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- SYDNEY 630 AM
- NEWCASTLE 1458 AM
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- BRISBANE 936 AM
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- 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—EIGHTH 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. Nigel Gregory Scullion

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 Fiona Joy Nash

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 Citizenship
The Hon. Kevin James Andrews MP

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 and Minister Assisting the
Prime Minister for Indigenous Affairs
The Hon. Malcolm Thomas Brough MP

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

Minister for Employment and Workplace Rela-
tions and Minister Assisting the Prime Minister
for the Public Service
The Hon. Joseph Benedict Hockey MP

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

Minister for the Environment and Water Re-
sources
The Hon. Malcolm Bligh Turnbull MP

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

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

Minister for Fisheries, Forestry and Conservation and Manager of Government Business in the Senate
Senator the Hon. Eric Abetz

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

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

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

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

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

Special Minister of State
The Hon. Gary Roy Nairn MP

Minister for Ageing
The Hon. Christopher Maurice Pyne MP

Minister for Vocational and Further Education
The Hon. Andrew John Robb MP

Minister for the Arts and Sport
Senator the Hon. George Henry Brandis SC

Minister for Community Services
Senator the Hon. Nigel Gregory Scullion

Minister for Justice and Customs
Senator the Hon. David Albert Lloyd Johnston

Assistant Minister for Immigration and Citizenship
The Hon. Teresa Gambaro MP

Assistant Minister for the Environment and Water Resources
The Hon. John Kenneth Cobb MP

Parliamentary Secretary to the Prime Minister
The Hon. Anthony David Hawthorn Smith MP

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

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

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

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

Parliamentary Secretary to the Minister for Foreign Affairs
The Hon. Gregory Andrew Hunt MP

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

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

Parliamentary Secretary to the Minister for Defence
The Hon. Peter John Lindsay MP

Parliamentary Secretary to the Minister for Health and Ageing
Senator the Hon. Brett John Mason
SHADOW MINISTRY

Leader of the Opposition
Deputy Leader of the Opposition, Shadow Minister for Employment and Industrial Relations and Shadow Minister for Social Inclusion
Leader of the Opposition in the Senate and Shadow Minister for National Development, Resources and Energy
Deputy Leader of the Opposition in the Senate and Shadow Minister for Communications and Information Technology
Shadow Minister for Infrastructure and Water and Manager of Opposition Business in the House
Shadow Minister for Homeland Security, Shadow Minister for Justice and Customs and Shadow Minister for Territories
Shadow Assistant Treasurer and Shadow Minister for Revenue and Competition Policy
Shadow Minister for Immigration, Integration and Citizenship
Shadow Minister for Industry and Shadow Minister for Innovation, Science and Research
Shadow Minister for Trade and Shadow Minister for Regional Development
Shadow Minister for Service Economy, Small Business and Independent Contractors
Shadow Minister for Multicultural Affairs, Shadow Minister for Urban Development and Shadow Minister for Consumer Affairs
Shadow Minister for Transport, Roads and Tourism
Shadow Minister for Defence
Shadow Minister for Climate Change, Environment and Heritage and Shadow Minister for the Arts
Shadow Minister for Veterans’ Affairs, Shadow Minister for Defence Science and Personnel and Shadow Special Minister of State
Shadow Attorney-General and Manager of Opposition Business in the Senate
Shadow Minister for Sport and Recreation, Shadow Minister for Health Promotion and Shadow Minister for Local Government
Shadow Minister for Families and Community Services and Shadow Minister for Indigenous Affairs and Reconciliation
Shadow Minister for Foreign Affairs
Shadow Minister for Ageing, Disabilities and Carers

Kevin Michael Rudd MP
Julia Eileen Gillard MP
Senator Christopher Vaughan Evans
Senator Stephen Michael Conroy
Anthony Norman Albanese MP
The Hon. Archibald Ronald Bevis MP
Christopher Eyles Bowen MP
Anthony Stephen Burke MP
Senator Kim John Carr
The Hon. Simon Findlay Crean MP
Craig Anthony Emerson MP
Laurence Donald Thomas Ferguson MP
Martin John Ferguson MP
Joel Andrew Fitzgibbon MP
Peter Robert Garrett MP
Alan Peter Griffin MP
Senator Joseph William Ludwig
Senator Kate Alexandra Lundy
Jennifer Louise Macklin MP
Robert Bruce McClelland MP
Senator Jan Elizabeth McLucas
Shadow Minister for Federal/State Relations, Shadow Minister for International Development Assistance and Deputy Manager of Opposition Business in the House  
Robert Francis McMullan MP

Shadow Minister for Primary Industries, Fisheries and Forestry  
Senator Kerry Williams Kelso O’Brien

Shadow Minister for Human Services, Shadow Minister for Housing, Shadow Minister for Youth and Shadow Minister for Women  
Tanya Joan Plibersek MP

Shadow Minister for Health  
Nicola Louise Roxon MP

Shadow Minister for Superannuation and Intergenerational Finance and Shadow Minister for Banking and Financial Services  
Senator the Hon. Nicholas John Sherry

Shadow Minister for Education and Training  
Stephen Francis Smith MP

Shadow Treasurer  
Wayne Maxwell Swan MP

Shadow Minister for Finance  
Lindsay James Tanner MP

Shadow Minister for Public Administration and Accountability, Shadow Minister for Corporate Governance and Responsibility and Shadow Minister for Workforce Participation  
Senator Penelope Ying Yen Wong

Shadow Parliamentary Secretary for Foreign Affairs  
Anthony Michael Byrne MP

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

Shadow Parliamentary Secretary for Environment and Heritage  
Jennie George MP

Shadow Parliamentary Secretary for Treasury  
Catherine Fiona King MP

Shadow Parliamentary Secretary for Education  
Kirsten Fiona Livermore MP

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

Shadow Parliamentary Secretary for Industrial Relations  
Brendan Patrick John O’Connor MP

Shadow Parliamentary Secretary for Industry and Innovation  
Bernard Fernando Ripoll MP

Shadow Parliamentary Secretary for Northern Australia and Indigenous Affairs  
The Hon. Warren Edward Snowdon MP

Shadow Parliamentary Secretary to the Leader of the Opposition (Social and Community Affairs)  
Senator Ursula Mary Stephens
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The PRESIDENT (Senator the Hon. Paul Calvert) took the chair at 9.30 am and read prayers.

PETITIONS

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

David Hicks

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

The Petition of the undersigned shows:

• That the treatment of David Hicks is not in accordance with Geneva Convention Guidelines applying to prisoners of war.

Your petitioners ask that the Senate should:

• Ensure that Australian citizen, David Hicks’, rights are met under the guidelines of the Geneva Convention as it applies to prisoners of war

• Send a delegation to George W. Bush asking that David Hicks be returned to Australia

• Ensure that David Hicks be entitled to a civil trial, in Australia, if he is charged with any crime

by Senator Kirk (from 1,461 citizens)

Military Detention: Guantanamo Bay

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

The Petition of the undersigned draws to the attention of the Senate the continuing operation of the United States military detention facility at Guantanamo Bay. This facility exists in contravention of international law and has been widely condemned by the leaders of other Western nations, the United Nations, respected jurists and religious leaders. The recent decision to release 134 detainees following a review by the US Department of Defense, 119 to their countries of citizenship, further highlights the illegitimacy of the facility’s operation.

Your petitioners believe:

(a) the United States’ military detention facility at Guantanamo Bay exists in a jurisdictional void, denying detainees’ fundamental human rights;

(b) those suspected of any crime, including terrorist-related offences, have a right to a fair trial, to allow them an opportunity to defend all charges against them;

(c) South Australian David Hicks has been detained at Guantanamo Bay for more than four years, and it is unlikely he will be repatriated by the Australian Government in the foreseeable future, despite the repatriation of the citizens of nearly every other Western nation;

(d) in the absence of any effort to ensure the human rights of detainees, and following allegations of outright violations of these rights, the facility must be closed.

Your petitioners therefore request the Senate urge the Government to support calls for the military detention facility at Guantanamo Bay to be closed.

by Senator Stott Despoja (from 60 citizens)
(c) the US Military Commissions Act 2006 will not allow detainees to receive a fair trial;
(d) South Australian David Hicks has been detained at Guantanamo Bay since January 2002; and
(c) Mr Hicks should immediately be granted a fair trial or repatriated to Australia.

Your petitioners therefore request the Senator urge the Government to ensure Mr Hicks immediately is granted a fair trial or repatriated to Australia.

by Senator Stott Despoja (from 27 citizens)

Petitions received.

NOTICES

Presentation

Senator Nettle to move on the next day of sitting:
That the Senate:
(a) notes the ‘Bring David Hicks Home’ campaign launched in Bennelong, Sydney, in the week beginning 18 March 2007 by GetUp; and
(b) calls on the Government to bring Mr Hicks home.

Senator Bob Brown to move on the next day of sitting:
That the Senate endorses the climate change action plan proposed by the Australian Council of Trade Unions, including its call for:
(a) government subsidies for energy efficient retrofitting of buildings;
(b) mandatory green building codes;
(c) large-scale reuse of treated effluent;
(d) improved vehicle fuel efficiency;
(e) greater use of shipping to cut greenhouse gas emissions;
(f) the right to reject work which harms the environment; and
(g) a mandatory renewable energy target of 10 per cent, as called for by the Australian Greens in 2002.

Senator Nettle to move on the next day of sitting:
That the Senate:
(a) notes the recent death of Israeli linguist, author and peace activist Ms Tanya Reinhart;
(b) sends its condolences to her family and friends; and
(c) recognises the contribution that Ms Reinhart has made to achieving peace and justice in Palestine and Israel.

BUSINESS

Rearrangement

Senator ABETZ (Tasmania—Minister for Fisheries, Forestry and Conservation) (9.33 am)—I move:
That government business orders of the day nos 4 to 6, and the orders of the day relating to the Tourism Australia Amendment Bill 2007 and the Australian Energy Market Amendment (Gas Legislation) Bill 2006, be considered from 12.45 pm till not later than 2 pm today.
Question agreed to.

LEAVE OF ABSENCE

Senator PARRY (Tasmania) (9.33 am)—by leave—I move:
That leave of absence be granted to Senator Vanstone from 20 March to 23 March 2007 for personal reasons.
Question agreed to.

NOTICES

Postponement

The following items of business were postponed:
General business notice of motion no. 680 standing in the name of Senator Nettle for today, proposing the introduction of the Food Safety (Trans Fats) Bill 2007, postponed till 26 March 2007.
General business notice of motion no. 745 standing in the name of Senator Siewert for today, relating to World Day for Water, postponed till the next day of sitting.
General business notice of motion no. 746 standing in the name of Senator Siewert for today, relating to the Murray-Darling Basin, postponed till the next day of sitting.

General business notice of motion no. 747 standing in the name of the Leader of the Australian Greens (Senator Bob Brown) for today, proposing the introduction of the Lobbying and Ministerial Accountability Bill 2007, postponed till 28 March 2007.

**BUSINESS**

**Rearrangement**

Senator ABETZ (Tasmania—Minister for Fisheries, Forestry and Conservation) (9.34 am)—I move:

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

(a) general business order of the day no. 78 (Climate Change Action Bill 2006); and

(b) orders of the day relating to government documents.

Question agreed to.

MR GOUGH WHITLAM AC, QC

Senator FAULKNER (New South Wales) (9.35 am)—I move:

That the Senate:

(a) notes that on 22 March 2007 Gough Whitlam becomes Australia’s longest-lived elected Prime Minister;

(b) congratulates Mr Whitlam on achieving this milestone; and

(c) acknowledges his outstanding contribution to Australian public life.

Question agreed to.

Senator Bob Brown—Mr President, would you note the Greens’ support for that motion?

The PRESIDENT—It was unanimous.

Senator Bob Brown—Then would you note that it was unanimously supported? That is better still.

The PRESIDENT—The *Hansard* will reflect that.

**COMMITTEES**

**Intelligence and Security Committee Meeting**

Senator PARRY (Tasmania) (9.35 am)—At the request of Senator Ferguson I move:

That the Parliamentary Joint Committee on Intelligence and Security be authorised to hold two classified hearings during the sitting of the Senate on Friday, 23 March 2007, from 9.30 am, to take evidence for the committee’s inquiries into the review of administration and expenditure: Australian Intelligence Organisations – No. 5, and the review of the re-listing of Tanzim Qa’idat al-Jihad fi Bilad al-Rafidayn (TQJBR) as a terrorist organisation under the Criminal Code Act 1995.

Question agreed to.

**National Capital and External Territories Committee Report**

Senator LIGHTFOOT (Western Australia) (9.36 am)—I present the report of the Joint Standing Committee on the National Capital and External Territories, *Review of the Griffin Legacy amendments*. I move:

That the Senate take note of the report.

The Griffin Legacy amendments are some of the most significant changes proposed for the future urban planning of Canberra. They seek to restate some of the key planning principles Griffin proposed and articulate specific strategic plans for the central national area. The amendments examined by the committee include amendment 56, the Griffin Legacy, principles and policies; amendment 59, City Hill Precinct; amendment 60, Constitution Avenue; and amendment 61, West Basin in Lake Burley Griffin.

The committee supports the broad aims of the Griffin Legacy project. The aim of advancing Griffin’s plan to guide the future urban planning of Canberra through the 21st century is enviable. The committee, however, believes that the Griffin Legacy amendments can be improved. Through the
roundtable public hearing evidence was provided which questioned the adequacy of parts of these amendments. These criticisms are not easily dismissed.

In relation to amendment 56, concerns were raised about excessive building height, traffic and transport implications, loss of vistas of national significance and loss of green space. In addition, there were concerns about the scale of the proposed developments and the lack of a rigorous planning rationale. At the same time, the committee’s examination revealed that there were concerns about the adequacy of the NCA’s consultation process. The examination of amendment 59 revealed concerns about the level of detail, issues about public funding and specific concerns about serious disruptions to traffic and excess building heights and loss of vistas. Amendment 60 notes that Constitution Avenue will become an elegant and vibrant mixed use grand boulevard linking London Circuit to Russell. The amendment was supported by key stakeholders including, for example, the Returned and Services League of Australia, the Canberra Institute of Technology and St John’s Church. Each of these groups has made valid cases for supporting the amendment.

The committee, however, has noted some of the concerns about the amendment which also cannot be easily dismissed—in particular, the scale of the proposal and the possible negative impact on the vista from Parliament House towards Constitution Avenue which is, perhaps, one of the most significant urban vistas in the nation. Amendment 61, West Basin in Lake Burley Griffin, is notable for its size and scope. It is proposed that part of the lake be reclaimed using infill taken from the proposed Parkes Way and Kings Avenue tunnel. The amendment provides for a land bridge over a section of Parkes Way for streets to extend to the lake. A waterfront promenade will be created and stepped back from that will be a series of buildings. Building height on the waterfront promenade will be limited to eight metres, with a maximum of two storeys. The parapet height of buildings fronting the promenade will be a maximum of 16 metres, and taller building elements to a maximum of 25 metres, and not exceeding 30 per cent of the site area may be considered. Taller buildings may be considered on sites north of Parkes Way.

In considering this matter further, the committee examined the NCA’s 2004 report, The Griffin Legacy, Canberra—the nation’s capital in the 21st century. In that report, the National Capital Authority set out a plan for West Basin which is moderate in tone, less dominated by development and much more inclusive through the use of extensive green area. Evidence to the committee suggested that the scale of development for West Basin should configure more closely to the NCA’s 2004 proposal.

As a result of the committee’s findings, the committee has recommended that amendments 56, 59, 60 and 61 be disallowed so that the NCA has the opportunity to further refine the amendments taking into account issues raised in the committee’s report. This finetuning is necessary and in the interests of Canberra and the nation.

I would like to express, on behalf of the committee, our gratitude to all those who participated in the inquiry and to the staff of the secretariat. I thank my committee colleagues for their cooperation and substantial contribution throughout the course of the inquiry. On behalf of the committee, I commend the report to the Senate.

Senator LUNGY (Australian Capital Territory) (9.42 am)—I would like to add some comments to the tabling of this report of the Joint Standing Committee on the National Capital and External Territories titled Review of the Griffin Legacy amendments. As deputy
chair of that committee, I note Senator Lightfoot’s comments as chair.

This committee has had a longstanding frustration with the conduct of the National Capital Authority, particularly with its performance in the area of consultation. So it was with some disappointment that, despite what appears to have been very lengthy consultation with—and indeed concurrence of, in this case—the ACT planning authorities and the across-the-board bipartisan support of the Griffin Legacy amendments, so many concerns were raised at the round table forum held by the committee for the purposes of looking at the implications of the Griffin Legacy amendments.

For the record, as Senator Lightfoot said, we are talking about amendments 56, 59, 60 and 61. Despite acknowledging that there is general support for these amendments within the ACT government—and certainly by the majority, for all intents and purposes, of submitters in the NCA consultation process and by the coalition government itself—there are problems. The committee feels strongly enough about them to recommend to the minister that, as the minister, he consider moving disallowance of these amendments. The committee has recommended it in that form. I am certainly of the view, and the committee is of the view, that these amendments do not warrant tossing out, because that general support is there, but they do warrant refining. There are a number of areas, which I will not go through again, and which Senator Lightfoot has outlined, where improvements could be made.

I would like to place a couple of points on the record about my concerns. They relate very specifically to parking and transport issues. The people of Canberra and the region who live and work around the central part of this city have been suffering for quite some time with parking issues. The NCA is responsible for this side of the lake in particular. But with increased development in Civic and the surrounding precinct in particular, parking has become more and more difficult. It is not enough to make the assumption that people will make the choice to move to public transport in the absence of parking. The people of Canberra deserve better planning in relation to that. That includes issues like this—the Griffin Legacy—which does outline a plan for the next 25 years of development to take into account that amenity that I think everybody deserves with respect to transport. That was a particular concern that came out.

The other area of concern is the overall approach and level of detail in these amendments. It is a very particular challenge to draft amendments which set such long-term parameters. It is not about specific sites. It is about the general context and nature of future development. So in that sense these amendments are critically important to the ACT’s economy and to the nation’s capital. They do set the parameters for long-term development. We know that some of the models put forward to us are not all going to happen at once, but they will happen over time, and that is why we believe extra care ought to have been taken in the drafting of these amendments.

Going back to consultation, one particular weakness the committee found was the wide variety of views at our roundtable. We also acknowledge that many of the submissions that were identified by the National Capital Authority as being favourable to this were in fact not more than one-line submissions. There were a number in the pack of that 70 per cent which showed just single-line comments with no name and no attribution to them, collected through, I presume, the Griffin Legacy display which has been down at Regatta Point for quite a long time now.
We have made a recommendation in relation to consultation which is, sadly, a predictable thing for this committee to do in relation to the National Capital Authority, and that is that they explore improved ways in which to consult with the public. This is a bit of a broken record for this committee. One of the concerns expressed at the roundtable was that the feedback and the publishing of those submissions was a very poor process on the part of the NCA. What in fact happened in providing feedback was that the comments that were noted and responded to were not sourced, so submitters had no way of knowing if the committee was specifically responding to their concerns or to a general concern, or whether their concern was shared by everybody else.

So our second recommendation relates specifically to the National Capital Authority exploring options for ensuring submissions to all of the authority’s consultation processes are made publicly available, subject to full approval by the submitter and compliance with privacy principles. All they need to do is say, ‘Are you happy for your submission to be published?’ We were not convinced as a committee that the lengths to which the NCA went to to not identify submitters were appropriate—they just added confusion and I think promoted distrust amongst the community who made those submissions that the process was being handled adequately. I am confident the NCA will take this suggestion at face value and work again to improve their consultation processes.

Finally, what to do about it? I am certainly very strongly of the view that this place is not a place to arbitrate on ACT planning matters. It is of no help to the ACT economy nor indeed is it in the interests of the people of the ACT to have the Senate arbitrate on specific planning matters. That is why we as a committee have asked the minister to move disallowance in these amendments. If the minister moves disallowance then I believe that the Senate will respect his will. The reason we have suggested that disallowance is the way to go is that there is no other way to change these amendments. Because the amendments had already been tabled in parliament, they cannot be amended. What is unfortunate is that we were not able to provide this feedback to the minister prior to the amendments being tabled, which would have allowed the NCA and the minister to perhaps make those amendments if the minister was of the mind to take our advice, because we are an advisory committee only.

Senator Lightfoot—We never had that opportunity.

Senator Lundy—That opportunity was never made available to the committee. In light of the roundtable, the committee is left with the only process to recommend to the minister that those refinements be made, hence we are recommending that the minister move disallowance. That is quite specific. I believe the only way that we would support a disallowance is if the minister moved it. I say that because I do not believe it is in the interests of the ACT that as a party or as a Senate we start to arbitrate on issues of planning. Yes, it is always political. It should not be as political as it is. I am firmly of the view—and I know the government does not share this view—that these matters should be an issue more for the democratically elected ACT government and the ACT planning authorities. But, that said, I have never advocated the view that the Senate ought to be the arbitrator on the specificity of planning amendments and requirements for the ACT.

I am not a planner. It is not my profession. I am very comfortable with my position in advising the government on the suitability of these amendments, based on feedback we get from professionals and stakeholders in the
community who have a view. That is why, as I said, we are asking the minister to move disallowance. In that way, he would be able to show good faith that he is prepared to take the constructive advice of this committee.

Let me restate our position. The committee broadly supports the Griffin Legacy amendments. They are supported by, obviously, the coalition government. They are supported by the democratically elected ACT government. But there are improvements that could be made. So I urge the minister to take this action. I will not be supporting a disallowance motion unless it does come from the minister, for the purposes of permitting the minister to make those refinements and hopefully get along with the process. I am gravely disappointed in the National Capital Authority for once again failing in their duty to do the best they possibly can with their consultation obligations under the National Capital Plan and act.

