assistance Package**

(Question No. 2609)

**Senator O’Brien** asked the Minister representing the Minister for Transport and Regional Services, upon notice, on 2 November 2006:

With reference to the Textile, Clothing and Footwear Post-2005 Assistance Package to be delivered through the Regional Partnerships Program: (a) on what basis was the package developed; (b) how will it be administered; (c) who is eligible; (d) which regions are eligible; (e) how will funds be allocated; and (f) can details be provided of funding allocated to date.

**Senator Ian Campbell**—The Minister for Transport and Regional Services has provided the following answer to the honourable senator’s question:

(a) The Textile, Clothing and Footwear Post-2005 Assistance Package is the responsibility of the Department of Industry, Tourism and Resources (DITR).
(b) The Department of Transport and Regional Services (DOTARS) provides administrative support for the community assistance element of the Textiles, Clothing and Footwear (TCF) Structural Adjustment Program through the Regional Partnerships programme. DOTARS undertakes assessment of applications using the Regional Partnerships framework and the special considerations relating to the Textiles, Clothing and Footwear element. DOTARS provides an assessment report and recommendation to DITR for decision.

(c) The eligibility criteria for the community assistance element of the TCF Structural Adjustment Program are the same as for Regional Partnerships applications. Applicants will need to address additional considerations of how the structural adjustment package caused by industry consolidation has impacted on the applicant’s community and how the project will address the impact on that community.

(d) Any regional and metropolitan centres and communities, which have been impacted by industry closures, are eligible to apply for funding under this element.

(e) Funding is provided by DITR. DITR receives an assessment report and recommendation from DOTARS for each application and makes decisions about whether a project will be funded.

(f) No funding has yet been allocated under the community assistance element of the TCF Structural Adjustment Program. No applications have been received.

Reginald Murray Williams Australian Bush Centre
(Question No. 2611)

Senator O’Brien asked the Minister representing the Minister for Transport and Regional Services, upon notice, on 2 November 2006:

With reference to the Reginald Murray Williams Australian Bush Centre project in Eidsvold, funded through the Regional Partnerships programme:

(1) Was an application submitted for funds for the project before it was announced in 2004.

(2) Does the Government’s $4 million commitment to the project still stand.

(3) How much funding will be provided to the project by Eidsvold Shire Council.

(4) Has the Queensland Government agreed to provide funding for the project.

(5) Will other financial sources be provided for the project.

(6) Has a provider that will produce a business plan and feasibility study been selected.

(7) How many times has the steering committee overseeing the project met.

(8) What consultation is being carried out by the proponent, the Eidsvold Shire Council, with the local community regarding the proposed centre.

(9) In relation to a council-funded motel to be opened in May 2007, referred to in the tender document to select a provider for the business plan and feasibility study: (a) how will the motel be financed; and (b) has the community been consulted.

Senator Ian Campbell—The Minister for Transport and Regional Services has provided the following answer to the honourable senator’s question:

(1) No.

(2) Yes.

(3) $200,000 per year over 3 years.

(4) No.

(5) To be identified in the business case planning.
(6) Yes. Commencement by the consultant is conditional upon confirmation of State Government funding.

(7) Three times.

(8) The steering committee is comprised of representatives of the community. Council also advised that the newly elected mayor, Cr Patrick Connolly, put out a media release which was published in the Central and North Burnett Times of 2 November 2006 on the progress of the project.

(9) This is an Eidsvold Shire Council matter.

**Cluster Bombs**

*(Question No. 2616)*

**Senator Allison** asked the Minister representing the Minister for Defence, upon notice, on 7 November 2006:

(1) Does the Government possess a stockpile of cluster bombs as is alleged by the Cluster Munition Coalition; if so: (a) how many are in the stockpile: (i) in total, and (ii) of each type; (b) what are the different types found in the stockpile; (c) for each type in the stockpile: (i) what proportion of the bomblets, on average, are left unexploded upon detonation, and (ii) what is the approximate scatter area; (d) is it possible, or likely, that the bomblets within any of the cluster bombs could be mistaken by children as small toys, if they are left unexploded in fields or residential areas; (e) when were the cluster bombs obtained; (f) from which company or which nation were the cluster bombs obtained; (g) what other countries, if any, are storing some or all of the stockpile; (h) what is the approximate pecuniary value of the stockpile; (i) why does the Government possess the stockpile; and (j) does the Government intend to retain the stockpile indefinitely.

(2) If the Government does not possess a stockpile of cluster bombs, has the Government ever possessed such a stockpile in the past.

(3) Has the Government ever used a cluster bomb as a weapon of war or for testing purposes; if so: (a) how many have been used; (b) where have they been used; and (c) what types have been used.

(4) Has the Government ever produced, or contracted an Australian company to produce, cluster bombs.

(5) Would the Government support multilateral moves to place an international ban on the use, storage and construction of cluster bombs; if not, why not.