Question agreed to.

MIGRATION AMENDMENT (REVIEW PROVISIONS) BILL 2006 [2007]

Report of Legal and Constitutional Affairs Committee

Corrigendum

Senator PARRY (Tasmania) (9.52 am)—At the request of Senator Payne I present a corrigendum to the report of the Legal and Constitutional Affairs Committee on the Migration Amendment (Review Provisions) Bill 2006 [2007].

Ordered that the document be printed.

AUSTRALIAN ENERGY MARKET AMENDMENT (GAS LEGISLATION) BILL 2006

TOURISM AUSTRALIA AMENDMENT BILL 2007

SCHOOLS ASSISTANCE (LEARNING TOGETHER—ACHIEVEMENT THROUGH CHOICE AND OPPORTUNITY) AMENDMENT BILL 2007

First Reading

Bills received from the House of Representatives.

Senator JOHNSTON (Western Australia—Minister for Justice and Customs) (9.53 am)—I indicate to the Senate that these bills are being introduced together. After debate on the motion for the second reading has been adjourned, I shall move a motion to have the bills listed separately on the Notice Paper. I move:

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

Question agreed to.

Bills read a first time.

Second Reading

Senator JOHNSTON (Western Australia—Minister for Justice and Customs) (9.53 am)—I move:

That these bills be now read a second time.

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

Leave granted.

The speeches read as follows—

AUSTRALIAN ENERGY MARKET AMENDMENT (GAS LEGISLATION) BILL 2006

Under the oversight of the Ministerial Council on Energy (MCE), Australia has made substantial progress towards an efficient and effective national energy market over recent years.

The bill I am introducing today represents a significant legislative step forward towards a truly national regime for the regulation of gas pipeline infrastructure, complete with national regulatory and national rule-making bodies.

The Australian Energy Market Amendment (Gas Legislation) Bill 2006 sees the Commonwealth take the lead in establishing the Ministerial Council on Energy’s cooperative legislative regime for
regulating access to gas pipelines. This regime, once established, will ensure that the regulatory framework governing our energy sector is sound. This is crucial to Australia’s future energy security and economic growth.

MCE’s cooperative legislative regime involves the development of the National Gas Law and National Gas Rules, which will be applied in all participating jurisdictions to create a harmonised national gas access regime. The Ministerial Council on Energy has committed to establish this regime by 30 June 2007.

The new gas access regime will be underpinned by lead legislation enacted in the South Australian Parliament. Early next year, South Australian Parliament will enact the National Gas (South Australia) Act 2007, and the National Gas Law will be the Schedule to that Act.

The introduction of this bill does not affect the making of the National Gas Law. A draft of the National Gas Law was released for consultation on 7 November 2006. All MCE Ministers will consider the outcome of that consultation process before agreeing to a final version.

The Commonwealth, and all the States and Territories (with the exception of Western Australia), have agreed to introduce legislation, known as Application Acts, to apply the National Gas Law as law in their own jurisdictions. WA will pass “mirror” legislation with content similar to the NGL, rather than applying the NGL established by South Australian law.

This bill amends the Australian Energy Market Act 2004 to make it the Commonwealth’s Application Act for the new gas access regime. The Australian Energy Market Act, once amended, will apply the National Gas Law in the Commonwealth’s jurisdiction, ensuring that the new gas access regime applies throughout Australia, including the offshore area and external territories.

Under the current gas access regime nine different regulators make decisions and determinations, leading to uncertainty and inconsistency in the application of regulation. Under the new National Gas Law, the regulation of all gas transmission and distribution pipelines (except in Western Australia) will be undertaken by the Commonwealth Australian Energy Regulator (AER). This crucial reform will lead to more efficient and consistent regulatory decision-making.

It is vital that Commonwealth Parliament take a legislative lead in establishing this regime by enacting legislative amendments that will appropriately empower the AER, and two other Commonwealth bodies – the National Competition Council (NCC) and the Australian Competition Tribunal (ACT) – to take on crucial functions within the new gas access regime.

To this end, this bill amends the Trade Practices Act 1974 (TPA) to explicitly allow the National Gas Law, when applied as a law of a state or territory, to confer functions and powers, and impose duties, on these three Commonwealth bodies. The involvement of these Commonwealth bodies is an essential part of this cooperative scheme, and the Commonwealth must take the lead by legislating to provide for these functions and powers to be exercised. South Australian Parliament, and indeed parliaments in all participating jurisdictions, must see that the Commonwealth is committed to this cooperative scheme.

The AER, NCC and ACT will have important roles in overseeing and reviewing the proper operation of this legislative scheme to ensure economically efficient, competitive outcomes in the gas market that protect the long-term interests of consumers of gas.

For example, important decisions made under the new gas access regime, including those made under Western Australian law, will be reviewable by the Australian Competition Tribunal. This will achieve greater accountability and consistency in decision-making, and better protect the interests of both consumers and investors in the gas sector.

This bill has the crucial function of allowing the greenfields pipelines incentives contained in the current gas access regime to continue to operate in the new gas access regime. These incentives were agreed by the Ministerial Council on Energy and allowed to operate by amendments to the TPA under the Energy Legislation Amendment Act 2006, passed in the winter sitting. The greenfields incentives support new investment in pipeline infrastructure within Australia, and crossing our territorial waters to other countries, increasing
Australia’s energy security and benefiting Australian gas consumers.

Further, by applying the National Gas Law in Commonwealth law, this bill will help to lessen the regulatory burden on pipeline owners where they are subject to competition in providing natural gas services.

The NGL will also introduce a new light-handed form of regulation that allows pipelines subject to competition to negotiate commercial outcomes with access seekers, without the burden of direct involvement by the regulator. Only where negotiations fail will the Australian Energy Regulator become involved, offering a binding arbitration to resolve the access dispute. This form of regulation allows gas market participants to negotiate economically efficient outcomes, whilst creating a fair and effective access regime.

In summary, the amendments I am introducing today represent a significant legislative step towards a truly national gas access regime under a national regulator and national rule-making body. This cooperative scheme will ensure that Australia enjoys the benefits of a competitive and efficient gas market, whilst minimising the regulatory burden on industry. This bill has the full support of my State and Territory colleagues on the Ministerial Council on Energy.

The Act provides for a significant investment in school infrastructure, including $1 billion of Australian Government funding for the Investing in Our Schools Programme (IOSP). This Bill will provide an additional $181 million investment in Australian schools through this successful programme. The total funding available for schools under the IOSP will increase to $1.181 billion. An additional $127 million will be provided for state-owned government schools and an additional $54 million will be available to non-government schools.

For state government schools, this programme is delivering a range of often overlooked, but still important, smaller infrastructure projects. Importantly, these projects are identified by individual school communities and are often projects that never make it to the priority list of the States and Territories.

Through this programme the Australian Government is responding to the need to restore and build school buildings and grounds by injecting much needed additional funding into schools. The standard of school infrastructure can have a marked bearing on teaching and learning. The Australian Government contributes significantly to school infrastructure funding in both state-owned government schools and in non-government schools as a means of improving educational outcomes for all Australian children.

There has been an enthusiastic response from schools for funding under the IOSP. The Australian government has so far approved over 15,000 projects from government schools and over 2,000 projects from non-government schools. The additional IOSP funding will be targeted towards schools that have received little or no funding to date, followed by those that have received less than $100,000 for government schools and $75,000 for non-government schools.

Under the Capital Grants Programme an estimated $1.7 billion is also being provided by this Government over 2005-2008 to assist the building, maintenance and updating of schools throughout Australia. The Act currently provides an estimated $1.2 billion in capital grant funding for State and Territory government schools and an estimated $489 million for Catholic and independent schools.
The Bill will appropriate $11.7 million for capital funding for non-government schools for 2008 to maintain the existing funding level. Without this amendment capital funding for non-government schools for 2008 will decrease.

The final measure in this Bill is to provide $9.445 million for the National Projects element of the Literacy, Numeracy and Special Learning Needs Programme for 2008. This is to ensure continued funding to the end of the quadrennium. This programme supports strategic national research projects and initiatives aimed at improving the learning outcomes of educationally disadvantaged students.

This Bill maintains the Australian Government’s commitment to a strong school sector through assisting government and non-government schools with important building projects and improvements in literacy and numeracy, which will support improved educational outcomes for all Australian students.

I commend the Bill to the Senate.

TOURISM AUSTRALIA AMENDMENT BILL 2007

The Tourism Australia Amendment Bill 2007 amends the Tourism Australia Act 2004 by making changes to governance arrangements for the organisation. The changes introduced in this Bill form part of the implementation of the government’s response to the Review of Corporate Governance of Statutory Authorities and Office Holders that was conducted by Mr. John Uhrig.

Tourism Australia is the Federal Government statutory authority responsible for international and domestic tourism marketing as well as the delivery of research and forecasts for the sector. Tourism Australia was established on 1 July 2004, bringing together the collective skills and knowledge of four separate organisations: the Australian Tourist Commission; See Australia; the Bureau of Tourism Research and Tourism Forecasting Council.

Tourism Australia has emerged as one of the world’s leading national tourism organisations. It works to influence those outside Australia to visit the many regions of Australia, whether for personal, recreational, professional or business reasons. It works to persuade Australians to travel throughout their own country. It works to foster a sustainable Australian tourism industry. And it works to increase the economic benefits to Australia from tourism. These economic benefits include export income and jobs, especially in regional Australia.

The Government has assessed Tourism Australia’s existing governance structure against the recommendations and principles of the Uhrig review and have identified that the board template is best suited to Tourism Australia’s role as the government’s tourism marketing agency. This bill amends the Tourism Australia Act 2004 by making minor improvements to the governance and accountability arrangements for Tourism Australia.

These amendments will bring the existing governance arrangements more closely in line with best practice under the board template as identified in Uhrig, and provide increased accountability to the Parliament commensurate with the high levels of public funding for the organisation’s activities.

The Government has confirmed that the existing structure of a statutory authority operating under the Commonwealth Authorities and Companies Act 1997 with governance by a Board is consistent with the Uhrig recommendations. This recognises the need for Tourism Australia to operate flexibly in a commercial environment.

These arrangements are strongly supported by Australia’s tourism industry. The minor improvements proposed in the bill seek to balance increased independence for the Board, principally through removal of the Government member, with improved accountability appropriate to an organisation that receives over 80% of its income through appropriation and whose work involves considerable public scrutiny, here and overseas.

On behalf of the Government I would like to thank those who contributed to the assessment. The views and interests of Australia’s tourism industry will continue to inform the Government’s tourism promotion activities.

Ordered that the resumption of the debate be made an order of the day for a later hour.

Ordered that the bills be listed on the Notice Paper as separate orders of the day.
COMMITTEES

Standing Committees

Reports

Senator PARRY (Tasmania) (9.54 am)—Pursuant to order and at the request of the chairs of the respective committees, I present reports from committees in respect of the examination of annual reports tabled by 31 October 2006.

Ordered that the reports be printed.

BUDGET

Consideration by Estimates Committees

Report

Senator PARRY (Tasmania) (9.55 am)—On behalf of the chair of the Economics Committee, Senator Ronaldson, I present the report of the committee on the 2006-07 additional estimates, together with the Hansard record of the committee’s proceedings and documents received by the committee.

Ordered that the report be printed.

BUSINESS

Rearrangement

Senator JOHNSTON (Western Australia—Minister for Justice and Customs) (9.55 am)—I move:

That government business notice of motion No. 1 standing in the name of Senator Abetz for today, relating to committee groupings for estimates hearings, be postponed till 26 March 2007.

Question agreed to.

ANTI-MONEY LAUNDERING AND COUNTER-TERRORISM FINANCING AMENDMENT BILL 2007

In Committee

Consideration resumed from 21 March.

The TEMPORARY CHAIRMAN (Senator Chapman)—The committee is considering government amendments (1) to (4).

Senator NETTLE (New South Wales) (9.56 am)—I have a couple of things to follow up on from yesterday. I thank the minister and others for their comments. The issues raised about the CEO of AUSTRAC actually raise more concerns for me. Of course, I recognise that the minister was saying that ASIS is going to determine whether their request is appropriate and so is the CEO of AUSTRAC. I accept what you are saying. ASIS are going to want to proceed with their investigations and they are going to be rather supportive of what they are doing and put that forward. I have certainly not heard anything that has convinced me that the CEO of AUSTRAC is the best person to decide whether ASIS are doing their job or not. If there is anything else on that I would be happy to hear it.

The minister made some comments yesterday about IGIS, the Inspector-General of Intelligence and Security, and responded to my comments in my speech on the second reading about them being underfunded and understaffed. I wonder if the minister is able to outline how many staff are now working for IGIS. I think the last time I asked that question it was four, and that included admin staff. Having an idea of the number of staff in ASIS compared to the number of staff in IGIS gives us some insight into the capacity for oversight of that issue.

The minister asked yesterday whether I could give an example of my concern. I want to put a specific example to the minister that has come to mind just now, which is of Australians who may be providing donations to family members who are in Tamil controlled areas of Sri Lanka. This is something we have talked about before in other arenas, whereby intelligence would be in AUSTRAC that there were Australians who were providing funding to organisations or individuals in Tamil controlled areas of Sri Lanka. The amendment being proposed here by the gov-
ernment is that ASIS be given access to that information and that they be able to pass that on to foreign governments, which in this case would be the intelligence services of Sri Lanka. I asked some questions yesterday about how we can make sure that that information is not used inappropriately. Of course, I am not suggesting that the Sri Lankan intelligence services or government can do anything about the people in Australia. But how do we make sure that when that information is passed over it does not lead to the detention, death or torture of people or other inappropriate violence or human rights abuses towards those family members who are being provided with money by Tamils in Australia or indeed the Australians themselves when they are in Sri Lanka?

Senator JOHNSTON (Western Australia—Minister for Justice and Customs) (10.00 am)—With respect to the resourcing of the inspector-general, I refer the learned senator to the most recent annual report. All of the material she seeks is set out there. With respect to the safeguards, I have answered that question in great detail with respect to the role of the Minister for Foreign Affairs. With respect to the duties and obligations of each of the CEOs of ASIS and AUSTRAC prior to allowing the information to pass, I think the question has been answered.

Senator NETTLE (New South Wales) (10.00 am)—I was expecting a little bit more. I was anticipating that the minister might refer to section 133 of the AML legislation, which we talked about yesterday. What is contained in the existing legislation certainly does not satisfy me that we can be assured with respect to any intelligence that is passed on by ASIS, or indeed by the AFP or ASIO, to the Sri Lankan government—to use the specific example—or their intelligence organisations. It does not leave me confident that the relatives of Tamils in Australia will not have that information used inappropriately. The section in the act says:

(1) The Director-General of Security may communicate AUSTRAC information to a foreign intelligence agency if the Director-General is satisfied that:

(a) the foreign intelligence agency has given appropriate undertakings for:

(i) protecting the confidentiality of the information; and

(ii) controlling the use that will be made of it; and

(iii) ensuring that the information will be used only for the purpose for which it is communicated to the foreign country; and

(b) it is appropriate, in all the circumstances of the case, to do so.

I do not think that provides us with any assurances that it will not be used in that way. If you provide information to the Sri Lankan government, or an intelligence arm of the Sri Lankan government, about which Tamils are receiving support from their family members in Australia, does that provide us with a guarantee that that information will not be used to persecute those people? That is the history that we have seen. I am using this example because it is a current one, having regard to the 82 Sri Lankans sent to Nauru on the weekend. It is an example that Justice Dowd has spoken about in similar inquiries—that there are activities that provide support for family members or organisations in Tamil controlled areas of Sri Lanka, such as when Australians send money in order to support reconstruction after tsunamis and earthquakes in that region of the world. I do not want the parliament to be making it easier for the perpetrators of that persecution, be they the Sri Lankan government, militias or whomever, to be able to persecute individuals in Sri Lanka or Australian Tamils when they travel to Sri Lanka. That is the concern that I have.
We have already had a substantial debate on this matter. I want to make it clear that I have heard a lot of very useful information about how the system is going to work, and it concerns me that the CEO of AUSTRAC is going to decide whether or not ASIS are doing their job. I have not heard anything to say that that individual is in the best position to be able to do that. With respect to having systems in place to ensure that ASIS can have access to this information, obviously everyone wants to stop the financing of terrorism, but there are other systems in place whereby people need a warrant from a judicial officer, for example, to make sure that they are following proper procedure. That is not proposed here. What is proposed here is that the CEO of AUSTRAC will determine whether or not ASIS are doing their job.

If we did have a system which was about warrants, that would be great. That would be along the lines of acceptability to the Greens. But it is not what we have. All I have heard is that the CEO of AUSTRAC will decide if ASIS are doing their job. I know, because groups have been contacting me, that there is significant concern in the Australian community that this legislation seeks to increase the capacity for ASIS to spy on Australians, and the implications that has for Australians who are supporting their family members, be they in Palestine, Tamil controlled areas of Sri Lanka or various other parts of the world. This legislation, which exempts banks from the anti-discrimination legislation, is going to see racial profiling occur. We have heard police organisations talk about the danger in doing this.

What is proposed in this specific piece of legislation to increase the powers of ASIS has not been justified by the government. Some arguments have been put forward, but I think those arguments lead us to a view that any access, if at all, by ASIS should be far narrower than what is proposed in the legislation. It would be far more appropriate to have a system of requiring a warrant from an independent judicial officer—the kind of avenues that are followed elsewhere in other pieces of legislation. That is not contained in the legislation.

Whilst the Greens can accept that there may be some arguments for this proposal, they are not before us. So there is a need to start again and try to put in place a system that ensures that any information received by security agencies, be they ASIS or others, is for the purpose of preventing the financing of terrorism. That is what we want to do. Let us make sure that we introduce legislation that does that. This legislation does not. It does not provide appropriate safeguards. We have not had a justification from the government about why ASIS is to be given access, on top of the other 30 intelligence agencies that were given access in the previous legislation. We are just not in a position to support this proposal because the safeguards are not there. Yes, we all want to stop the financing of terrorism, but let us do that in the legislation instead of just throwing out the net and letting innocent people be caught by it.

Senator JOHNSTON (Western Australia—Minister for Justice and Customs) (10.06 am)—I am very respectful of the learned senator’s concerns; I do not share them. I did mention to the senator sections 133 and 133A and set out the safeguards. I have previously outlined the process by which access to AUSTRAC information by designated agencies under section 126 of the Anti-Money Laundering and Counter-Terrorism Financing Act occurs. In summary, the terms under which ASIS or, for that matter, any other designated agency can access information will be governed by a memorandum of un-
derstanding between AUSTRAC and the designated agency.

The particular MOU between AUSTRAC and ASIS will regulate the process by which information is requested. So not only do the CEOs of each agency have a statutory obligation to review and to satisfy themselves that they are within power; the MOU will specifically direct what threshold issues must be addressed prior to the information passing, the overarching principles being those set out in section 126—namely, that AUSTRAC information can only be used for the purposes of the agency’s function. That is a matter that I have already mentioned. The MOU between ASIS and AUSTRAC will be negotiated. In the broad matrix of all of the issues, I am respectful of the senator’s concerns but I do not share them.

Senator NETTLE (New South Wales) (10.08 am)—I thank the minister for that information. Do you have any idea on the time frame for the negotiation of the MOU and whether or not, once the MOU is finalised in the negotiations, it will be publicly available?

Senator JOHNSTON (Western Australia—Minister for Justice and Customs) (10.08 am)—As the senator would understand, the intelligence is sought. It is sought on a basis which would have it available as soon as is reasonably possible. It is something that is being expedited and, no, it is not a public document.

Senator LUDWIG (Queensland) (10.09 am)—As I understand it, the Director-General of ASIS may communicate AUSTRAC information to a foreign intelligence agency from the day after this act receives royal assent, so that is in fact a retrospective operation of that particular provision. Is that right? In other words, ASIS has been omitted—and I am sure you have provided a reason for that. I want to confirm that that is what we are now doing in moving the amendment regarding ASIS first.

Senator JOHNSTON (Western Australia—Minister for Justice and Customs) (10.10 am)—I am advised that it will commence at the same time as the other ASIS amendment in the bill, which is upon royal assent.

Senator LUDWIG (Queensland) (10.10 am)—In other words, the bill would receive royal assent and it would then operate from that start date? What date is that, or when will it commence?

Senator JOHNSTON (Western Australia—Minister for Justice and Customs) (10.10 am)—When the legislation receives royal assent. We are unable to give a specific date because of the appointment requirements with respect to the Governor-General.

Senator LUDWIG (Queensland) (10.10 am)—So it is not a retrospective operation; ASIS will come in and operate from the day this receives royal assent? It is just when you look at amendment (1) it says ‘clause 2, page 2 (table item 6), omit the table item’. So you are omitting the table from the current act and introducing a new table, which is schedule 1, items 21 to 57. That means that item 40A then falls within items 21 to 57, which means that the bill will receive royal assent and the schedule is being varied. That aside, the question really is: from when does item 40A operate—from when this bill receives royal assent or from when the principal act receives royal assent and, if so, has it?

Senator JOHNSTON (Western Australia—Minister for Justice and Customs) (10.12 am)—From the day after this bill receives royal assent.

Senator LUDWIG (Queensland) (10.12 am)—So, in short, there is no retrospectivity?
Senator JOHNSTON (Western Australia—Minister for Justice and Customs) (10.12 am)—Not upon my instructions.

The TEMPORARY CHAIRMAN (Senator Murray)—The question before us relates to government amendments on sheet QS416. Senator Nettle has asked that the amendments be taken in two parts—amendments (1) and (4) together and then amendments (2) and (3) together. The question is that government amendments (1) and (4) on sheet QS416 be agreed to.

Question agreed to.

The TEMPORARY CHAIRMAN—The question now is that government amendments (2) and (3) on sheet QS416 be agreed to.

Senator NETTLE (New South Wales) (10.13 am)—I want to follow up on the question that I asked earlier about staffing for IGIS. The last time I asked it was four but I understand it is seven now and looking at going to eight. How does that compare with the staffing for ASIS? I saw the ads in the paper at the weekend looking for more ASIS staff, and I acknowledge that it is one of the many security agencies where the government has been increasing staffing numbers. I would appreciate getting an idea of that comparison.

Senator JOHNSTON (Western Australia—Minister for Justice and Customs) (10.13 am)—I am not in a position to assist the senator with that. The staffing of those agencies is set out in annual reports and other documents. I do not have the specific information at this stage, other than to ask for estimates from officials, and I am not sure that anything greatly turns upon it. I have just been informed that those numbers are not in the public record; I stand corrected.

Senator NETTLE (New South Wales) (10.14 am)—That was going to be my point: ASIS does not do an annual report so I am not in a position to be able to make that kind of assessment around staffing numbers. I would appreciate any information that can be provided—and it does not have to be an exact number, just within a realm. We are talking about seven IGIS staff. We know there has been a massive expansion in recruitment by ASIO and by ASIS. Are we talking hundreds? I do not need an exact figure, just an idea in order to make that comparison.

Senator JOHNSTON (Western Australia—Minister for Justice and Customs) (10.14 am)—I do not have one. Given that we have a nondisclosure of records with respect to ASIS, I would not wish to intend to get them.

Senator NETTLE (New South Wales) (10.15 am)—I indicate that the Australian Greens will not be supporting these amendments because we have not heard the justification for them. I will raise that when I move my amendments. We think that any access that would be provided needs to be limited to ensuring that it is stopping the financing of terrorism. We have not been provided with the argument as to why ASIS now needs this information. Perhaps the minister can provide more about it.

We have the 30 other agencies. We have ASIS and the AFP. How did it come about? Did ASIS say, ‘Oops, you left us off’? Did the government say, ‘Oops, we left you off’? We just have not heard how this came to be. We are not satisfied that the safeguards are there. We have heard talk about IGIS. We know it has seven, going on eight, staff that people are not aware of in order to make complaints to them. We have heard that there will be a memorandum of understanding and that it will not be made public. Our concerns have not been addressed.

I accept that the minister has gone some way towards seeking to address this. I thank
him for the information that he has provided. But he has not been able to provide the information. It may be there. Then we would be satisfied. But the case has just not been made. If there is going to be any access, we think it needs to be far more limited than is proposed under this current piece of legislation. So we are not in a position to support this wider access.

If we had more information then we might be able to support a narrower and more defined access which is limited to stopping the financing of terrorism. But that is not what we have. We have only an open slate, and an open slate is not acceptable to the Greens or, I think, many people in the community. It extends the operations of ASIS and their spying on Australians without the relevant justification. It is to do with the comments I made earlier: when governments ask for these expansions of power to intelligence organisations—to occur behind closed doors—then there needs to be a justification. We have simply not heard that justification or seen the appropriate safeguards to ensure that it is limited to what we all want to achieve, which is stopping the financing of terrorism.

Senator LUDWIG (Queensland) (10.17 am)—I think we might have dealt with it in part yesterday, but only to make it plain why Labor does support these amendments. What Senator Nettle is proposing is quite a unique position. She is opposing the idea that the Director-General of ASIS may communicate AUSTRAC information to a foreign intelligence agency. We have the AUSTRAC CEO, with the relevant safeguards and oversight, and the Director-General of ASIS, who, I presume, is a responsible person as well in terms of both his capacity as Director-General of ASIS and the act under which he works. The act also provides a limit to the work they can do which is offshore in that sense for foreign intelligence service.

What you then do is say that AUSTRAC cannot provide information to a foreign intelligence agency. But you have already accepted that AUSTRAC can, under existing legislation, provide information to a foreign intelligence agency. So we have the unique position where AUSTRAC can provide information to a foreign intelligence agency through what the current law allows, but the Director-General of ASIS cannot. If for some reason the government were to take up your position, it would not change one fact: they would get it in any event, just through another route.

This is a sensible amendment. It allows the Director-General of ASIS to communicate AUSTRAC information to a foreign intelligence agency in that instance rather than going through the bureaucratic loop that is currently in the legislation. What is then proposed from the Greens perspective is to add a bureaucratic loop. The information will still flow. On that basis I have not been persuaded by your argument as to why this should not be supported.

Senator NETTLE (New South Wales) (10.20 am)—I think it is worth making it clear that this is not the only place that I have made these arguments. I made these arguments in the previous round of anti-money-laundering legislation. My concerns at the moment are directed at ASIS, because that is what we are dealing with in this legislation, but I have made several comments in this forum and others about definitions of terrorism and the impact that has on the broad net that is thrown.

If we are going to take away the privacy of Australians, we need justifications and we need to ensure that, in taking away that privacy, it is for a specific purpose. We do not think that in this case or in previous cases it has been specific enough. We are not saying that there are not instances where it may be
appropriate. We are saying: ‘Let’s be clear. Let’s hear the justifications. Let’s ensure that, if we are taking away the privacy of Australians, as is proposed in this legislation, we are doing it for legitimate reasons and the legislation limits the privacy implications for Australians to what is absolutely necessary.’ This legislation does not do that. That is why we cannot support these particular amendments.

Going back to the figures I was talking about previously around staffing, I think ASIO is up to 110,000 staff. I was just stabbing in the dark on where we might be with ASIS. But it is certainly a large number of staff. We have seven, going on eight, Inspector-General of Intelligence and Security staff for overseeing. I am not saying that they cannot do a good job. But those seven going on eight include the admin staff. So their capacity to have that oversight is not extensive. I do not know—and by all accounts it does not sound like I am going to find out—how that compares to the number of staff that exist in ASIS.

Perhaps the minister can answer one more question: given that this is proposed to be the system for ASIS to access information through Austrac, have there previously been any instances of ASIS accessing Austrac information? The assumption is no and that this is setting up the system, but perhaps I am wrong; perhaps they have already been doing it through some other mechanism—whether it be through ASIO or whatever. I thought I should check that. It seems to be setting up a system on the way in which ASIS will get access to Austrac. Is it fair then to assume that up until now ASIS has never had access to Austrac information?

Senator JOHNSTON (Western Australia—Minister for Justice and Customs) (10.23 am)—I have no specific information. The Inspector-General has oversight of this and the annual report of the Inspector-General indicates that he takes his function as to the compliance of these agencies with the statutory provisions for objects and duties very seriously. I have no information with respect to what access, if any, has occurred.

Senator Nettle (New South Wales) (10.23 am) —I appreciate that information is not here. If the minister is able to provide us with any information about that during the committee stage of this debate, it would be appreciated. I accept it is information that is difficult to have here, but if he is able to provide us with any information on whether ASIS has had access to Austrac information in the past, it would be appreciated.

The TEMPORARY CHAIRMAN (Senator Murray) — The question is that amendments (2) and (3) on sheet QS416 be agreed to.

Question agreed to.

Senator Nettle (New South Wales) (10.24 am) — The Australian Greens oppose schedule 1 in the following terms:

(1) Schedule 1, items 3 to 6, page 3 (line 14) to page 4 (line 6), TO BE OPPOSED.

(2) Schedule 1, items 26 and 27, page 9 (line 16) to page 10 (line 7), TO BE OPPOSED.

(3) Schedule 1, item 32, page 10 (lines 22 to 27), TO BE OPPOSED.

(4) Schedule 1, items 35 and 36, page 11 (lines 1 to 9), TO BE OPPOSED.

There has been a lot of debate on these issues already. The Greens’ opposition to these items is that we should not be giving ASIS officers access to Austrac. I have been through the arguments already as to why that might be the case.

Senator Ludwig—I think they are getting the information anyway.
Senator Nettle—I am waiting to hear that from the minister. Do they already have access to ASTRAC? If that is the case it would be helpful to the debate to know that. If we are putting in place a regime to give them access and they have already got access, it makes you question what we are doing. I am still waiting to hear whether we can get that information. I have made the point before: we all want to stop the financing of terrorism, and legislation that we introduce that takes away the privacy of Australians needs to be justified and needs to be specific to that. Our concern is that this is not specific. If what was being proposed by the government was more specific, that would be a different matter and we would be able to look at that; but it is not. We think it is too open-ended and we are not satisfied with the safeguards that have been outlined.

We think that for the CEO of ASTRAC to make the decision as to whether ASIS is doing its job or not is not the best way to go. We do not think that the Inspector-General of Intelligence and Security is able to provide the level of scrutiny that we would like to see. That is not to say that they cannot do some good things, but we do not think that they are able to provide the level of scrutiny we think is appropriate. The public is not made aware—in the memorandum of understanding, for example—how this will occur and what kind of analysis of financial records is going on, particularly for legitimate businesses that may be caught up in this. That is where our focus is, obviously. We are not here to defend those people who are financing terrorism; we are here for those people who get caught when the net is thrown wide. We want to make sure that there are safeguards in place to protect those people. I do not think I need to expand on it any more, other than to say that we think the scope is too wide for that access to ASIS. We think the case has not been made and we think it is not defined enough to the task that we are all focused on, which is stopping the financing of terrorism.

The Temporary Chairman—The question is that schedule 1 stand as printed.

Question agreed to.

Senator Ludwig (Queensland) (10.27 am)—In the interests of dealing with this efficiently, I seek leave to move opposition amendments (1), (2) and (4) to (7) on sheet 5199. That would leave opposition amendment (3) to be moved separately.

Leave granted.

Senator Ludwig—I move:

(1) Schedule 1, page 6 (after line 6), after item 13, insert:

13A Subsection 6(7)
Repeal the subsection.

(2) Schedule 1, page 8 (after line 20), after item 19, insert:

19A At the end of Part 6
Add:

79B Deregistration and register of deregistered providers

(1) The ASTRAC CEO may, by written instrument, deregister a provider from the Register of Providers of Designated Remittance Services.

(2) A provider may be deregistered if:

(a) the provider is found to be not of good character; or

(b) the provider is convicted of a criminal offence against the Commonwealth, a State or a Territory with a penalty of 2 years or longer; or

(c) the provider ceases to be able to provide the service.

(3) A written instrument in accordance with subsection (1) is a legislative instrument.

(4) The ASTRAC CEO must maintain a register for the purposes of this Part, to be known as the Register of Deregis.
tered Providers of Designated Remittance Services.

(5) The register is not a legislative instrument.

(6) The AML/CTF Rules may make provision for and in relation to either or both of the following:
   (a) the correction of entries in the Register of Deregistered Providers of Designated Remittance Services;
   (b) any other matter relating to the administration or operation of the Register of Deregistered Providers of Designated Remittance Services.

(4) Schedule 1, page 14 (after line 5), after item 51, insert:

51A  Subsection 199(4)
After “currency” (twice occurring), insert “or a thing”.

(5) Schedule 1, page 14 (after line 5), after item 51, insert:

51B  Subsection 199(5)
After “currency” (twice occurring), insert “or a thing”.

(6) Schedule 1, page 14 (after line 5), after item 51, insert:

51C  After subsection 200(12)
Insert:
Officer may seize other evidence

(12A) If a police officer or a customs officer has reasonable grounds to suspect that a thing found in the course of an examination under subsection (12) or (13) may afford evidence as to the commission of an offence against subsection 53(1) or 59(3), the officer may seize the thing.

(7) Schedule 1, page 14 (after line 10), after item 52, insert:

52A  Subsection 251(1)
Omit “7”, substitute “4”.

Similar amendments were moved when the earlier bill was before us. They were moved because at that time the then minister wanted the bill through parliament before Christmas so he could come back and deal with amendments or any other matters post that. This is the opportunity to do that. Although we understood the minister’s intent at that time, Labor informed him that we would still take the opportunity to move our amendments then, even though we were not going to have an opportunity to look at some of his amendments, and that we would give the minister another look at them when the next opportunity arose.

So it is not a case that we are not dealing with the substantive bill—in other words, the charge could be levelled at us that we are dealing with amendments that do not go to this bill. I reject that. This is a case where I could argue that the sloppy and ill-conceived way these amendments and the original bill were brought forward has necessitated this response by Labor, and we are now in the position of having to move our amendments twice to give the government the opportunity of considering them in the principal bill. I will not make that allegation, although I probably just have.

This also goes to comments made by the minister in relation to the second reading amendment that was moved in the House. It is still relevant—that is, both the second reading amendment moved in the House and these amendments to this bill—because of the process that had been undertaken by the then minister, Minister Ellison, when he introduced the legislation. Labor did understand the reasoning for that, although we did not agree with or accept it.

Labor’s view on this has always been that the government has done this in a piecemeal way. I could go through the examples of where bandaid upon bandaid has been applied, but I will not take that course now. I think I have made those points a number of times. As best I can I will deal with these
amendments in short form, given that I have spoken to them before. The minister at that time indicated that he was not going to look at any amendments. He would have had an opportunity to look at these amendments since we last moved them until now. Labor was not to know that the minister was going to move on to bigger and better things and that a new minister would take the reins. Given that, I think it would be helpful to now go through them again but in precis form. I am sure the staff have already advised the new minister of these amendments and that they have been considered before, but sometimes the opportunity of hearing them can persuade. It is a slim chance, Minister, but you might be persuaded to accept them—at least, if not now you might be persuaded at some future time to consider why you did not.

Amendment (1) on sheet 5199 is in line with recommendation 4 in the report of the Senate Standing Committee on Legal and Constitutional Affairs. It seeks to strike out clause 6(7), which gives the power through regulation to effectively override and amend the act. This is known as a Henry VIII clause. In putting forward recommendation 4 it is the view, and has been the view of many committees of the Senate, including both the Scrutiny of Bills Committee and the Legal and Constitutional Affairs Committee, that Henry VIII clauses should, from the point of view of good governance, be opposed unless very sound reasons are provided. Those sound reasons are not in this bill. It has not been well argued or put forward by the government to substantiate the need for a Henry VIII clause. In fact this process we are going through now, with technical amendments and the inclusion of ASIS, is a good example of where, if there are requirements to amend the principal act, you can undertake that in a relatively short time, bring them forward and amend the legislation accordingly. I think the government’s argument for flexibility is overstated in this instance.

Amendment (2) on sheet 5199 picks up recommendation 5 in the committee’s report that a separate register be set up for persons prohibited from supplying a designated remittance service. I do want the minister to consider this amendment a bit further. When you set up a register of designated remittance services and it stays as a continuously updated register, you put new designated remittance services providers on that list. For the sake of argument, let’s take the informal, traditional or ethnic based remittance services known as hawala and the like: you might find at certain times a person who has committed repeat offences against the act or who is otherwise an undesirable person to have channelling money overseas. Under the regime that will be set up under this bill such a person would simply remain on the list of designated remittance service providers. So even where you have an offender under the legislation or a person who might be undesirable in a broad sense—they might be associated with a range of members of the criminal underworld, for example—they still remain on the list. Of course, the argument was that you know where they are. I am not sure that is the retort I would want to hear. We think it is a pretty dumb idea to leave them on the list. Human nature being what it is there may be mistakes. It seems quite strange to us that you would have a regime in which persons can be enrolled or qualified to do a particular thing, in this case provide a designated remittance service, yet when it is no longer desirable for the person to retain that qualification, when you have come to a conclusion that they should not actually continue in that role, you have no power under the legislation to take them off. So they sit there as a designated remittance service provider. It seems to be half baked; it does not seem to be a full scheme.
What Labor proposed was to set up, in effect, a separate register of prohibited persons. That way the AUSTRAC CEO would have the power to strike off a registered person who breaks the law and move them across to a separate register of deregistered designated service providers. In that way, if you wanted to know where they were then they would be clearly known to people; they would be on a list of deregistered providers of remittance services. So they would not disappear into the ether either. The previous minister—wrongfully, in my view—rejected this approach because he was setting up a registration scheme and not a licensing scheme. However, no-one is suggesting that a licensing scheme can disavow the current minister of that view. It is just a matter of what we could say is common sense.

If you were to look at some of the experiences in overseas jurisdictions, it might also help. This problem—where people have set up registers in good faith and find, particularly in this area, that for a range of reasons you might want to strike them out but you have no power to—is not new. It seems sensible under a range of circumstances to have that power to be able to blueline them—or redline them, as the case may be—so that they are removed from the register. The argument is that they then disappear into the underworld, so to speak. Put them on a deregistered list and track that. In that way you are also providing a public service and know who you should not be dealing with because they are not a registered provider.

Amendments (4), (5) and (6) on sheet 5199 did not arise from an issue raised in the committee’s report but were raised in relation to the power given to Customs officers under the act. I can deal with them in short form. At present the act gives power to Customs officers to search persons for currency and bearer negotiable instruments when leaving Australia but does not appear to give them the right to seize anything other than the currency or bearer negotiable instrument. If there was a bearer negotiable instrument and with it a list of all of the bearer negotiable instruments and a document with signatures on it demonstrating that it was attached to the bearer negotiable instruments but not part of them or something which might otherwise describe them, that may not be able to seized as evidence in that way. It would seem sensible to ensure that bearer negotiable instruments can be seized as well as any evidence that might be attached to them.

Recommendation 28 of the FATF provided:

When conducting investigations of money laundering and underlying predicate offences, competent authorities should be able to obtain documents and information for use in those investigations, and in prosecutions and related actions.

Section 199 of the act, which deals with unlawful cross-border movement of physical currency, and section 200, which deals with unlawful cross-border movement of bearer negotiable instruments, as presently constructed, in Labor’s view, fails to meet that test. Recommendation 28 has not been implemented in total. Presently, when you look at sections 199 and 200, you see that they permit an officer—for example, a Customs officer—to seize physical currency and bearer negotiable instruments that afford evidence of the offence under sections 53(1) to 59(3). They do not allow an officer to seize any other thing which may afford evidence of the offence under sections 53(1) to 59(3).

To put it another way, when an officer forms a reasonable suspicion that an offence has been committed, they may only seize the physical currency or the bearer negotiable instrument itself and not any other evidence of the commission of that offence. It would seem sensible to have that logical extension. It might be that the government advisers say that there is a general power under the Cus-
toms legislation to seize that evidence. I cannot find that general power, so if it is there then perhaps you could direct me to it. But, in this instance, even if there were a more general power, you would need a specific power to ensure that evidence could be obtained. It is also one of those ways in which you can avoid having an argument about whether the additional document that was taken at that time was legitimately taken or not.

It is easy to imagine instances in which a power would be required. As I have said, all of the instructions which might go to how you conceal that there are negotiable instruments—where you put them or where they are now hidden, for instance—might be helpful to demonstrate that the excuse given by the person as to why they have got the bearer negotiable instruments is not a valid one.

(Extension of time granted) As I have said, the government may argue that there is a general power. I do not think the general power exists but I am happy to be corrected. Amendment (7) on sheet 5199 is based on committee recommendation 13 to reduce the review time from seven years to four. Labor’s view is that for a piece of legislation such as this one, where we have already seen amendment upon amendment, a technical correction and an addition, seven years is too long. The argument that has been put in response to that by the government is that by the time the rules, regulations and guidelines are put in place and the scheme gets under way, seven years might be about the right balance. By that time, I suspect that it will have gone too far if any substantive issues arise that the government does not want dealt with. Early is better for the business, the financial institutions and AUSTRAC to make sure that everything is on track, that it is operating effectively and efficiently, that it is not creating a burden on government in terms of the regulatory scheme.

It makes more sense to ensure an early review to get the balance right, because in Labor’s view we do not want a situation where a raft of issues jam up and wait and do not get resolved until the seven-year point. Bureaucracy as it is often responds to businesses by saying, ‘The review is in seven years’—or such and such a date—’so we’ll put it on tick and wait until then.’ In the business world it needs to be resolved early, and the earlier review will give that opportunity. The other matters and the sheer amount of delegated authority this regime imposes militate against a long review. The capacity for regulations to amend the legislation, where you may then take that opportunity of amending the legislation, means that you should take that course. AUSTRAC are relatively inexperienced, and let us not underestimate their task. They have grown and doubled in size, effectively overnight. I understand the CEO is pleased in that sense and takes the challenge well, and I have full confidence—and Labor has full confidence—in his ability. But it is still a bureaucracy that he has to manage as a regulator. Going from financial intelligence, or FIU, to being a regulator-enforcer, he has to undertake a range of other tasks, as well as having to deal with the legislation and the legislative process. The problem is the ill-effects for business if you get it wrong.

Senator MURRAY (Western Australia) (10.46 am)—I rise to speak to the six opposition amendments to the Anti-Money Laundering and Counter-Terrorism Financing Amendment Bill 2007, which are being moved together on sheet 5199. Before doing so, I wish to briefly remark on the earlier debate to say that the Democrats have also recognised the difficulties that exist with a possible overreach with respect to this legislation. In a military sense you might describe
it as collateral damage—in other words, it was not intended but it occurs. I thought that the point made indirectly by the minister is the accurate one. The obligation is on the Inspector-General in his or her annual report to ensure that a sensitive eye is kept on the application and implementation of this legislation.