(6) Has the Government been actively involved in operations to clear populated areas of unexploded cluster bomblets.

(7) Does the Government consider the use of cluster bombs to be morally justifiable; if so, under what circumstances.

(8) Does the Government condone the use of cluster bombs by Israel in the recent conflict with Lebanon.

**Senator Ian Campbell**—The Minister for Defence has provided the following answer to the honourable senator’s question:

(1) No.

(2) Yes, from the 1970s to 1990s.

(3) The Australian Defence Force has not used cluster munitions as a weapon of war, but they have been used in limited quantities for testing purposes.

(a) Approximately 10 to 20 cluster munitions were tested.

(b) Woomera test range in South Australia.

(c) Karinga cluster bomb and American CBU-58B.
(4) Yes, in the 1970s and 1980s the Government manufactured limited numbers of cluster bombs for testing purposes.

(5) The Australian delegation to the recent November Review Conference of the Certain Conventional Weapons Convention (the CCW) strongly supported a mandate for government experts to consider the application and implementation of International Humanitarian Law (IHL) with respect to Explosive Remnants of War, particularly focusing on cluster munitions. This is to include factors affecting the reliability of cluster munitions, and their technical and design characteristics, with a view to minimising their humanitarian effects.

(6) Yes. The Government has also contributed $500,000 to the United Nations Mine Action Service for clearance work in Lebanon, which will include unexploded cluster munitions.

(7) Cluster munitions have the potential to cause great harm to civilians, and the Government supports discussions in international fora aimed at placing restrictions on their use. Cluster munitions are not illegal under any arms control or IHL instrument, and they have legitimate military utility where properly targeted, are reliable and discriminating, and deployed in compliance with IHL. Defence made a substantial contribution to the funding of a discussion paper for the CCW on the IHL concept of proportionality and its application to the creation of Explosive Remnants of War, including cluster munitions.

(8) The Government is aware of reports of the use of cluster munitions by the Israel Defence Force (IDF) in southern Lebanon in the recent conflict with Hezbollah, and understands an internal inquiry has been announced into the IDF’s use of cluster munitions. Beyond this, the Government is not in a position to comment on the IDF’s use of cluster munitions.

Bureau of Transport and Regional Economics Seminar

(1) Of those that attended, how many were: (a) departmental staff; and (b) people other than departmental staff?

(2) (a) What was the total cost of the seminar; and (b) What costs were associated with Professor Cox’s appearance?

(3) Did the BTRE pay for Professor Cox’s travel to Australia; if not, who sponsored his travel?

Senator O’Brien asked the Minister representing the Minister for Transport and Regional Services, upon notice, on 13 November 2006:

With reference to the Bureau of Transport and Regional Economics (BTRE) guest seminar with Professor Wendell Cox on 15 August 2006:

(1) Attendees consisted of 18 departmental staff and 7 from outside the department.

(2) (a) The total cost of the seminar (hire of room and morning tea) was $365.45 (GST exclusive). (b) There were no costs were associated with Professor Cox’s appearance.

(3) The BTRE did not pay for Professor Cox’s travel to Australia, nor did it seek information regarding the funding of Professor Cox’s trip.

Transport Colloquium 2006

(1) Attendees consisted of 18 departmental staff and 7 from outside the department.

(2) (a) The total cost of the seminar (hire of room and morning tea) was $365.45 (GST exclusive). (b) There were no costs were associated with Professor Cox’s appearance.

(3) The BTRE did not pay for Professor Cox’s travel to Australia, nor did it seek information regarding the funding of Professor Cox’s trip.

Senator O’Brien asked the Minister representing the Minister for Transport and Regional Services, upon notice, on 13 November 2006:
With reference to the Transport Colloquium 2006 staged by the Bureau of Transport and Regional Economics:

(1) Can a breakdown be provided of the (a) costs; and (b) revenues, associated with this event.

(2) What was the total cost associated with the presentation by Dr Clifford Winston on the privatisation of urban transport systems including: (a) fees; (b) air fares; (c) accommodation; (d) meals; and (e) other costs.

**Senator Ian Campbell**—The Minister for Transport and Regional Services has provided the following answer to the honourable senator’s question:

(1) (Excluding GST)

(a) Total costs $133,344, comprising $6,943 in advertising and $126,401 in meeting expenses (catering, promotional materials, speakers’ fees and expenses, venue hire, audiovisual services and other sundry expenses).

(b) Revenues were $94,827, comprising $79,827 in delegate fees and $15,000 in sponsorship.

(2) (Excluding GST)

Dr Winston delivered a keynote address titled “Privatisation and deregulation on inter-city and urban transport systems”. He also gave a second address in the closing session of the conference. This session was titled “Key conclusions and policy challenges”. The total costs were $23,580:

(a) fees - $9,708;

(b) airfare - $12,831;

(c) accommodation - $843;

(d) meals - not separately identified, included in accommodation charge; and

(e) other costs, including taxis - $199