The broad policy principle that lies behind this act and this amending bill is supported by the Democrats, because we think this is a public interest matter which needs to be pursued. But of course we are not blind to the dangers that exist with privacy, and we hope the government is not blind to that. The government cannot ensure, cannot guarantee, that every single individual intelligence agency will act properly at every single moment—that is not possible in human affairs—so the only device we have is in fact the device of review. I would simply ask the minister to confirm that the government will ask the Inspector-General to be as diligent in this area as possible, bearing in mind the legitimate concerns that have been raised in that regard.

I turn now to the opposition amendments—and I will deal with all seven, if I may, in the brief. They have been well motivated by the shadow minister, and I do not need to repeat that. His item (1) is an amendment that was proposed by the Democrats last time the bill was before the Senate. It was supported by the official opposition, and of course the Democrats again support this amendment. I suspect that, in the usual course of the Senate since 2005, the government are likely to oppose the opposition amendments. If they do so, I would urge them to reconsider these matters. This is an amendment which arises from committee consideration. From memory, it was unanimously supported and it is a valid one. Similarly, we think that item (2) is a sensible technical amendment which will make the working of the legislation smoother. Item (3) extends the application of this subdivision to the United Nations and, given the primary role the United Nations is now taking in coordinating these matters, might well be worthy of consideration by the government. On the information available to us at present, we think that is probably the right move, unless the government can articulate strong reasons why it would not be.

Item (4) relates to the application of subsections to apply to things other than simply physical currency. It means that the police can also seize a thing as described in the legislation. Presumably the thinking is that if someone has a computer with information on it that shows currency transactions then that is the sort of thing that will be useful to us to seize. People often do not carry physical currency and collating evidence of money laundering requires a sophisticated and flexible approach. It could also refer to negotiable instruments, but the opposition has attempted to allow a broad net. It seems to me, unless the government can articulate some real reasons why it is not sensible, to be an amendment that provides necessary flexibility.

Items (5) and (6) are attached to the same approach. Item (7) is that the act be reviewed in four years, rather than seven, which reflects recommendation 13 of the committee report. In view of the sensitivities of moving into an area in which privacy may be a concern or in which unintended collateral damage might occur to individuals in some circumstances, I urge the government to consider a shorter review period. Even if you are minded to reject it at this time, there is nothing to stop you bringing that period forward. I think it is a legitimate recommendation—it is a unanimous recommendation from the committee—which should be respected.

Senator Johnston (Western Australia—Minister for Justice and Customs)
I am obliged to Senator Murray for his assistance and contribution with those remarks, and I am also very much obliged to Senator Ludwig for his hard work on this subject. The government has previously expressed its view on these amendments, as I am sure Senator Ludwig anticipates. We are not in a position to accept them. We take on board everything that is being said. I can see that the amendments are presented in a spirit of seeking to further enhance and preserve privacy and to do the sorts of things that they do, which I respect. The situation with the Henry VIII clause is one which, obviously, concerns all senators. That is not to say that there are not times when a Henry VIII clause has no legitimate function. This is an instance when one is minded to say that the response of government to a very versatile, dynamic financial system needs to be extremely responsive and quick and equally dynamic and innovative. Accordingly, we must be able to respond to the mechanisms and devices of the financial services industry which facilitate the rapid movement of large sums of money.

The question that springs to mind is, ‘What are the safeguards?’ The safeguards are that such regulations made to respond to the products, mechanisms and devices are simply disallowable in parliament. I think that answers the need for the clause. I think the clause is a legitimate use of an extraordinary power. It is not used without considerable consideration. This is one of the rare occasions when the power is legitimate and should be used.

The government, noting the detail that has gone into it, does not accept the amendment on deregistration. As I am sure Senator Ludwig has heard, the act of 2006 instituted a registration regime, not a licensing scheme. It is important that the registration system captures all providers of remittance services and maintains the capacity on one database to revisit the previous intelligence as gathered. I think that is a very important point that, respectfully, has not been considered with respect to this amendment. Taking information off has the potential, almost on a commonsense basis, to undermine the integrity of the system.

Senator Ludwig—We’re not taking them off.

Senator JOHNSTON—Well, deregistering them.

Senator Ludwig—We’re flagging them on the computer. What sort of computer are you running?

Senator JOHNSTON—A very good one.

The TEMPORARY CHAIRMAN (Senator Murray)—Order! Senator Ludwig, you can respond when the minister is seated.

Senator JOHNSTON—The government does not see that the amendments regarding the search powers are necessary. To use a phrase used by Senator Ludwig, I am giving a precis because I know that my predecessor has provided all these arguments, but both for the sake of the record and respecting the mover of the amendments, the government does not see these amendments as necessary; should operational experience demonstrate that such amendments are necessary—bear in mind it is a three-year roll-out package with a seven-year review—this can be considered when the legislation is reviewed in accordance with section 251. Bear in mind also that there is a further tranche with respect to other modes of financial transactions coming.

Senator Ludwig—Really?

Senator JOHNSTON—Well, it is coming. I am sure, given the intense legislative program, Senator Ludwig and I will be almost the first to know.

There is a technical difficulty with the proposed amendment (4), which seeks to
empower a police officer or Customs officer to seize further evidence which might be relevant to the commission of an offence against section 59(3) of the act. An offence against section 59(3) can only occur if a person has first been required to produce a bearer negotiable instrument to a police or Customs officer under section 200 or if the police or Customs officer has found a bearer negotiable instrument during a search of the person under section 200. Section 59(1) provides that if a bearer negotiable instrument is produced under section 200 or found during such a search then the police or Customs officer may require the person to give the AUSTRAC CEO a report about the bearer negotiable instrument that has been produced or found. The offence in section 59(3) is for failing to provide a report when required to do so under section 59(1), which would necessarily occur after the person has been searched under section 200. It is unlikely in those circumstances that any other evidence could be found on the person pursuant to the search under section 200 which will assist in the prosecution for failing to report under section 59(3).

The general power of search flows from the Crimes Act 1914, as amended, and the ability to seize evidence is upon a suspicion of an offence under part 1AA of the Crimes Act 1914, as amended—as I have said. That is the general powers of search and seizure, where if there is a legitimate suspicion of an offence such powers can be used.

With respect to the argument which I think was also raised by Senator Murray, the government does not support the reduction of the review period. As I have said, the legislation will not be operational until 12 March 2015. Reducing the period in section 251 to four years will result in a full-scale review of the act after only nine months of fully implemented operation. We clearly say that that would be unreasonable and that you would require a longer period to analyse and assess the operation or capacity and outcomes of the capability.

I think I have answered Senator Murray’s question. I do not believe there are any other matters, other than to say that this is about the third time, with respect, that we have been through why the government proposes to enact these enactments as they are and why the government is not minded to go with the opposition’s amendments.

Senator LUDWIG (Queensland) (11.00 am)—I thought I would have another go at the deregistration and registration scheme. Minister, I will put it simply: you have excellent computers. You can actually have all the information on the same computer. You do not need a separate list. You can simply flag the information. I am sure your computers are sufficiently modern that you can differentiate on one list, both a checked and unchecked listing, as to whether a remittance service provider is registered or deregistered.

The beauty of having a registered and deregistered list—and I will use a common example—is that you have a list of people: some ‘good’ and some ‘bad’. Your view is to put them all on the one list without differentiating them. My view is that, especially in providing this service, you could put them on one list and flag those people who were ‘bad’ people. Your view is to put them all on a list but have no way of differentiating them. I am sure that your computers are capable of providing that differentiation. You will find that agencies in Australia’s jurisdiction and also those in the jurisdictions of many other countries are struggling with this issue. If you cast your net to the UK, you will find that agencies dealing with remittance service providers in implementing FATF are having the same problem as has arisen in other jurisdictions. In fact, I will go so far as to say that, when you come back to this place with a
solution, I will not be surprised if you try not to look as though you have simply picked up Labor’s amendment. That will be the more interesting thing to watch.

As you said, Minister, you have responded to most of these issues before so I will not deal with these matters any further, other than to encourage you to support them or at least to have a look at them.

Senator JOHNSTON (Western Australia—Minister for Justice and Customs) (11.03 am)—We have had a look at them. We cannot support them and, with respect to the actual nuts and bolts of the register and the deregister list, we have put the matter to AUSTRAC and the agency has indicated that it prefers the legislative framework and model as laid out. To that extent, we have to go with what it thinks is the most efficient.

The TEMPORARY CHAIRMAN (Senator Chapman)—The question is that opposition amendments (1), (2), (4) to (7) be agreed to.

Question negatived.

Senator LUDWIG (Queensland) (11.03 am)—I move amendment (3) on sheet 5199:

(3) Schedule 1, page 11 (after line 22), after item 40, insert:

40A After section 132

Insert:

132A United Nations deemed to be a foreign country

For the purposes of this Subdivision, the United Nations is deemed to be a foreign country and its constituent bodies are deemed to be a foreign law enforcement agency.

Before I deal with the amendment—which will not take long—I have a couple of questions on which I seek clarification. Firstly, does AUSTRAC share financial intelligence information with Interpol and, if so, on what lawful basis under the present act does it share this information? It is a simple point.

Senator JOHNSTON (Western Australia—Minister for Justice and Customs) (11.04 am)—Interpol is not a designated agency, as I am instructed, and there is no sharing of information with that agency. I cannot take it any further.

Senator LUDWIG (Queensland) (11.05 am)—It begs the question as to why you would not share financial information with Interpol. Secondly, does any other Commonwealth agency share financial intelligence information with supranational or multilateral bodies and, if so, could the minister explain the lawful basis of that? I am trying to follow which supranational, multinational or lateral bodies—to give a broad range of bodies—are currently sharing information with AUSTRAC. You said no in relation to Interpol.

Senator JOHNSTON (Western Australia—Minister for Justice and Customs) (11.05 am)—Only those agencies that are designated agencies as defined under section 5 of the act can receive the information.

Senator MURRAY (Western Australia) (11.06 am)—The question arising harks back to the ASIO-ASIS debate—that is, could a designated agency that gets this information from Australia then in turn give that information to a non-designated agency such as Interpol? In other words, how do you cut off information you are given from one agency going to another with which they may have an agreement?

Senator JOHNSTON (Western Australia—Minister for Justice and Customs) (11.07 am)—All I can say is that, in order to receive the information, it has to be a designated agency. My instructions are that Interpol, for example, is not a designated agency and therefore would not be able to be the beneficiary of any information. I simply reit-
erate all of the fail-safes that I went through yesterday. That is, the application has to come from the CEO of, in this instance, ASIS, for the government’s amendments. He has to be satisfied of certain things, namely that the information is necessary in the fulfilment of his role and powers. The CEO of AUSTRAC must then make a similar assessment. The information must be designated, no other information must pass, and the agency itself must be a designated agency from the beginning of the chain. If it is not a designated agency, it cannot access the information. I think that indicates that the concept of an onshore agency, as designated, passing to a non-designated agency in a sort of third person type event would render the initial assessment process such that the information would not be permitted to flow.

Senator MURRAY (Western Australia) (11.08 am)—The minister may misunderstand my question. It seems to me that Australia may exchange information under this legislation with a foreign intelligence agency, for instance. How does the minister suggest that, if a foreign intelligence agency wants to pass it on to Interpol, Australia would be able to interfere with that? I do not think they would. There may be no good reason why Interpol should not get the information but, as far as I can see, a foreign intelligence agency which has a relationship with Interpol would be able to pass on information which it received from Australia. That would seem to be possible.

Senator JOHNSTON (Western Australia—Minister for Justice and Customs) (11.09 am)—Sections 133(1)(a)(i) and 133A talk about the confidentiality of the information. I want to clarify that the CEO of the Australian Federal Police or the CEO of the Australian Crime Commission can pass on AUSTRAC information to a foreign law enforcement agency under section 132 if authorised by the AUSTRAC CEO—and we come back to the powers and duties of the CEO on that basis.

Senator Murray—So Interpol could get it?

Senator JOHNSTON—Interpol is not a foreign law enforcement agency.

Senator MURRAY (Western Australia) (11.10 am)—I am sorry, Minister; I am not trying to be obtuse, but a foreign law enforcement agency with which Australia legitimately deals, in terms of this legislation, may itself pass on that material to Interpol. You have no means of stopping that, monitoring that, reviewing that or preventing that, surely.

Senator LUDWIG (Queensland) (11.10 am)—What there seems to be, Minister, is a massive hole in how you actually address sharing of financial intelligence information with overseas jurisdictions. What we have now discovered is that AUSTRAC cannot, with its relevant safeguards, share it with Interpol—which is effectively a very large organisation designed to assist in intelligence sharing and information sharing and be able to assist others. But it is not only Interpol; it is other bodies as well, it seems. What you seem to have is a situation where AUSTRAC can share it with a foreign intelligence organisation but not with Interpol, with a supranational multilateral body—with the relevant safeguards; we are not talking about open access. We are talking about where there is a properly constituted, demonstrated reason for sharing intelligence. One example that comes to mind is AWB Ltd.

What you have got is this hole where you want to be able to insulate AUSTRAC—and your government, it seems—to ensure that, if the Volcker inquiry wants information, it cannot get it. It may be necessary for the United Nations, in a properly constituted inquiry, to have that relevant information or at least be able to access it with the relevant
safeguards. The other position you would have is that, if you do not want to cooperate with bodies such as Interpol, you would hide behind that legislation. Mr Volcker himself described the level of cooperation offered by the Howard government as ‘beyond reticent, even forbidding’. That is how Volcker described this government in terms of providing information. I interrupted Senator Murray’s train of thought; but I will come back to this shortly.

Senator JOHNSTON (Western Australia—Minister for Justice and Customs) (11.13 am)—Just so that senators are clear with the way the legislative framework operates, we have defined designated agencies, and there are (a) through (x) of them, including, amongst others: the Australian Crime Commission, ASIO, the Australian Commission for Law Enforcement Integrity, the Australian Competition and Consumer Commission, the Customs Service, the Federal Police, the Prudential Regulation Authority, the Treasury Department, the New South Wales Crime Commission, the Crime and Misconduct Commission of Queensland, any state and territory royal commission, and so on. I have attempted to give a flavour by enumerating those agencies that may access AUSTRAC information.

Section 132 clearly sets out that the CEO may communicate AUSTRAC information to the government of a foreign country if he is satisfied that:

(a) the government of the foreign country has given appropriate undertakings for:

(i) protecting the confidentiality of the information; and

(ii) controlling the use that will be made of it; and

(iii) ensuring that the information will be used only for the purpose for which it is communicated to the government of the foreign country...

We have to make an assumption here as to the integrity and veracity of the foreign government. They have given an undertaking that the information will be used only in accordance with what is required to access that information, so the CEO has a jurisdictional threshold question. It goes on:

(b) it is appropriate, in all the circumstances of the case, to communicate the information to the government of the foreign country.

I respect the concerns of Senator Murray in this, but we must have the capacity to use the information to our benefit. We are confronted with the almost philosophical question of, ‘What if the country breaches its undertakings?’ That is just a circuitous nonargument that everything we do has to confront. Indeed, we have sought to put the obligation upon the CEO to make a thorough and detailed investigation weighing up what the request is for, how vital the information is and also the benefits to his system and the national interest. It goes on:

(2) The AUSTRA CEO may, in writing, authorise the Commissioner of the Australian Federal Police to have access to AUSTRAC information for the purposes of communicating the information to a foreign law enforcement agency under subsection (3).

You would say, ‘How is that going to work?’ The answer is:

(3) The Commissioner of the Australian Federal Police may communicate AUSTRAC information to a foreign law enforcement agency if the Commissioner is satisfied that:

(a) the foreign law enforcement agency has given appropriate undertakings for:

(i) protecting the confidentiality of the information; and

(ii) controlling the use that will be made of it; and

(iii) ensuring that the information will be used only for the purpose for which it is communicated to the...
foreign law enforcement agency; and

(b) it is appropriate, in all the circumstances of the case, to do so.

It strikes me that it would be very difficult to go any further in charging the commissioner and the CEO of AUSTRAAC with a more clear duty to ensure that there is a nexus, there are undertakings and it is in the national interest to proceed with the dissemination of information to those agencies. We have said that the AFP Commissioner carries a similar burden. I think the framework, with respect, is very thorough, is robust and is in the national interest such that we can in terms of money laundering and counterterrorism go into parts of the world where we suspect money is flowing across our borders for the ill-gotten ends of money laundering and financing terrorism.

Senator MURRAY (Western Australia) (11.18 am)—I thank the minister for that lengthy response. But it actually highlights a difficulty. I do not take a restrictive view of these arrangements; I take a more expansive view. I think it is appropriate, as you would gather from my support for the Labor Party’s amendment, for international bodies such as the United Nations and Interpol to be in the frame, if you like, of anti-money-laundering cooperation internationally periodically, as appropriate and where the circumstances warrant it.

Minister, I think your answer unnecessarily limits the prospects that will be before our own law enforcement agencies and the realities of world money laundering. Let me give you an example, which I suggest might not be hypothetical but might actually be very common. The British government are the foreign government we are dealing with, and they make a request to us. But on the same money-laundering issue they are dealing with, for instance, the United States government—and we would have no qualms about cooperation with them—the French government and Interpol. I cannot conceive of a situation where the Chief Executive Officer of AUSTRAAC would say to the British government: ‘Thank you for application. You can use this information as requested by you to interact with the French and the United States governments with respect to these particular targets. But, by the way, we are prohibiting you from using Interpol.’ or, ‘We are prohibiting you from interacting with the United Nations.’ That just does not make sense to me.

So, whilst you may not have formally designated them, I would think there is very little likelihood of those sorts of restrictions being put in writing to a government which is interacting with a number of other governments and which might want to interact with an international agency such as Interpol where that ties into the money-laundering circumstance. So, unless you are going to confirm to me that the Chief Executive Officer of AUSTRAAC will in each case prohibit each foreign government from dealing with the United Nations or Interpol, if that was part of the web, I will assume that it is likely to happen.

Senator JOHNSTON (Western Australia—Minister for Justice and Customs) (11.21 am)—The reason that I read out the section, for the benefit of the Senate, was to indicate that there is a responsibility upon the CEO. He may make a determination. We have subsections (1)(a) and (b). Subsection (1)(b) enables the CEO to make an independent determination appropriate in all the circumstances of the case to communicate the information to the government of the foreign country. Guided, as he would be, by the provisions of (a), he may do that. He may make the discretionary decision that he wants the information to go through the channel as you have described. Now, the
consideration would obviously be the national interest. The government takes the view that that is appropriate.

Senator Ludwig (Queensland) (11.22 am)—Is it not in the national interest to cooperate with the Volcker inquiry? That is the reverse of your argument. What you are effectively saying is that the Austrac CEO can cooperate with the government of a foreign country, but it cannot provide information to a multilateral body such as the United Nations or a body that is otherwise juxtaposed, where you then have to ask which government you have to go to in order to talk to the body. It is a supranational body. Your arguments earlier about ASIS wanting direct access are apposite here. It is the same argument you put then. The reason you have amended it to include ASIS—and we have agreed to it—is that you want direct access to financial intelligence. That makes sense.

Can you then confirm that Austrac has never provided information to FATF, the Financial Action Task Force—the body that we then deal with in terms of their responsibilities to be able to make recommendations and deal with anti-money laundering? This is about whether this government is serious about cooperating in anti-money laundering not only nationally but also internationally, and not only with foreign governments but also with other bodies, including the UN, especially given what Volcker said about this government’s attitude when he tried to inquire. It could have been put to bed then if we had an international perspective. You are still now arguing against it. I am amazed.

Senator Ludwig (Queensland) (11.27 am)—Let me understand this: you are not using this for Operation Wickenby? Can you rule it out? Operation Wickenby does not use financial intelligence from Austrac on your analysis.

Senator Johnston (Western Australia—Minister for Justice and Customs) (11.27 am)—For the shadow Attorney-General to ask such a question in an ongoing inquiry discloses a complete lack of understanding and a misconception of what is ever going to be answered with respect to the ongoing investigation and prosecution. The short answer is: don’t go there.

Senator Ludwig (Queensland) (11.28 am)—I am not asking about operational matters. You went there first by limiting the role...
of AUSTRAC to an area. I am simply giving you an example of where information may or may not be used. You confirmed in your earlier speech that it could not be used and that I was somehow wrong. It seems to be that, when you look at predicate offences and all of that information on which AUSTRAC can provide financial intelligence, you can ensure that financial intelligence is used appropriately in a range of investigations domestically. I am simply trying to establish why you do not use it internationally and you limit it in such a way that you rule out FATF, the OECD, Interpol, the United Nations and other bodies with appropriate safeguards. I do not know the reason. You have not been able to enlighten me as to why you will not. I am waiting for an explanation of that. If you are going to provide it, provide it now. If you do not know, say so—’I don’t know.’ If you do have an answer, I would be keen to understand it.

Senator MURRAY (Western Australia) (11.29 am)—It may assist this particular aspect of the debate to refer to the Bills Digest No. 105 with respect to this bill. On its penultimate page, in the subsection entitled ‘Amendment to the Inspector-General of Intelligence and Security Act 1986’, it refers to item 62 in that paragraph and then follows it with:

Note that the Tax Laws Amendment (2007 Measures No. 1) Bill 2007 introduced on 15 February 2007 amends the secrecy and disclosure provisions in the Taxation Administration Act 1953 to allow the Commissioner of Taxation to make disclosures of taxpayer information to Project Wickenby taskforce officers and to officers in other taskforces that may be prescribed in the regulations. Project Wickenby is a multi-agency taskforce—

and the minister will be able to confirm whether AUSTRAC is on that taskforce—addressing alleged tax avoidance and evasion involving the use of offshore entities, which may also entail other features such as large-scale money-laundering, fraud, or breaches of the law relating to the regulation of financial markets or corporations.

Now, self-evidently, the Parliamentary Library is not an agency of the government; it is an agency of the parliament and its views are not those of the government, but it clearly has the view that AUSTRAC has a part to play, not only in the prevention of the commission of money-laundering crimes but in following up crimes which have already been committed. I must say very clearly that I have absolutely no objection to AUSTRAC information being used in that way. I think it is perfectly proper and, in fact, highly desirable. I will support Project Wickenby facilities being enlarged to maximise the prosecution of anyone who has been engaged in money laundering for criminal or tax avoidance purposes.

I will repeat that my understanding of the minister’s earlier response is that the chief executive officer of AUSTRAC may, on application, allow appropriate information in appropriate circumstances to be distributed via a foreign government to a multilateral agency, which I would assume for internal investigations would be something like the Project Wickenby task force, or externally might include agencies such as Interpol.

Senator JOHNSTON (Western Australia—Minister for Justice and Customs) (11.32 am)—I respect Senator Murray’s concerns on this but the point I made needs to be clear, because Senator Ludwig has this misconception. This is a financial intelligence unit. AUSTRAC is a financial intelligence unit; it data mines for information. It acquires intelligence. It does not prosecute; it does not enforce.

Senator Ludwig—Yes, it does.

Senator JOHNSTON—With respect to reporting it may—in order to access the in-
formation. There is that other aspect; you are quite right. In terms of prosecution—and you can talk about Wickenby or any other prosecution—it provides intelligence to the enforcement agencies. The enforcement agencies then, using that information, go forward and accumulate the case. It may be that they revert back to AUSTRAC in the future, during the investigation, but the information is intelligence information. They take the intelligence and, if it was a bank account transaction, the AUSTRAC information would not necessarily be relevant to that. It would identify it but the bank records would be seized and the bank records would be, under the best evidence rule, the evidence that would be produced to substantiate the case—not the fact that there was some data on the AUSTRAC database. Do you follow what I am saying here?

The information flows from the intelligence gathering agency, AUSTRAC, to the enforcement agencies. Just keep that in mind. That is the way the system is designed to work. Indeed, there may be some obscure circumstances where evidence is required—I would not want to predict what can happen in cases—but it is not intended to be like that. It is simply to provide intelligence. The enforcement agencies would then go forward and on the basis of what they had received the designated agencies would prepare a case that was suitable for prosecution. That is the way it works.

Senator MURRAY (Western Australia) (11.35 am)—As I understand the questions from the shadow minister, he is of the view that the legislation, to use an example, would prohibit the provision of information to the Volcker inquiry—let us assume that it is current and not historical. That is what he assumes. My assumption from your responses, and from my understanding of the legislation, is that the Chief Executive Officer of AUSTRAC—if, for instance, asked by the United States government to provide information which was in turn to go to Mr Volcker—could make that determination. Or, to use another example, if the British government wanted information which was to be transferred to Interpol for a different operation, the Chief Executive Officer of AUSTRAC could make that determination. Or, internally and domestically, if the intention was that Project Wickenby needed information he could make a determination to pass on that information. That is my understanding. Although the legislation is explicit with respect to foreign governments and in terms of certain designated agencies it does not prohibit multilateral transfers of information in appropriate circumstances as determined by the Chief Executive Officer of AUSTRAC. That is my understanding. Unless you are going to say I am wrong I therefore would assume the legislation is as open-ended as it needs to be.

Senator JOHNSTON (Western Australia—Minister for Justice and Customs) (11.37 am)—I think that is right; that is correct. In your example, the CEO would have to be satisfied that the use to be made by the government of another country—the United States in your example—was within all the consideration thresholds of the CEO. He would ask, ‘What is this information for?’ The information would not be provided to the Volcker inquiry. The information would be provided to the government, and they would be required to specify what it was going to be used for. Bear in mind that it is intelligence and in all three systems we have talked about here—the United Kingdom, the United States and Australia—there is no evidentiary capacity in the foreign use of that information. It is purely intelligence. If all you had was the intelligence and you were unable to substantiate it with admissible admissible evidence, you would have very little.
Senator Ludwig (Queensland) (11.38 am)—I understand the government’s position. They are making their case, I guess. One of the earlier questions asked was whether Austrac shares financial intelligence with FATF. I did not quite catch whether you answered that particular question.

Senator Johnston (Western Australia—Minister for Justice and Customs) (11.38 am)—I am obliged to Senator Ludwig for revisiting that. I have an answer. FATF, as I am sure the senator is aware, is a body established to set global standards. It does not have any investigative functions apart from monitoring the member nations to ensure compliance with the standards as set out. Austrac is a financial intelligence regulator. Its function is to share information, but FATF is not a beneficiary of that function.

Senator Nettle (New South Wales) (11.39 am)—We are coming towards the end of the committee stage, and I wanted to check whether the minister had any more information about whether or not ASIS is currently able to access Austrac or has done so in the past. The crux of the issue that we have been dealing with is about giving access. Have you had the opportunity to get any more information about that?

Senator Johnston (Western Australia—Minister for Justice and Customs) (11.39 am)—That is why we are enacting what we are enacting. It is not a designated agency and it has not accessed the information. That is what I am instructed.

Senator Nettle (New South Wales) (11.40 am)—I addressed this before. One would assume that, given this legislation is about setting up a system for ASIS to access Austrac, ASIS have not previously had access to Austrac, but I thought it was worth asking the question. Senator Ludwig was indicating previously—and if I am mis-representing him, I ask him to please correct me—that he thought that they already had that access. That is the reason I asked the question. I understand what the legislation is about and what follows from it. But I thought it was worth asking whether that meant that up until now ASIS have never had access to Austrac information.

Senator Johnston (Western Australia—Minister for Justice and Customs) (11.40 am)—Yes.

Question negatived.

Bill, as amended, agreed to.

Third Reading

Senator Johnston (Western Australia—Minister for Justice and Customs) (11.42 am)—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

Aged Care Amendment (Security and Protection) Bill 2007

Second Reading

Debate resumed from 26 February, on motion by Senator Scullion:

That this bill be now read a second time.

Senator McLucas (Queensland) (11.42 am)—The genesis of this legislation was in the horrific allegations of sexual abuse in a residential aged care facility in Victoria in February of 2006. All Australians heard about this. People will recall the allegations of rape of an elderly woman. Those allegations were aired on The 7.30 Report by her granddaughters. Each and every Australian was offended at the commentary that we all had to endure during that time. Those media reports, as we know, were followed up with further allegations of abuse. While of a lesser
nature, they offended each of us. These were allegations of victimisation and of mental torture. Horrific events were alleged and in some cases substantiated. They offended us all. It is important to say, though, that many operators and staff of residential aged care facilities contacted my office at and around that time and they were equally offended at what they had seen. I want to place on record my recognition and respect for those many providers of residential aged care who have principles and processes in place that mitigate against the abuse of the elderly in their care. They have, through careful consideration, constructed a culture of respect and dignity in their facilities and they are to be commended for that. The Aged Care Amendment (Security and Protection) Bill 2007 before us today is the government’s response to the events of last February.

Labor will support this legislation. But, in doing so, I need to say that it is extremely limited in its scope. It only addresses serious sexual and physical abuse in residential aged-care facilities. In doing so, it reinforces the myth that abuse of the elderly happens predominantly in aged-care homes. Whilst data in Australia is limited, international research does tell us that between two and six per cent of older people are abused in the community generally. We know that abuse in the community is far more prevalent than it is in aged-care facilities. We also know and are concerned by the fact that abuse mainly occurs from a family member.

Abuse has a range of forms. It is not just sexual and physical abuse. It also includes psychological abuse, emotional abuse and neglect. That is an area that we need to consider far more. Neglect of an elderly person, whether intentionally or through poor training of care providers, is considered abuse as well. As I said, this legislation only addresses serious sexual and physical assault and only in residential aged-care facilities.

However, there are events that are occurring in residential aged care that require a response. I have been questioning the department since these events. Unfortunately, we were advised in February estimates that there have been 29 cases of abuse reported to the department and that six staff members have been charged following those reports. That warrants a response, and this legislation will be supported in the hope that it will assist to protect the 166,000 residential aged-care residents in Australia.

The elements of the bill before us include a requirement for compulsory reporting, a protection of those who report, the establishment of investigative principles by regulation and significant changes to the aged-care complaints process. When suspicion on reasonable grounds—and that is important—is held by an approved provider or an allegation of unlawful sexual conduct, unreasonable use of force or assault is made to an approved provider then the approved provider is required under this legislation to report that allegation or suspicion to the police within 24 hours and to the Secretary of the Department of Health and Ageing.

Under this legislation, approved providers are afforded discretion not to report some allegations or suspicions of sexual or physical abuse. In these cases, covered by the investigation principles, all three of the following circumstances must exist: firstly, the approved provider must have reasonable grounds for believing that the offender is a resident; secondly, a medical diagnosis must have been made of mental impairment; and, thirdly, there must be a behaviour management plan in place for the suspected offender. Staff members are required to report assaults. They can report to the approved provider or an approved provider’s key personnel, to the police, directly to the secretary of the department or to another person authorised by
the approved provider to receive reports of suspected reportable assaults.

During the Senate inquiry into this bill a number of issues were raised relating to compulsory reporting. I firstly want to go to the issue of ‘reasonable grounds’. The legislation indicates that if a suspicion on reasonable grounds is held by a staff member or an approved provider then compulsory reporting is required. Interestingly, though—and we will go to this during the committee stage—an allegation of abuse must be reported irrespective of whether there are reasonable grounds. It does seem to be anomalous. It was raised by a number of witnesses to the committee. As I said, we will pursue that during the committee stage.

The second issue is the issue of reporting to police. Concern has been expressed about consultation with state and territory police forces. The department indicated during the inquiry that they had convened meetings with the ACT, Queensland and Victoria between themselves and their police forces and that other meetings were to be arranged. I have to say that that indication was met with some bemusement by residential aged-care representatives in Queensland. They indicated to me that it has taken them some months and many meetings with the Queensland Police to develop processes for the police checks in that state. The concern that has been expressed, about whether the various police agencies have been fully consulted, remains.

Many witnesses to the committee talked about the need for sensitivity from police when entering aged-care facilities. There was concern expressed about uniformed officers regularly attending residential facilities and the impact that that may have on the health and wellbeing of residents generally. The question was also raised of the need for privacy for those people who had been abused.

The visitation of police into aged-care facilities will have to occur carefully, respecting the privacy and the dignity of all residents.

There was also concern about compulsory reporting leading to over-reporting as residential aged-care providers report anything so their obligations under this legislation are covered. For these reasons, and because of the lack of a clear response by the government, Labor supports the second recommendation of the Senate inquiry into the bill. The intent of that recommendation is to flag to the government that vigilant and ongoing monitoring of the operations of compulsory reporting needs to start from day one. The alternative consideration is a recommendation of a review in two years. Those two options are not mutually exclusive. It is important, though, that we send a strong message to the government that the committee was concerned about how compulsory reporting will work. Labor will be monitoring the implementation of this component closely to ensure that its operation does in fact improve the protection of our vulnerable elderly.

The other issue that was raised about compulsory reporting is the discretion not to report. As outlined earlier, the bill establishes a regime where if the perpetrator is believed to be a resident and has a medical diagnosis of mental impairment and a behaviour management plan is in place then the discretion not to report exists. The issue was canvassed at the inquiry, and we still require resolution on how the medical diagnosis is to be made and recorded. There was conflicting evidence provided to the inquiry and, once again, we will pursue that at the committee stage.

I think the Aged and Community Services Association and Aged Care Queensland have written to all senators indicating their concern about the implementation of the compulsory reporting regime and that in fact it removes a right that every Australian has not
to report abuse. Every person who has been sexually or physically abused has a right not to pursue that with the police. But this legislation ensures that any abuse is reported to police. It is a fraught question because it changes the rights of those who live in residential aged care, and it is one that I have trouble with.

However, Dr Yates, who is I think an experienced paediatrician from the Australian Medical Association, answered a question which was asked on behalf of Senator Moore at the inquiry. I thought his evidence was quite compelling. The chair, on behalf of Senator Moore, asked Dr Yates what he would do in a circumstance where a resident requested not to report an assault which they had received from a staff member. The question was, ‘Should we not take it any further?’ He was asked what he thought. He said:

Too bad. This is not an issue for that person alone. That is an indication of risk to everybody else in that residential care service and anywhere else that that casual worker might be working. The other thing I would have to say is that residents are sometimes frightened in that environment. They fear being thrown out. They fear not receiving the services. If you cannot walk and you are dependent on the people around you to stand you up so that you are not wet that day, it is very tough. I think that, irrespective of that, it will have to be worked through with the resident. Even if they have cognitive impairment, you would have to work through it with them … I do not think you can allow a situation where there has been a clear episode of abuse and the resident says, ‘Don’t take it any further,’ because the alleged perpetrator of that abuse is a risk for everybody else in the residential care centre.

I think Dr Yates’s commentary has to be considered and adopted. Another element of the legislation is protection of those who report abuse. The legislation requires that staff members who make disclosures must have their identities protected and must not be criticised. Further, it protects disclosures from civil and criminal liability. That is an essential element of the legislation. On the ABC’s Lateline program, broadcast on 20 February 2006, in relation to the elder abuse story in a specialist dementia unit in Victoria, an unnamed aged care worker said:

In the facility, in this particular facility, it was starting to happen before I left more and more and you feel you have—you can’t do anything. You have no recourse to say anything. Because if you do say anything, you are then bullied by management, from right up, the head office right the way down. You have no recourse. There is nowhere—you put in reports and say that this is happening. Nothing is ever done. It disappears never to be seen again.

That is why we need to have comprehensive whistleblower protection protecting those who report abuse. Labor support the measures in the bill, but we are of the view they do not go far enough. In the report of the Senate Standing Committee on Community Affairs into aged care, tabled in June 2005—a report, I must say, that has not as yet been fully responded to—we recommended that the committee examine the feasibility of introducing whistleblower legislation to provide protection for people, especially staff of aged care facilities, disclosing allegations of inadequate standards of care or other deficiencies in aged care facilities.

Appropriate whistleblower protection needs to be extended to the reporting of all forms of abuse—sexual, physical, emotional, psychological, financial or neglect. Those issues of abuse are far more prevalent than the abuse we are dealing with today. Of course, the protection is only warranted when those allegations are made on reasonable grounds. If they are vexatious they should be treated as such, but people who report any type of abuse, including neglect, should be protected. Many cases of retribution during that inquiry were raised when people raised concerns.
Adopting whistleblower protection of the nature that I have described will encourage a culture of reporting. People will recall that the inappropriate sexual dealing shown on The 7.30 Report was witnessed by another staff member, who did not report it. It is beyond me why you would not report it. Perhaps it was because there was no whistleblower protection in place. Labor are also of the view that we need to extend protection to all people involved in residential aged care services, not only to staff members. This matter was raised in a quite compelling way by the Victorian advocacy organisation that presented at the inquiry, and we will move amendments to that effect during the committee stage.

The legislation also proposes changes to the departmental section of aged-care quality and compliance, which will be established as the Office of Aged Care Quality and Complaints. It will have the power to investigate all complaints. In the case of a breach, the office will have the power to require the approved provider to remedy the situation and to apply sanctions if necessary. This is a significant change to the way in which complaints about aged care generally will be dealt with, and it will be supported.

There are also changes to the office of the Aged Care Commissioner. The bill inserts a new part into the act establishing the Aged Care Commissioner. The commissioner will replace the existing Commissioner for Complaints and will have powers to investigate complaints arising from action taken by the new Office of Aged Care Quality and Compliance with regard to investigations and the conduct of the office. The commissioner will also examine certain decisions and complaints made by the office and make recommendations accordingly. The commissioner will examine complaints about the conduct of the accreditation body or the conduct of a person carrying out an audit or making a support contact under the accreditation grant principles. The commissioner may make recommendations to the accreditation body arising from the examination but will not examine a complaint about the merits of a decision under those principles. The commissioner will also have the capacity to undertake own motion reviews. The commissioner will advise the minister at the minister's request about any matters that arise from examinations. The commissioner will have some discretion not to deal with a complaint where a complaint is deemed to be frivolous, vexatious or not made in good faith or to be already being reviewed by a court or a tribunal. He or she will have that discretion. We support those changes and again refer the department to the committee's report Quality and equity in aged care, which was tabled in June 2005.

I want to place on record, though, Labor's offence at the dismissive financial impact statement in the explanatory memorandum tabled with the bill. Financial impact statements were introduced by Labor in 1983, with good reason. People making decisions about legislation need to have full knowledge of the costs of implementing such legislation. Further information was provided from the department subsequent to the inquiry, but I have to say that it is still incomplete.

The commencement date was of strong interest to all witnesses to the inquiry. Almost every witness and submitter recommended a delay in commencement, and I am pleased to see that the government has acknowledged that and has now introduced amendments to that effect.

The events of February 2006 shocked and appalled all Australians, but the response of the minister and the government has been too limited and unfortunately has reinforced the incorrect perception that abuse occurs mainly
in residential care. The truth is that most abuse of older people occurs in the community, and this bill does nothing to address that reality. Labor will support the legislation, but in the context of the need for a far more comprehensive response to abuse. Our vulnerable elderly deserve protection from abuse in all its forms and deserve our support.

Senator POLLEY (Tasmania) (12.02 pm)—I want to acknowledge in the chamber today the contribution to this debate of our shadow minister for ageing, disabilities and carers, and her ongoing commitment to this area. I congratulate her. The hearing that took place was very important. But I also rise today to speak on the Aged Care Amendment (Security and Protection) Bill 2007. Firstly, I wish to commend the government’s allocation of $90.2 million from next month towards further safeguarding residents in aged-care homes from sexual and serious physical assault. This is a welcome move but tragically late in its delivery and sadly limited in its impact.

I remind honourable senators that this bill was only introduced in February this year. For six long months after the minister promised those funds to safeguard aged-care residents the $90.2 million has just been sitting there waiting for this legislation. It is also now a long time—two years—since the Senate inquiry on quality and equity in aged care. And it is one full year since the shocking revelations on the ABC’s Lateline, when distressed relatives told of the sexual abuse of their grandmother in a residential aged-care home. Sadly, that shameful story is not an isolated case.

Nor is the abuse of the elderly limited to criminal assault. It extends to negligence, psychological mistreatment, bullying and neglect. Our aged citizens—our parents and our grandparents—deserve our protection and care. It is a minimalist approach to limit that protection to alleged criminal behaviour. The government should be proactive in compelling providers of aged care to provide care which complies not merely with the criminal law but with standards of decency.

Many of our aged-care institutions do provide that quality of care, particularly in my home state of Tasmania. Most aged-care workers look after the aged and infirm inmates of those institutions with professionalism and dedication that go well beyond the call of duty.

It was extremely helpful for the members of the Senate inquiry into this legislation to hear from associations representing the interests of the ageing community and of the people caring for them. Their knowledge and concern were evident in their submissions and are indicative of the care and commitment of those who look after our aged and infirm. It is just a pity that more use was not made of their valuable expertise when the bill was being drafted. For several of the key stakeholder organisations not to have been involved at all, or to have been involved in only an incidental manner, in the consultations leading up to this legislation is very damning of this government—but that, I would have to say, is proving since I have been in this place to be fairly typical of this arrogant government.

Labor supports the provisions of this bill to the extent that they address the pressing problems faced in aged-care institutions. Compulsory reporting of suspected sexual and physical abuse is as necessary for our aged persons in care as it is for our young people in our schools, but this is overdue. And protection of those who report suspected abuse is essential if the legislation is to be fair for those reporting, as well as effective for those abused. A greater capacity for the Department of Health and Ageing to
investigate complaints, and an ombudsman-like Aged Care Commissioner, independent of the department, to scrutinise the department’s investigations are also essential to the effectiveness of this legislation.

However, it is not enough to limit the scope of the legislation to criminal abuse and its prevention. All forms of abuse of the aged should have to be reported. The vast majority of abuses are not a matter of breaking the law but of breaking the hearts of the aged and their relatives. Poor nutrition, neglect—leaving residents unattended in wet and dirty beds—emotional abuse and financial abuse are among the examples of abuse and degradation submitted to the Senate inquiry. Labor, in response to this large, if largely hidden, range of abuses of the elderly, is proposing an amendment so that all forms of abuse must be reported. Deficiencies in nutrition, hydration, hygiene, verbal and emotional or financial abuse, as well as other instances of inadequate care, must be required to be investigated.

The so-called whistleblowers—those who report on these abuses—must also be protected. Labor is also proposing an amendment to widen the categories of people who should report abuses and to extend the same protection to them as is currently proposed only for aged-care providers. There are many people in a position to assess whether or not elderly residents of our aged-care facilities have been abused. Indeed, family members are often the ones best placed to discern the effects of abuse on a loved one. Others who are well placed to observe the abuse itself are other aged-care residents and aged-care advocates. These people, too, should be protected by law from victimisation inflicted on them as a result of their reporting.

Only by widening the network of protectors can we be certain that the aged and frail in our community do not suffer the pain, suffering and indignity that too many of them have been subjected to up to now. It is not only Labor that recommends an amendment of this kind. The Senate committee to which this legislation was referred recommended on 9 March, among other things:

That the Bill be amended to extend the whistleblower protections to aged care residents, the families of residents and aged care advocates where they have reasonable grounds to suspect that the information indicates that a reportable assault has occurred and the disclosure is made in good faith.

It was not only the Labor members of the committee who heard what witnesses had to say. The entire committee recognised that it was a significant oversight to exclude loved ones, as well as experienced, independent professionals, from reporting on abuse of the aged.

How arrogant of this government to ignore the advice it got from the very community that it invited to give advice. These are citizens who know firsthand about the care of the vulnerable in our community. These people took the time to write to the Senate committee and to appear before it. Their experience was taken on board by the Senate inquiry but not, apparently, by this arrogant government. This government will not even listen to its own coalition-dominated committee. As we all know, the committee structure was changed very recently to ensure that the government had control. The government is not even listening to its own committees.

This legislation gives all the signs of a botched job being rushed through by a confused and forgetful minister who himself has now moved on. Only a rattled, tired government would make such a mess of spending the promised $90.2 million. It has skimmed over the surface of the depth and detail of a complex problem. I do acknowledge the amendment being proposed to the impossible commencement date of 1 April—although it
was pretty appropriate, being April Fools’ Day.

The changes mean that all staff must be informed. That date, 1 April, was going to make things almost impossible, because there is an onus on institutions to ensure that all staff are properly and correctly prepared for the changes. Anyone who has any idea of the enormous time it has taken to inform teachers, carers, counsellors and medical practitioners about the mandatory reporting of sexual harassment of young people would have some idea of the demands for training in new procedures. So I reiterate that I support the amendment to change the date.

The Senate inquiry was told by stakeholders just what pressures institutions will be under if they have to meet the deadlines of this legislation. With all the will in the world, it will be virtually impossible to set up the systems needed to report, sensitively, accurately and fairly, suspected and alleged instances of sexual abuse. We want to make sure that we get this right. As Catholic Health Australia submitted:

This Bill … imposes extra administrative, training and legal responsibilities on approved providers without any additional funding flowing to enable the process to be as effective as possible.

Not only funding but clear guidelines are missing. Who will ensure that policies and practices are in place that will truly enable staff to report neglect and abuse without any fear of reprisal? A set of investigation principles has been foreshadowed by the government, but they will not be available until after this bill has become law. So there will be no scrutiny by parliament and no input from the stakeholders best qualified to say what will work and what will not.

Guidelines are essential if the legislation is actually to take effect. Staff will need to know which matters they must report. Management will need to know which matters it must investigate. Institutions will need to know how investigations are to be conducted, and they must exercise care to protect the aged residents and the carers. Procedures may have to be modified, especially where any element of dementia might be involved, and guidelines are crucial in an area of such sensitivity.

Our aged-care system faces a number of long-term challenges. Two years ago the Senate’s inquiry into quality and equity in aged care found deficiencies with the operation of the Aged Care Complaints Resolution Scheme and made recommendations to improve the system. It has taken media reports to shake this government’s complacency. Yet still it has reacted with one bandaid solution, poorly constructed, to a long-term social challenge.

It is estimated that the number of Australians aged 70 or over will double over the next 20 years. We must act now to prepare for the future. The sector has suffered for far too long, and this is evident in the problems which are emerging now. Labor’s stance on this issue is clear: our elderly deserve the right to live in a safe and caring environment. Labor believes that healthy and positive ageing must be an achievable goal. Older Australians deserve the best our nation can provide.

Just one of the many important areas absent from this legislation is the critical issue of staff-resident ratios. Staffing levels have dropped since the introduction of the Commonwealth Aged Care Act 1997, which took away the connection between funding and the level of care provided in aged-care facilities. Various independent surveys have confirmed this. Currently there are no minimum levels of staffing required by Commonwealth legislation for aged-care facilities. The Commonwealth accreditation process only requires a facility to have ‘adequate’ staffing
numbers. Residents who have specialised nursing care needs must have them met by ‘appropriately qualified nursing staff’. Opinions will inevitably vary as to what levels are adequate or whether staff are appropriately qualified. These terms must be clarified to end uncertainty.

There is now significant evidence that patient care and safety can be adversely affected by inadequate staff numbers. A well-trained, adequate and valued workforce is ultimately the best protection against elder abuse. The Aged Care Crisis Team has highlighted the importance of all levels of staff working in aged-care services, including management, to have an understanding of the issues of caring for frail older Australians. These issues include dementia and cognitive impairment, troublesome areas that have not adequately been accounted for in this legislation. Additionally, there are no requirements for registered nurses to have undergone specialist training. It is unacceptable for frail and ill elderly people to be cared for largely by untrained staff.

I recognise the inherent difficulties in the education and training of staff working in residential aged-care facilities, in particular assistants in nursing and personal-care staff. There is a critical shortage of aged-care nurses and a major wage disparity between nurses and personal-care staff in the aged-care sector and the acute-care sector. Labor will develop strategies to improve the recruitment and retention of aged-care nurses with a focus on addressing the wage disparity, improving working conditions, reducing the paperwork burden, and improving opportunities for further education and training.

To ensure high-quality service standards are adopted and maintained, Labor supports a rigorous accreditation process. We need to tighten the monitoring of aged-care facilities, especially for those that do not provide an appropriate level of care, to ensure that all aged-care facilities provide high-quality care and services to older Australians. In 1996 there were 800 surplus beds in aged care. We are now facing a massive shortage of beds for the elderly. Waiting time for a bed doubled between 2000 and 2005. Frail and elderly people were taking up acute-care beds in hospital as a direct result of this.

We should be providing aged-care services of the highest quality possible. I believe that older Australians who need residential care should be provided with the highest quality nursing and personal care in safe and comfortable surroundings. I support an effective complaints resolution process to ensure that residents of aged-care facilities and their families are able to resolve their concerns satisfactorily. I commend to the Senate the amendments proposed by the Labor Party.

Senator HUMPHRIES (Australian Capital Territory) (12.17 pm)—It is my pleasure to rise to support the Aged Care Amendment (Security and Protection) Bill 2007 and indicate that it is a very significant step towards the greater protection of Australians who live in aged-care facilities. It would be easy to misunderstand the nature of what has occurred in Australia with the introduction of this legislation by listening only to the comments that have been made by those on the other side of the chamber. It would be easy to overlook that Australia has had a dramatic lift in the quality of its provision of care and support to older Australians in the last 11 years.

Let me make a few comparisons for that purpose. In 1995-96—that was the last year that Labor was in government—we spent a total in Australia of something like $3 billion on aged-care funding; as of last financial year, 2006-07, we were spending $7.8 billion on aged care. That is an increase of 160 per
The total number of aged-care places available in 1995-96 was 141,293; as of 30 June 2005 it had risen to 193,753, a 37 per cent increase, which obviously outstrips the increase in the size of the aged population. The increase over that time was in the order of about 28 per cent, so the increase in the number of aged-care places has been in excess of the rise in the aged population that might demand those services. We have not just overseen an increase in resourcing for aged-care facilities and services in Australia; we have also overseen a dramatic change in the tenor and the standards applicable in those facilities.

In the years preceding the change of government in 1996 dramatic cases reached the headlines of older Australians being severely neglected and abused in aged-care facilities. This government took a strong approach towards those problems and dramatically changed the landscape with respect to what had happened in aged-care facilities. There was a huge crackdown, many facilities were closed and the government demanded higher standards.

It has been interesting to hear in the debate in this place the opposition citing situations where those standards have not been met and to reflect on how far we have come because of the work of this government. There were no applicable standards in those days that required the kinds of standards we now expect in those aged-care facilities, and the sorts of things that were commonplace then are now rare enough to be commented on in debates in this place and the other chamber. We have unquestionably changed the landscape for older Australians for the better, and those figures that I cited before demonstrate that very clearly.

This piece of legislation is about further improving the environment in which older Australians live when they enter an aged-care facility. The amendment bill has four main components. Firstly and most critically, it argues for a comprehensive regime of compulsory reporting of assaults in aged-care facilities to police and to the Department of Health and Ageing. Secondly, it provides protections for whistleblowers, approved providers and staff members who report aged-care assaults. Thirdly, the bill establishes a complaints investigation process to ensure that less-than-scrupulous care providers are held to account. Finally, the bill establishes an Aged Care Commissioner to replace the existing Commissioner of Complaints.

In supporting this bill, we need to acknowledge that those are very significant steps to ramp up the level of protection for people who are vulnerable in aged-care facilities. I think it needs to be put on the record that, overall, Australian providers of services to the aged do a good job. They provide high-quality services and the people who use them get both good value for money and close attention to their needs and their concerns. It is unfortunate that, perhaps due to the vulnerable nature of many of the people who occupy those facilities, we sometimes find providers who are less than scrupulous and whose attention to the needs and rights of residents in their facilities is not as close as we would like it to be.

This legislation seeks to put in place a compulsory regime which says that when a person working in an aged-care facility encounters these cases of the abuse of a resident—albeit that they are relatively rare—they must be brought to the attention of the appropriate authorities. They must be brought to the attention of both the police service in the relevant state and the Department of Health and Ageing. That, in a sense, is a change of paradigm for this sector. There has been an expectation in the past that these matters would be dealt with using the com-
mon sense and judgement of those involved—staff members, operators, family members and so forth. But it has been made obvious by recent incidents in the last 18 months that in some cases that common sense does not suffice to address these problems adequately and that some form of compulsion needs to be in place.

There are exemptions from compulsory reporting. Those exemptions apply in the case of an assault by a person suffering cognitive impairment on another resident. When those exemptions apply, other mechanisms need to be put in place to protect the residents concerned from further assault. We are lifting very significantly and very dramatically the standard that we require for those who work and operate in this sector. In fact some of the evidence put before the committee suggested that in some ways we might be going too far—that the regime is overly onerous in requiring all assaults to be reported, with the exemptions that I mentioned put to one side.

In her remarks, Senator Polley said that the government had not given enough attention to the views of stakeholders in the development of these provisions. That claim is entirely false and without foundation. It has taken some time to bring this legislation forward precisely because the views of stakeholders were being carefully canvassed. I must say that the evidence of the thoroughness of the department’s examination of this issue—and indeed the minister’s scrutiny of the views of stakeholders—is that when this legislation came forward and the community affairs committee conducted our inquiry there was strong support from every one of the witnesses who appeared before us for the concept of this new, dramatically different regime in Australia’s aged-care sector. There was not one witness who said that we should not have a regime of compulsory reporting of assaults on those in aged-care facilities—although some witnesses certainly suggested that there should be modifications to the nature of that reporting regime. So I do not think the government has got that wrong. The government has understood the need to reflect the views of stakeholders in this respect and the regime put on the table in this legislation is essentially acceptable to those stakeholders.

There are issues, as I have suggested, about the extent to which that regime might be modified. The feasibility of a system of compulsory reporting was questioned by a number of providers during the consultation process and during the hearing that the community affairs committee conducted. Those providers expressed concern about the mandatory requirement to report assault allegations and suspicions to police in particular. For example, Australian Unity, one of those providers, suggested that aged-care providers—so as not to overburden police or create a backlog of relatively insignificant complaints which could cripple the system—should only report to police when the care provider deemed that there were reasonable grounds to suspect an assault. They argued that compulsory reporting stripped a resident of the right not to report an assault—a situation tantamount to giving older people fewer rights than anyone else simply because they are in residential care.

There are two issues here which I think we need to look at very carefully. The question of giving older people fewer rights is certainly a matter that vexed the committee for some period, and it was examined very carefully by the committee. We recognised that these concerns were valid but were convinced at the end of the day that there was a need for an element of compulsion in this reporting—that is, that we should not have a situation where a provider could say, ‘We choose not to report what a resident has told us is a case of assault.’ The Australian Medi-
cal Association pinned down this argument very well when it argued that without mandatory reporting one could in no real way protect the interests of the elderly in care. It said that duress would be a very real prospect in serious assault cases if elderly, highly dependent and frequently mentally impaired residents had the choice not to report an assault to police—that is, they could be put under pressure in those circumstances not to take a matter forward. That was an argument that ultimately convinced the committee, and we have not recommended in our report that there should be a right to opt out.

Of course it is possible, once police are contacted and if the police come to investigate a particular allegation, for them to take the views of a particular resident into account if that resident says, ‘I don’t wish this matter to be taken any further.’ But the concept of not being required to contact the police and not being required to report the matter to the department is one which I think the committee comprehensively rejects.

We know that approximately 75 per cent of residents in residential aged care facilities in Australia today have some form of cognitive impairment. As a result, there are very great variations in social behavioural norms among those residents. The committee noted that the regime which is being put in place here is being implemented in the absence of data about what kind of reporting incidence will occur as a result of those changes—that is, we do not know whether we can expect a flood of these sorts of complaints or whether they will be relatively modest in number and easily managed by both the department and the relevant police forces. This is a matter which I think only time will be able to provide an answer to.

The committee feels that it is necessary for the department to have regular meetings with the Aged Care Advisory Committee to discuss implementation issues and to ensure that what we end up with is a sustainable model of compulsory reporting. If the system proves to be unwieldy, it may be necessary to hold a formal review of the legislation, perhaps within the next two years or so—following a suggestion made by the Australian Medical Association—which might ultimately lead to the exclusion of certain sorts of assaults or assaults between certain categories of people: for example, an assault by a resident on another resident or a resident-on-staff assault. I think those issues need to be carefully examined. In due course, it may be necessary to have a system of reporting to the department but not necessarily to the police force. We simply indicate that there is a lack of data about this.

We do not yet know what the system is going to experience when the model comes into force at the beginning of April, but we do know that it will need to be carefully monitored and that the views of stakeholders will need to be carefully identified and considered while the system is being rolled out. We need to be aware that we are significantly changing the model that works in Australian aged care facilities. We have had a model where reporting did not need to occur if the provider did not feel that a matter needed to be brought to the attention of the authorities. We now have a model where the default position is that you do report, irrespective of whether you think the assault has in fact occurred and whether there is anything to investigate. That must be an important change in the mindset of the sector and one which I think the department understands will take some time for it to fully digest.

The Labor Party has proposed an amendment to require all forms of abuse or neglect within aged care facilities to be reported. I cannot understand why such an amendment would be moved when it was fairly obvious to the committee that examined these matters
that the potential problem with the legislation is that the reporting requirements as they stand are too onerous—that is, they will require more reports to be made to the relevant authorities than, it was argued, those authorities would be able to comprehensively digest and process. The fear was expressed that there would be hundreds of complaints of assault coming to local police forces to investigate that were alleged by, for example, residents with a mental impairment, such as dementia, and that this would overburden the system.

That consideration was put forcefully during the inquiry, so it is hard to understand why the Australian Labor Party now says that we should make the reporting regime even more onerous by requiring even more things to be reported. I assume that they are responding more to the position of the party on this issue—it seems to me that they are playing an element of catch-up—than to the evidence which was placed before the committee during its inquiry. We need to see how these provisions work out in practice before we think of requiring further reporting to occur.

I cannot recall any evidence given during the inquiry itself about other forms of neglect or abuse or of a lack of services or standards being met within homes which would somehow require special arrangements to be put in place to provide for those things to be properly aired in a public way, such as with the Department of Health and Ageing. Mechanisms are already in place to deal with those issues, and evidence of there not being adequate arrangements, I think, was lacking. It is the right of those opposite to put these amendments forward. But I would say to them: if you actually carried them forward into law, they would impose an incredibly heavy burden on this sector and, moreover, they would impose a ridiculously heavy burden on others to try to make sense of complaints which would simply be beyond the capacity of the system to properly deal with.

As I said, this legislation is very significant; it is a very big change. Far from being the hallmark of what Senator Polley called ‘a tired and rattled government’, I think it indicates a government with a sense of vigour and determination to continue to improve the services offered to older Australians in care. We know that this system is essentially a good one. We know that it provides a very satisfactory, high quality of services to the vast majority of people who enter this sector. We know that further work needs to be done to raise those standards. This legislation more than anything else in the last few years does just that: it raises the standards. It improves the level of protection available to Australians in those settings. And I think it deserves to be strongly supported by the Senate.

I have no doubt that both the Department of Health and Ageing and the new Minister for Ageing will pay close attention to the issues which have been raised by the committee, look very carefully at the question of workload and capacity of the system to properly scrutinise complaints that are made and adjust, if necessary, the provisions of the new scheme to reflect those concerns if they materialise. But I have no doubt that the first and most important step is to put legislation of this kind on the table, have it enacted and engineer that significant ramping-up of protection to Australians in this context.

Senator ALLISON (Victoria—Leader of the Australian Democrats) (12.37 pm)—The Aged Care Amendment (Security and Protection) Bill 2007 is part of the government’s response to a number of alleged cases of sexual and physical assault of residents of aged care facilities last year—and it is, I might say, something we called for at the time. I think we can all agree that it is unac-
ceptable that any form of abuse is perpetrated on the elderly, and I think I am safe in saying that we are all supportive of measures which protect vulnerable Australians, regardless of their age. That is why I will be supporting this bill; however, we do have some concerns about the legislation. They are not so much about the intent of the bill as about how it goes about putting that intent into practice. Perhaps more significantly, we have concerns about what the bill does not do. In fact, the bill is a very narrow response to a serious issue in our community. It is an issue which has not received the attention and considered response that we think it deserves.

We say that the government should be looking at comprehensive approaches to elder abuse, preferably approaches that prevent abuse in the first place and that help people to identify inappropriate behaviour and intervene before it escalates into a criminal offence. Compulsory reporting is often a case of shutting the gate after the horse has bolted. I should make it clear that we have in the aged care sector very dedicated, hard-working people who provide an invaluable service to aged Australians. This is not a criticism of them. The sector on the whole is willing to work with the government to put in place appropriate processes to ensure greater protection for their residents, but unfortunately this bill—like so much of what the government is dishing up—has been brought before the parliament in a rushed manner with inadequate consultation and consideration of some of the practicalities of what is being proposed.

The bill was introduced on 7 February, with an inquiry to be done and dusted by 14 March. That is actually a comparatively long period of time when you look at the ridiculously limited time given to other recent inquiries. The original expectation was that the measures would be implemented by 1 April. Of course, as we are increasingly seeing with this government, the bulk of the operational detail about the practices and processes that will give effect to the reforms will be included in subordinate legislation which no one has yet seen. Although the government did manage to put together a rough and ready explanatory guide to flesh out some of the areas that lack clarity, it was not available until March and it still leaves many questions unanswered.

The bill builds on the measures introduced last year: the requirements for police background checks for aged-care workers and certain volunteers in aged-care facilities as well as the introduction of more unannounced inspections of aged-care homes. We supported these measures and, at the time, argued for a broader approach in tackling elder abuse. The problem is that the abuse of older Australians is not limited to residential care and it is not limited to physical and sexual abuse. This bill establishes a requirement for aged-care providers to report allegations or suspicions of unlawful sexual contact or unreasonable use of force on a resident in a residential aged-care service. But there is nothing in the bill that deals with other forms of abuse: psychological abuse, financial abuse or even neglect.

The Democrats argue that all abusive behaviour and exploitation is unacceptable. This bill does not contain any measures to tackle abuse, neglect or exploitation of older Australians that may occur in their own homes. It is true that the issues in relation to prevention, detection, intervention and response to elder abuse in community settings are different from those in residential aged-care facilities, but nonetheless we say they warrant equal attention. Conservative estimates suggest that some 97,000 Australians will be subjected to elder abuse in domestic settings by 2011. That is a frightening statistic. The government is supporting and encouraging older Australians to remain at
home, where, it could be argued, there is even less scrutiny than in residential aged-care facilities. Yet the government is offering us nothing to protect these people. We favour a more comprehensive response that would protect the aged regardless of where their care takes place and regardless of what form the abuse might take.

I will be moving a second reading amendment which, amongst other things, calls on the government to develop a comprehensive evidence based approach to elder abuse which includes strategies to protect older people from all forms of abuse in residential and community settings. The key elements of the bill are a requirement for compulsory reporting, protection of those who report, the establishment of investigation principles by regulation, and significant changes to the aged-care complaints process. The bill establishes a compulsory reporting system for when a physical or sexual assault is alleged or suspected to have occurred. Aged-care providers must report this alleged or suspected assault regardless of the wishes of the person who has allegedly been, or is suspected to have been, assaulted.

It is true that allowances have been made for circumstances in which a resident with diminished mental capacity is involved in carrying out an assault. In these circumstances, there is some discretion allowed. But there is no discretion when it comes to the wishes of competent older adults with decision-making capacities. Many people no doubt see this as a good thing; indeed, the Australian Medical Association’s position is that the individual’s wishes are beside the point. This is certainly not an easy or straightforward matter to deal with, but it is seriously concerning that a system is being proposed that gives older people in residential facilities fewer rights than others.

Let us be clear: we are not talking about situations in which individuals are in some way impaired in their ability to make an informed decision about whether to report an assault to the police or not. We are talking about competent elderly people. In other circumstances the law assumes that competent adults can make their own decisions about whether or not to do anything about the abuse they experience. This does not mean that others would necessarily agree with the decision that they make, but at least they have that choice. The legislation explicitly denies older individuals with decision-making capacity that choice, simply on the basis that they are residents in residential care.

Being a resident of an aged-care facility does not automatically make an individual less able to make informed decisions, and it should not mean that they have fewer rights. Interventions relating to abuse should be victim focused, with the interests of the victim taking precedence over those of the care provider or the government. I am aware of the time, and it might be useful for me to seek leave to continue my remarks later.

Leave granted.

The ACTING DEPUTY PRESIDENT (Senator Marshall)—Order! Pursuant to orders of the day, the time for this debate has now expired.

BANKRUPTCY LEGISLATION AMENDMENT (DEBT AGREEMENTS) BILL 2007

BANKRUPTCY (ESTATE CHARGES) AMENDMENT BILL 2007

Second Reading

Debate resumed from 20 March, on motion by Senator Scullion:

That these bills be now read a second time.

Question agreed to.

Bills read a second time.
Third Reading

Bills passed through their remaining stages without amendment or debate.

AVIATION TRANSPORT SECURITY AMENDMENT (ADDITIONAL SCREENING MEASURES) BILL 2007

Second Reading

Debate resumed from 1 March, on motion by Senator Coonan:

That this bill be now read a second time.

Senator MASON (Queensland—Parliamentary Secretary to the Minister for Health and Ageing) (12.46 pm)—Very briefly, aviation security is a high priority, and this government continues to be responsive to changing threats to the Australian aviation industry. This bill makes amendments that are necessary to the Aviation Transport Security Act 2004 to better manage the vulnerability and the technical capability of aviation security screening points with respect to liquid explosive detection. Overall, this bill facilitates the screening for liquids, aerosols and gels necessary to protect Australians and the Australian aviation industry.

Question agreed to.

Bill read a second time.

Third Reading

Bill passed through its remaining stages without amendment or debate.

OFFSHORE PETROLEUM AMENDMENT (GREATER SUNRISE) BILL 2007

CUSTOMS TARIFF AMENDMENT (GREATER SUNRISE) BILL 2007

Second Reading

Debate resumed from 1 March, on motion by Senator Coonan:

That these bills be now read a second time.

Senator STOTT DESPOJA (South Australia) (12.48 pm)—There does not seem to be a large line-up on this non-con Thursday afternoon of people speaking on bills. I will make a few comments on behalf of the Australian Democrats regarding the Offshore Petroleum Amendment (Greater Sunrise) Bill 2007 and the Customs Tariff Amendment (Greater Sunrise) Bill 2007. In themselves, these bills are not controversial, and the Australian Democrats will be supporting the legislation. The bills together are intended to put in place uniform arrangements across both the Greater Sunrise field and the Joint Petroleum Development Area to allow developments on the fields to proceed from the Australian side.

The reason I want to remark on this legislation is not because we have a fundamental problem with the legislation before us but because the Australian Democrats, as honourable senators would be aware, have had a longstanding problem with the treaty that these bills are designed to implement. We have spoken out numerous times in support of the relatively newly formed nation of Timor-Leste. We have spoken out against human rights abuses by Indonesian forces that took place in that region during that region’s occupation. We spoke out in 2004 against a so-called ‘economic occupation’, when the government was seeking to cement the arrangements for what we thought was an exceptionally miserly agreement on resource sharing.

The Treaty on Certain Maritime Arrangements in the Timor Sea, as signed, is more generous to Timor-Leste than the original agreement—the one with which we had fundamental problems. As senators would recall, not only was the process of bringing that treaty and the legislation to the parliament for debate hastily done—it was speedily done in an unacceptable way—but the content of that treaty was questionable as well.
Under this treaty, the people of Timor-Leste will receive half of the royalties from the Greater Sunrise field, whereas in the earlier proposal Timor-Leste would have only received 18 per cent of the total share. So the Australian Democrats accept that a better deal has been organised. The people of Timor-Leste have gained a better deal in this process. Hopefully, the returns of these resources will help them to rebuild their country and achieve social and economic stability.

What I do not accept is the way the Australian government has behaved on occasions during this process. We as a nation were instrumental in assisting Timor-Leste to achieve its independence. I have put on record before and acknowledged the good work of this government in playing a fundamental, positive and generous role in that process. The process was not as smooth as was hoped, but that was a really appropriate act on the part of this government. I say that as a member of a political party that from its inception supported the independence of East Timor.

But our generosity as a nation during that process did stand in stark contrast to how we have behaved during some of the negotiations with Timor-Leste on the issue of oil and gas. I have previously described the government as acting as a bully and being penny-pinching in a way that my party and I believe involved pressuring the Timorese delegation to accept a deal that was at times frankly questionable in its legal framework. Indeed, if the maritime boundary between Australia and Timor-Leste had been determined by the conventions of international law, it is argued that the Greater Sunrise field—not to mention some of the other fields that currently lie within the JPDA and from which Australia is already extracting resources—would lie entirely within Timor-Leste’s economic zone.

What does it say that our country refused to allow the maritime boundary between Australia and Timor-Leste to be determined by the International Court of Justice? Many people still believe that it looked incredibly suspect that a treaty signed with Timor-Leste prevents them from pursuing any permanent maritime boundary claims for 50 years. What does it say about us as a nation—one of the wealthiest nations per capita in the world, blessed with natural resources as we are and in the midst of a commodity boom—that we would at best drive a hard bargain and at worst cheat the people of Timor-Leste out of the proceeds of these oil and gas fields?

I understand there are many in government and elsewhere who would argue that it is right for Australia to drive a hard bargain to get the best position for our country, that is entirely justifiable on the basis of standing up for the Australian economy and Australian jobs and that it is not in our interest as a nation to miss out on at least some share of the resources. I am not suggesting that we are not entitled to anything, but it is a little short-sighted to go for a blatant defence on the grounds of the Australian economy and Australian jobs. Of course we want to see jobs protected and we want to see our economy grow, but not if it means using standover tactics with one of the world’s poorest nations, which is right on our doorstep.

One of the great things about our country is our inherent sense of fairness. Over the past few years, a lot of Australians have expressed their concern over the way the negotiations were handled and, indeed, what resources were made available to the people of Timor-Leste. We have seen advertisements on TV. There were many public meetings, emails, correspondence, faxes and phone calls from constituents urging the Australian government to play a fairer role to ensure that the people of Timor-Leste did not miss
out and to recognise that the people of that country are not blessed with the same natural resources on which to base their economy as we are. Oil and gas revenue is likely to be and indeed is a significant proportion of their national income.

There is no doubt that these resources mean more to that nation than they do to us. As a result of this deal, the government will earn over $10 billion in upstream revenue over the life of the project. Our own Minister for Finance and Administration, Senator Minchin, put that sum into an Australian context during Senate estimates last month when he waved away concerns about the idea of $10 billion being spent on the water package over a 10-year period. He said:

... less than half a per cent of Commonwealth government expenditure—let’s keep it in perspective ...

Indeed, let us keep it in perspective and recognise the growing needs of that poor nation as opposed to our own. If indeed $10 billion is a small amount to government—and I am not suggesting that it is—why did we drive such a hard bargain in the first place? Why did we have to damage our collective reputation, particularly among the people of Timor-Leste, for the sake of a relatively small percentage of the government budget?

In recent weeks we have seen just how fragile in many respects the stability in Timor-Leste is. It is largely dependent on the ability of the Timorese government to improve living conditions and job opportunities for their citizens. The more revenue they get from oil and gas, the better the chance those in Timor-Leste have of achieving long-term stability and all of the things that flow from that. I think that a stable Timor-Leste is very much in Australia’s national interest.

We could have gifted the royalties from the oil and gas fields in question to the Timorese. It could have been a gift to them to celebrate their independence as well as to recognise that this is a country with fundamental needs and that the stability of that nation does, of course, affect us. We could have done that without setting a precedent that would weaken our position in any future negotiations on maritime borders. If we had gifted those resources, we would arguably be less likely to need to risk our own resources or our people in further missions, such as peacekeeping missions, or other forms of humanitarian assistance or aid in that region. If we had gifted the resources to Timor-Leste, they would need less development aid from us. Just as importantly, if we had gifted them with those resources, we would have further cemented the goodwill that is felt between the people of Timor-Leste and this country as our result of our assistance in helping them to achieve independence.

We did not do that. Instead, we initially played bully boy and employed penny-pinching tactics. While Timor-Leste is still a good friend to our nation, I believe our role in those negotiations has been a blight on our relationship. The Australian Democrats and I accept and acknowledge that the treaty has now been signed; it is binding and there is little to be gained from delaying the passage of the legislation before us. In fact, the faster this legislation is enacted, the faster the people of Timor-Leste can receive royalties from the development of the fields. I just wish that our government understood that there are benefits to be had from being truly magnanimous in a circumstance such as this, and sometimes I think those benefits are worth more to us as a nation and are more calculable, if you like, than the benefit of money in the pockets of Australians in the sense of putting it into government revenue. We will be supporting the legislation before us, but I remind the Senate of some of the government’s actions in relation to the negotiations and the implementation of this treaty. I hope
that we will remember the importance of that relationship and not seek to blight it in the future.

Senator MASON (Queensland—Parliamentary Secretary to the Minister for Health and Ageing) (12.59 pm)—These bills, the Offshore Petroleum Amendment (Greater Sunrise) Bill 2007 and the Customs Tariff Amendment (Greater Sunrise) Bill 2007, will ensure that the current legislative framework for the Greater Sunrise gas field is maintained once the Offshore Petroleum Act 2006 is proclaimed and the Petroleum (Submerged Lands) Act 1967 is repealed. These bills will complete the framework for the potential development of the Greater Sunrise gas field for the benefit of both Australia and Timor-Leste. I thank senators—especially Senator Stott Despoja—for their support of the bills and commend the bills to the Senate.

Question agreed to.

Bills read a second time.

Third Reading

Bills passed through their remaining stages without amendment or debate.

TOURISM AUSTRALIA AMENDMENT BILL 2007

Second Reading

Debate resumed.

Senator IAN MACDONALD (Queensland) (1.01 pm)—The Tourism Australia Amendment Bill 2007 amends the Tourism Australia Act 2004 by making changes to the governance arrangements for that organisation. The changes are said to be introduced following a review of corporate governance of statutory authorities and office holders conducted by Mr John Uhrig. This review went across a number of government agencies. I am not sure that some of the results of the review have been of particular use to the government, and in some instances I think the actions taken by the government across a range of areas have not been quite appropriate. However, in this instance I agree that the recommendation to remove the government director from the board is a good one.

I have always thought that in these types of organisations there is a real conflict of interest when there is a government-appointed member of the board who is usually a senior public servant who usually would be advising the relevant minister on the particular issue. I always thought that there was a conflict of duties between the duty of the board member to the board and the duty of the board member—in his role as a senior public servant in giving advice to the minister—to the minister. So I think it is appropriate in this instance that the government member be removed from the board and I certainly support that.

I note from the explanatory memorandum that the amendments also give the minister greater power to terminate the appointment of a board member. I think that is probably appropriate where these organisations are substantially operating on Australian government money. Whilst they are independent boards they are fairly heavily funded, if not totally funded—I am not sure, in the instance of Tourism Australia, whether it is total or just substantial—by the Australian government. Certainly where the government funding is substantial or total then the government needs to have the ability to relatively easily remove a member whom the minister is satisfied is not acting in the best interests of Tourism Australia, or where the performance of a member has been unsatisfactory for a significant period. I see that there is also a new provision where the board can, by a two-thirds majority, determine that a board member should be reviewed—and the minister would then act accordingly. I think those areas are appropriate.
The organisation, Tourism Australia, does a fantastic job for tourism in our country, and has done so in various forms—in various other organisational ways—over many years. Australia is a very attractive tourist destination and as the world becomes wealthier—particularly as East Asia becomes wealthier—more and more people are looking to Australia as a destination for their holiday travel. We have a country that has much to offer. As Australians we are always slightly blase about the fabulous geography, scenery and interesting heritage that we have in this country. Australia has some of the best snowfields in the world. I think it does; I am not a snow person myself and I have never been skiing there but from all reports we have fabulous snowfields.

Certainly, the Great Barrier Reef, where I come from in North Queensland, is rightly called one of the seven wonders of the world. There is scuba diving, fishing and fabulous scenery along the barrier reef. The wet tropics rainforests in the north of Queensland are world class. If you go to the centre of Australia and Ayers Rock—Uluru—you will see some scenery that is unique in the world. Many people—including me, as part of a Senate committee—have had hands-on experiences with Indigenous art in Central Australia. That, in itself, is an experience that you cannot get anywhere else in the world.

While I am a northerner and think that all good things in Australia are north of the Tropic of Capricorn, I acknowledge—as I did with the snowfields—that places like Tasmania are sensational tourist destinations. Even Victoria might have some attractive tourist destinations, although I struggle to think exactly what they might be on the spur of the moment—I only joke in saying that; the Seven Sisters springs to mind very easily, as do some of the rainforests of eastern Victoria. South Australia has its own charm, from Kangaroo Island up into the deserts, and Port Lincoln is a lovely area. Western Australia is a huge state with a variety of tourist attractions in the coastal areas, the Margaret River wineries, inland Australia and, up into the north-west, the Kimberley, which is an area that is attracting many foreign tourists—a lot from Europe, a lot from America and, increasingly, people from East Asia. Some of that coastal Kimberley scenery and geography is mind-blowing and unique in this world. We have an enormous capacity within Australia to promote tourism and to get people in.

Covering all of those fabulous destinations is the fact that Australia, as well as being a well-set up tourist area—there are good hotels and good transport—is a safe destination. Increasingly in the world, safety for tourists—who want to have an adventure but want to have it relatively safely—enhances Australia’s reputation in the tourism area. We are a safe country. We have very good border security. We have good and honest police forces, law enforcement agencies and court systems. Relatively, we are free of crime. You do get a mugging here and an assault there, but, by and large and compared to the rest of the world, Australia is a very safe place. So we have a lot to talk about; a lot to brag about; a lot that makes us a very attractive destination for tourists from overseas.

We have to continue to promote, because there is a lot of competition around for the tourist dollar, and that is where Tourism Australia does such a mighty job. I guess it is always easy to be critical from the outside looking in, but the ‘Where the bloody hell are you?’ campaign, which was Tourism Australia’s last effort, had a mixed reception. The Liberal Senate team went to the Gold Coast a few months ago, which was a very worthwhile experience. I and my Liberal Senate colleagues went and spoke to the industry and got a feel of what the industry was about on the Gold Coast, which is one of
the world class tourist attractions that Australia is privileged to have. Some of the Gold Coast tourism people said—and everyone has a different opinion, but I related to their opinion—that ‘Where the bloody hell are you?’ was attractive to Australians, but it is not Australians who we are trying to attract to Australia; we are really trying to attract Asians, who scratched their heads and wondered what that was all about.

I know that different people have different views, but I was persuaded to the view that that was not a terribly good marketing ploy. Some people have told me that inbound tourism has not been as good in recent years as perhaps it was in the past. As I say, with the many tourism operators that you have, you will have different views and opinions on what the right tourist approach is, but I was a bit concerned about that.

One of the things that concerns me about some of those campaigns—and indeed about the Tourism Australia board—is that I wonder how many people directing the operations are in fact involved in the tourism industry at the grassroots level. It has been suggested to me by some tourism operators that you have, you will have different views and opinions on what the right tourist approach is, but I was a bit concerned about that.

I urge the minister to look at the composition of the Tourism Australia board. That is no reflection on those who are currently on it. I must confess that I have not done the research to even see who is on it—I am quite confident that they are very good people. But if the suggestion that many of them are not directly involved at the coalface in the tourism industry is correct then that concerns me.

I do not want it to be seen that I am simply being a parochial Queenslander, but it has been suggested to me that none of the members of the board of Tourism Australia come from my state of Queensland. Non-Queenslanders may rubbish Queensland and people may say that I am being a little parochial, but without contradiction I can say that Queensland is a significant part of the Australian tourism industry. The barrier reef and the wet tropics rainforests are areas that have a worldwide reputation. The Gold Coast beaches and the Sunshine Coast beaches are as good as you would get anywhere in the world. Queensland is a tourist state. The fact that there is no-one associated with Queensland directly—as I understand it at the present time—on the board is a concern to me.

Certainly, these boards should be skills based board positions. I am not saying that every state must have representation, because it is not a representative board; it is a board based on skills. But I can assure the minister that in Queensland there are any number of very capable and able tourism operators and people involved in the tourism industry who well deserve appointment to this major board of Australia. I know a lot of people involved at the coalface of the tourism industry in Queensland who would be the sorts of people who could be appointed to that board. So, while I know our minister has done a sensational job in her role as tourism minister since she has held that portfolio and she greatly advertises and adds value to the attraction of Australia to international
tourists—the minister does a sensational job, a very positive and worthwhile job—I would urge her, in making appointments to the board, to take into account some of the matters I have mentioned in the last 10 minutes or so. With that, I support the bill and commend it to the Senate.

Senator MASON (Queensland—Parliamentary Secretary to the Minister for Health and Ageing) (1.15 pm)—First of all, I thank Senator Macdonald for his eloquent rhapsodising about Australia’s tourism potential—and particularly, Senator Macdonald, in relation to Queensland. Thank you for that. The Tourism Australia Amendment Bill 2007 makes minor amendments to the Tourism Australia Act 2004. The amendments form part of the government’s response to the Uhrig review and subsequent assessment of the governance arrangements of Tourism Australia. I commend the bill to the Senate.

Question agreed to.

Bill read a second time.

Third Reading

Bill passed through its remaining stages without amendment or debate.

AUSTRALIAN ENERGY MARKET AMENDMENT (GAS LEGISLATION) BILL 2006

Second Reading

Debate resumed.

Senator ALLISON (Victoria—Leader of the Australian Democrats) (1.17 pm)—I rise to speak on the Australian Energy Market Amendment (Gas Legislation) Bill 2006. The Democrats support this bill. I acknowledge and encourage the objectives of the bill to increase the access to and competition within the gas market. As a less greenhouse-intense fuel, gas is recognised as having an important role to play in reducing the greenhouse intensity of our economy.

I would like, however, to take this opportunity to discuss the broader energy market reform agenda and how the current business-as-usual approach is not serving us very well. The Australian energy market has been progressively deregulated since 1993. De-regulation broke down the government owned and vertically integrated energy supply industry and introduced competition and third-party access to infrastructure networks. This is all to be commended.

Australia’s energy demand is currently growing at three per cent a year, by 2010 greenhouse emissions from the stationary energy sector are projected to be 153 per cent above 1990 levels, and Australia’s energy consumption is projected to double by 2050. The consensus amongst energy policymakers in tackling the greenhouse challenge for energy is that we must drive energy efficiency to achieve aggressive reductions in energy consumption, we must use fossil fuels strategically and we must replace coal with low-emissions technologies such as renewable energy and increased small scale and high-efficiency generation close to where the energy is used—that is, distributed generation. The current energy market framework does not serve these outcomes.

We still have a 1990s style market and an energy market that provides incentives for ever-increasing energy demand. In these times of climate change and requirement for resource efficiency and energy security, all technologies will need to be pressed into service. We have to allow participation in the market to all these alternatives. I am not even talking about providing incentives, but simple removal of barriers to participation in the market. To quote the New Scientist:

According to projections by the International Energy Agency, 2005 was the first year nuclear power’s electricity output dropped behind that of small-scale plants producing low or no carbon dioxide emissions.
It goes on to say:

This burgeoning “micropower” movement is a significant step towards reducing carbon emissions. Much of the world’s small-scale generation involves combined heat and power “company-generation” projects, whose carbon dioxide emissions are 30 to 80 per cent less than that of large-scale gas-fired plants. The worldwide uptake of this technology is being accompanied by fast growth in the use of renewables such as solar and wind.

Far from creating an energy market to take advantage of this trend, the current regulatory environment in Australia has significant barriers to the promotion of innovation and participation of smaller distributed generation and renewable energy in the energy market and effectively prohibits energy efficiency.

Without participation from the demand side we have an incomplete energy market. This is an issue that was recognised in the Parer review report of 2002, Towards a truly national and efficient energy market. While a majority of the Parer review recommendations have been implemented and Ministerial Council on Energy working groups were established in 2003 to investigate energy efficiency, renewable energy and distributed generation, my concern—which should also be a concern for the government—is with the time frame of reporting. With respect to timing, recommendations from the MCE energy efficiency and renewable energy and distributed generation working groups either have not been delivered or have been delivered too late for the current round of energy market amendments, creating more barriers to lock out participation of energy efficiency, distributed generation and renewable energy.

Those barriers can be procedural or a consequence of the technology—such as self-dispatch solar or wind technology or outright regulatory barriers and cost barriers, such as inequitable charges being applied to late market entrants such as wind generators—or barriers can take the form of burden of costs not factored in at the time of deregulation, cost of connection and cost of participation in the market. For example, wind generation, which represents less than one per cent of Australia’s energy market, is being charged disproportionately compared to large power stations, which represent 85 per cent of total generation, through the application of network system control charges. An analogy is to charge a light aircraft for the cost of extending a runway, when the extended runway benefits large jets—in this case, the large power stations.

Peak energy demand, which may occur for only a couple of hours at a time, drives the need for additional infrastructure. There is a concept of ‘negawatt’ market, where large-scale load curtailability or energy conservation is hidden into the market, instead of additional generation. Currently there is no market for large-scale energy efficiency or load curtailability beyond the occasional informal arrangement between retailers and customers. Similarly, increased user participation and demand side response, where a consumer can respond to market signals of high demand price scenarios, is not being progressed in line with the current energy market reform agenda.

Additional concerns include inadequate retail competition and that the energy supply industry is showing trends of mergers resulting in corporations owning both retail and generation assets. That is a trend back to vertical integration and a trend towards locking out competition from new entrants and therefore innovators of low emission technologies and energy efficiency. This is not the direction we ought to be going in.

The Age today reported that in Spain wind power generation has risen to 27 per cent of the country’s total power requirement. That
demonstrates that there are no commercial or technical reasons why Australia should not have similar levels of wind generation. But, as I have just pointed out, there are significant regulatory barriers.

Energy efficiency was discussed vigorously in the Senate yesterday, and we heard about the good work that the Public Service is doing in demonstrating energy efficiency to large industrial energy users. While there is an important role for education and awareness, regulation, where the benefits are clearly known, should be included now, while the process of energy market reform is actually happening.

Cost competitive solutions are emerging from renewable energy and are even more so when combined with energy efficiency. That shift must be accommodated in the regulatory and energy market reform. While the working groups on energy efficiency, renewable energy and distributed generation are happily progressing, no market adjustment is being made in the current round of energy market reforms. The benefits of energy efficiency and smaller distributed generation are well known. I suggest to the government that, as a matter of urgency, it should remove all of the regulatory barriers to participation by small generation and energy efficiency.

Reform is tying Australia into high-energy growth and a high greenhouse emissions future rather than promoting competition between demand and supply options, promoting competition and innovation between energy services and energy commodities.

**Senator MASON** (Queensland—Parliamentary Secretary to the Minister for Health and Ageing) (1.26 pm)—I thank Senator Allison for her contribution. The Australian Energy Market Amendment (Gas Legislation) Bill 2006 will facilitate the development of a cooperative national approach to regulating access to gas pipeline infrastructure by applying the National Gas Law in the Commonwealth’s jurisdiction. This bill has the full support of all state and territory energy ministers, through the Ministerial Council on Energy. I would like to thank senators for their support of the bill and commend the bill to the Senate.

Question agreed to.

Bill read a second time.

**Third Reading**

Bill passed through its remaining stages without amendment or debate.

**Sitting suspended from 1.27 pm to 2.00 pm**

**QUESTIONS WITHOUT NOTICE**

**Broadband**

**Senator CONROY** (2.00 pm)—My question is to Senator Coonan, the Minister for Communications, Information Technology and the Arts. I refer the minister to the Treasurer’s comments this morning that Telstra and the G9 already have plans to build a national fibre-to-the-node broadband network and that government intervention is therefore not necessary. Can the minister also confirm that Telstra regulatory policy head, Phil Burgess, has stated:

The government needs to get its own policy house in order before there will be progress for all Australia on the FTTN talks.

Aren’t the major players making it clear that, unless the government changes, Australians will not get the broadband that they need?

**Senator COONAN**—I thank Senator Conroy for the question. It is of course the case that, in the competitive environment that this government has encouraged, in metropolitan areas there are two proposals currently being discussed for a fibre rollout.
That has been the case since sometime last year—probably about 18 months ago—when Telstra brought to the government a modified proposal to the one currently being considered.

Since then, there has been an alternative to Telstra’s proposal: a fibre-to-the-node network proposed by a group called the G9. It is a consortium of leading telecommunication providers, including Optus, IAPT, Macquarie Telecom, Soul Converged Telecommunications, Primus Telecom, Powertel, iiNet, Internode and TransACT. The G9’s proposal is a demonstration of competition at work in the open telecommunications environment that the government has established since 1997. The G9 propose a very similar network to the one that Telstra proposed—to cover five major capitals and the next 15 largest cities, a total of five million premises, at a cost of about $4.1 billion. Their proposal is for an open access network that would be open to all telecommunications providers to use to provide their telecommunications services to the public at a fair and cost-oriented price.

I think it is fair to say that competition has meant that Telstra is also very interested in rolling out a fibre network. That is why we want to continue to encourage competition. Telstra has an opportunity, of course, to continue its negotiations—and in fact is doing so. I encourage this. Telstra’s proposal would cover the five major capital cities. Telstra has estimated that its process would take about 3½ years.

The important point is that neither the consortium of the G9 nor Telstra has sought any government money to do this. So what we have here is a proposal for metropolitan areas, where two commercial providers are prepared, subject to getting a proper return on their investment, to undertake a rollout of fibre without the necessity to go and raid the Future Fund and without any necessity to go and rob the bush by taking away their $2 million Communications Fund. What they require is regulatory certainty—and that is in fact what they will get under the flexible regime that the government has in place. We will also be looking at the particular requirements of both groups, because their requirements differ. This government will continue to ensure—

Opposition senators interjecting—

Senator COONAN—I know the Labor Party does not care about this at all, but this government will ensure that we provide a regulatory framework that will let the market work and we will continue to invest in underserved areas that provide services to rural and regional Australians.

Senator CONROY—Mr President, I ask a supplementary question. I refer the minister to the Treasurer’s comments that the private sector will build a national fibre-to-the-node broadband network without government intervention. Can the minister point to any proposal—any proposal at all—to construct such a network, reaching 98 per cent of the Australian population, that does not involve government investment? Minister, hasn’t the Treasurer shown that your government has no idea how to deliver a fast broadband network to Australians and that this is a gross act of economic vandalism?

Senator COONAN—I thank Senator Conroy for the very amusing supplementary question. Senator Conroy has a very poor grasp of what it costs to deliver fast broadband—not only in metropolitan areas but anywhere throughout rural and regional Australia. This government is already delivering fast broadband throughout Australia and investing in a new network. We will continue to ensure that all Australians—not just 98 per cent; 100 per cent of Australians—will con-
continue to get fast broadband regardless of where they live.

**Broadband**

**Senator NASH** (2.06 pm)—My question is to the Minister for Communications, Information Technology and the Arts, Senator Coonan. Will the minister inform the Senate how the government is ensuring equitable access to broadband in rural and regional areas? Is the minister aware of any alternative policies?

**Senator COONAN**—I thank Senator Nash for her question and for her ongoing interest in investment in broadband internet in rural and regional parts of Australia. The Australian government is investing more than $4 billion in broadband and telecommunications services, guaranteeing fast broadband to every person who wants it.

**Senator Conroy interjecting**—

**The PRESIDENT**—Senator Conroy, you are warned!

**Senator COONAN**—We are currently providing more than $600 million in incentives to leverage investment by the private sector to build a new high-speed open access network across the country. Through the $2 billion Communications Fund, we are future-proofing the bush and ensuring its future telecommunications needs will be met.

Senator Nash asked me about alternative policies. Yesterday the Labor Party sought to unload one of the greatest policy con jobs on the Australian public, even more dubious than the infamous ‘noodle nation’, with a thinly detailed, poorly costed and essentially undeliverable proposal to lay fibre end-to-end across Australia. The policy to date has seen Australia’s foremost institutional analysts condemning Labor’s proposal as taking the country back 20 years and as being impractical. At the same time, other telecommunications specialists have labelled Mr Rudd’s first technological foray as overkill and redundant. As ABN AMRO concluded, ‘It really is broadband dreaming.’

No-one can deny that Australians have an appetite for broadband. As I have often said, we are second in the world in terms of OECD broadband take-up rates. But Mr Rudd’s Labor plan is quintessential Labor of old—leave out the detail, fudge the costings, throw out any semblance of prudent economic management. Out of yesterday’s 22-page document, which Senator Conroy admitted in his Press Club address had kept him up late for the previous 48 hours, only one page is devoted to any sort of detail on Labor’s proposal. I looked in vain for a coverage map or a costing table, and there is an abject omission of any level of technical detail. Already, yesterday’s mid-morning announcement of an $8 billion costing for Mr Rudd’s broadband stab in the dark is rising at the rate of about $1 billion every 12 hours. By late afternoon, Senator Conroy said in an interview with Steve Price on Sydney radio that Labor’s costings had already increased and were now about $8 billion to $9 billion.

But, even with those rising numbers, Labor’s upwardly revised figure is well short of what is realistically required to build a national fibre network capable of delivering a universal minimum speed of 12 megabits to 98 per cent of the population. But don’t take my word for it—less than a year ago Telstra was widely reported as saying that a national fibre rollout would cost in excess of $30 billion. That is about a $22 billion shortfall so far on Labor’s estimates. Two years ago, in evidence to Senate estimates, Telstra executive Bill Scales said in relation to the fibre rollout:

At the very least it requires literally tens of billions of dollars of investment.

Independent experts have said that it is about $20 billion. So while Telstra and independent
analysts have proven Labor’s costings to be little more than a back-of-the-envelope stab in the dark, the most damning assessments come from proven international experience. In the case of Singapore, a country with a land mass half the size of Sydney, the fibre rollout cost was $5 billion. Does Labor really expect the public to swallow Labor’s claim that they can cover seven million additional square kilometres with fibre with only $3 billion more? (Time expired)

Senator NASH—Mr President, I ask a supplementary question. Further to that answer, would the minister explain why the government will not be adopting alternative policies to the ones she has outlined?

Senator COONAN—I thank Senator Nash for her supplementary question. I was explaining that Labor’s costings are hopelessly flawed—about $22 billion short at the moment. In South Korea, which is about half the size of Victoria, the cost of the fibre network was in excess of $50 billion. Let us make no bones about it. Fair is fair. The Australian public should not be duped by Labor’s broadband fantasy. Labor’s costings are flawed, they are undeliverable and they do not stack up against international comparisons. You only have to look at international comparisons and what Telstra says to know that Labor is fishing up a dry gully here. It is back to its old tricks of wasting taxpayers’ money, making promises it cannot deliver. This should be a very clear warning to all Australians that Labor is not fit to manage the trillion-dollar Australian economy, cannot be trusted with the nation’s savings and is certainly not fit for government.

Broadband

Senator McEWEN (2.12 pm)—Can the minister confirm that since 2002, the Howard government has launched at least 17 different broadband programs? Haven’t these been piecemeal, hastily cobbled together, short-term measures driven by their political needs? Minister, do you agree with Terry McCrann’s comments today that building a high-speed broadband is a no-brainer? Minister, other than a series of National Party photo opportunities, what does Australia have to show for this procession of programs that have left Australia on the IT goat track?

Senator Abetz—What have you got against goats?

Senator Chris Evans—You are in charge of rabbits and rats.

The PRESIDENT—Order! Senator Evans!

Senator Abetz—No, you are, as Leader of the Labor Party.

The PRESIDENT—Order! Senator Abetz!

Senator COONAN—I consider that question to be ill-considered. This government is extremely proud of the fact that, after the Labor Party failed to take any of the tough questions on the privatisation of Telstra, failed to do anything about shutting down analog mobile phones and did not have any kind of substitute technology in place and left the bush high and dry, with no consumer protection, the government has entrenched safeguards for consumers and has delivered services to rural and regional Australia. It has appreciated that in populous areas the market works well; the market will deliver these services.

Senator Faulkner—Let me examine the minutes.

Senator COONAN—This government understands that, in order to deliver services to rural and regional Australia—

Senator Faulkner—‘Kind regards’—

The PRESIDENT—Senator Faulkner! I remind you that shouting across the chamber is disorderly, and you have been doing it all
question time. I would ask you to come to order.

Senator COONAN—I was in the course of saying that government investment is targeted at the particular needs as they evolve with broadband. Who can forget that the Labor Party were so technologically challenged that, just a couple of years ago, they all voted in favour of getting the government to invest $5 billion in dial-up internet? How silly do they look now, when they are trying to advocate something they cannot pay for—an end-to-end fibre network? So there was dial-up internet, which I think everyone thinks is a joke, and a pie-in-the-sky uncosted proposal. We have targeted investment. We have connected over one million premises and small businesses. We have enabled some technology changes throughout rural and regional Australia. We have in play a tender process that will deliver a build for a new network for regional and rural Australia. We have delivered a broadband guarantee so that all Australians—not just 98 per cent of them; 100 per cent of them—will have access to broadband regardless of where they live. This new network that will be rolled out needs to be sustainable and scaleable as people’s appetite for broadband increases and at a price that people can afford.

Senator Ludwig—It’s piecemeal. It’s been cobbled together, and you know that!

The PRESIDENT—Senator Ludwig, you are warned!

Senator COONAN—One of the very interesting things about fibre is that it has not been a commercial success anywhere in the world. It has not had much of a commercial return. Even Telstra’s estimates were very low. We have to ensure that the market does what the market will do. There are currently two fibre proposals being looked at. Then we have to ensure that, regardless of where people live in rural and regional Australia, they will not be dudged—that they will get the services they need, together with a future fund and a communications fund that will ensure that liabilities going forward will be met and that they will have access to better services as they come on-stream. It is very important for people listening to question time to know that this government is absolutely committed to ensuring that rural and regional Australia continue to get the benefits of targeted investment and that we will not step back from providing it.

Senator McEwen—Mr President, I ask a supplementary question. Minister, why has the government ignored its own broadband advisory group that identified a $30 billion economic benefit of true broadband? Will the minister now accept that the Howard government’s neglect of Australia’s broadband infrastructure has been the worst kind of economic vandalism?

Senator COONAN—The government’s investment has simply transformed the way in which people can live, work and run their businesses in rural and regional Australia. The ABS data that I have available shows that public investment in infrastructure is growing at twice the rate of that for the rest of the economy. All of the investment we make is targeted. It will be delivered in a way that continues to deliver benefits to rural and regional Australia. We will continue to ensure that fast broadband is available regardless of where we live.

Ageing

Ageing

Senator FIFIELD (2.18 pm)—My question is to the Minister for Finance and Administration, Senator Minchin. Minister, one of the biggest economic challenges facing our nation is the ageing of the population. What plans does the government have to address this issue? Is the minister aware of any alternative policies?
Senator MINCHIN—I thank Senator Fifield for his question. I think he knows better than most that this country does face a very significant demographic challenge over the next decade, as our first intergenerational report, in 2002, demonstrated. Unless we put money away now to deal with that challenge, the Australian government will have much more difficulty looking after older Australians properly in 10 years time and onwards. The nation, on the basis of this first intergenerational report, will be in deficit. Either services will have to decline or taxes will have to rise. We will release the second intergenerational report as part of the upcoming budget. I predict that that will show that we continue to need to put money aside now for this demographic challenge.

This government has implemented a plan to deal with that problem. That plan is the Future Fund. In its most recent statement on Australia, the International Monetary Fund said that the establishment of the Future Fund means that Australia is well placed to face the challenge of an ageing population. By locking money away and having an independent board invest it wisely, we can build savings to sustain the budget when the demographic pressure really does hit.

That is why Labor’s policy to raid the Future Fund is so irresponsible. I probably should describe it as ‘policies’, because Labor is planning to raid the fund in two different ways. Up until now, their policy has been to strip all the earnings out of the fund—and that was bad enough—but now we learn that their policy is actually to strip capital out of the fund. How on earth can a savings fund grow to meet the nation’s future needs if it is not allowed to keep its earnings for reinvestment and, even worse, if its capital is being ripped out of it? We call on Mr Rudd to release his costings now to show how on earth you can raid the fund in the way Labor proposes and still grow the fund to meet the challenge.

Senator Carr interjecting—

The PRESIDENT—Senator Carr, you are warned as well!

Senator MINCHIN—The nation has a superannuation liability that will be $140 billion in 2020. The Future Fund currently has $50 billion in it, so how on earth can it grow from $50 billion to $140 billion if it is being raided to pay for Labor’s vote-buying plans?

Opposition senators interjecting—

The PRESIDENT—Order on my left!

Senator MINCHIN—They are raiding it not just for broadband. Today both Mr Tanner and Mr Smith refused to rule out raiding the Future Fund for other vote-buying initiatives. Nothing will stand in the way of Labor making these big spending promises, not even their supposed principled opposition to the sale of Telstra.

Senator Chris Evans interjecting—

The PRESIDENT—Order! Senator Evans!

Senator MINCHIN—I wonder where Senator Carr was when Mr Rudd said they were going to sell all the Telstra shares. Mr Rudd, the Labor Party leader, described retaining Telstra in public ownership as ‘core Labor policy’.

Opposition senators interjecting—

The PRESIDENT—Order on my left! Senator Evans, I would remind you of parliamentary language when you are addressing senators across the chamber.

Senator MINCHIN—I wonder where Senator Carr was when Mr Rudd said they were going to sell all the Telstra shares. Mr Rudd, the Labor Party leader, described retaining Telstra in public ownership as ‘core Labor policy’. Even after T3, Labor promised they would not sell another single Telstra share. So Labor’s policy, up until Tuesday, was to force the Future
Fund to retain in perpetuity all of its Telstra shares. That was the policy: to force the fund to retain every single share. Today, two days later, the policy is to force the fund to sell all the shares and hand the cash over to a future Labor government. As the Treasurer quite properly said yesterday, this is probably the most irresponsible economic policy that Labor has come up with in its 11 long years of opposition.

**Telecommunications**

Senator HUTCHINS (2.23 pm)—My question is to Senator Coonan, the Minister for Communications, Information Technology and the Arts. Does the minister recall the Prime Minister’s promise during the 2004 election campaign, when he stated:

> We will make sure Australian businesses and families have access to the modern communications tools they need in the 21st century to live and work smarter.

Why then does the World Economic Forum rank Australia’s available internet bandwidth just 25th and the Australian government’s efforts at promoting information technology just 53rd in the world? Minister, are Australians not missing out on the tools they need for the 21st century to live and work smarter, because of the government’s failure to deliver on this important economic issue?

Senator COONAN—No, I certainly do not agree with the proposition that this government has not dealt with the need to allow people to live and learn smarter by reference to accessing broadband. I think that sometimes we get a bit mixed up, shall we say, with some of these figures that go around. Australia really is about comparable to Germany, France, the UK and the United States and has take-up that has grown faster than in any other OECD country except Denmark in the 12 months to 30 June 2006. These are important figures, because residential take-up of broadband increased by 63 per cent in regional areas and 41 per cent in metropolitan areas in the year to September 2006.

A major factor in broadband take-up has been price. That is one of the reasons why this government has been keen to ensure that—notwithstanding the preparedness of the Labor Party to roll back competition, to interfere in markets—the market will deliver, because that is really what gives consumers the best choice and keeps prices down. It also provides the best incentive for investment. It is important to know that the Australian government has continued to invest—

Senator George Campbell interjecting—

The PRESIDENT—Senator Campbell, come to order!

Senator George Campbell interjecting—

The PRESIDENT—Senator Campbell, come to order!

Senator George Campbell interjecting—

The PRESIDENT—Senator Campbell, I will not ask you to come to order again! Senator Coonan, do you wish to continue?

Senator COONAN—Yes. Thank you, Mr President, I do. I was just having difficulty hearing. I did want to point out that this government has invested about $4 billion in upgrading telecommunications services since we have been in government. Just since I have been in this portfolio, I have announced over $3½ billion to ensure that Australia is certainly not left behind but is able to compete effectively with broadband.

We have connected over a million premises and, with small businesses, we have been very keen to ensure that they have been able to access what they need to live, work and do business in rural and regional Australia. We currently have a new plan, a new broadband rollout and open access arrangement for rural and regional Australia that apparently the Labor Party would simply just roll over or cancel. The people of Australia
need certainty, and the best that the Labor Party have been able to come up with is a pie-in-the-sky, uncosted proposal that is rising at about a billion dollars every 12 hours. They have no idea how to deliver it and no idea how to actually use the market, where the market will work or how to invest in rural and regional Australia for services that are absolutely needed.

It is also important to know that Australia’s ICT capacity has been underpinned by access to fast broadband. It has contributed between 50 per cent and 80 per cent of productivity growth to the services and manufacturing sectors over the last two decades. It would not have been able to do that if this government had not, as new technology became available, enabled the conditions for broadband to be made available. So we will continue to ensure, with our Australian broadband guarantee, that all Australians, irrespective of where they live, will be able to continue to access services and will be able to do it even in the most remote parts of Australia.

Senator HUTCHINS—Mr President, I ask a supplementary question. Was Robert Gottliebsen not correct when he said today:

The Howard government have been caught hopelessly wrong-footed with outdated telecommunications regulations.

Is it not true that the Howard government’s backward-looking regulation is holding back the important infrastructure investments needed for Australia’s future economic prosperity?

Senator COONAN—No, that is not correct. The Australian government’s regulatory regime for the telecommunications sector is enabling unprecedented investment in the sector. I think when Labor was in we had a cosy duopoly. We now have over 150 telecommunication providers providing choice to consumers and keeping prices down and a competitive environment that enables people to invest with certainty and to continue to do so with appropriate incentives for the government in underserved market areas. It is absolute nonsense to suggest that the regulatory environment is responsible for commercial decisions of operators.

Workplace Relations

Senator ADAMS (2.30 pm)—My question is directed to Senator Abetz, the minister representing the Minister for Employment and Workplace Relations. Is the minister aware of a report released today by the Australian Mines and Metals Association which identifies 15 reasons why common-law contracts are inferior to Australian workplace agreements? Does the government agree with the report’s finding that preferring common-law contracts to AWAs would be bad for workers and bad for the economy? Is the minister aware of any alternative policies?

Senator ABETZ—I thank Senator Adams for her question. Being a Western Australian, she knows the importance of Australian workplace agreements for workers in the mines and minerals sector. I am aware of the report by the Australian Mines and Metals Association—a report from the coalface, so to speak. The report makes it very clear—and allow me to quote what it says—that Australian workplace agreements in the resources sector have provided a safer, more productive, better paid, dispute-free workplace. In particular, the report identifies that not only do workers on AWAs in the resources sector have wages 30 per cent higher than those on awards but also the injury frequency rate in the sector has declined by a massive 85 per cent since AWAs were introduced in 1996. It is no wonder that up to 80 per cent of the resource sector workforce in Western Australia has chosen to sign up to workplace agreements. If you are a worker
you get more pay and a safer workplace, and if you are an employer you get more productivity and fewer strikes. It is a classic win-win.

Very interestingly, the report also considers whether common-law contracts could adequately replace Australian workplace agreements, as proposed by Labor. Tellingly, the report shows 15 reasons why common-law contracts are in fact inferior to AWAs for both workers and the economy. For example, a common-law contract cannot be used to override an award or collective agreement, meaning employees and employers cannot customise their agreement in a manner different to the award or collective agreement, thereby totally defeating the purpose of having an individual agreement in the first place. And get this: common-law agreements do not prevent unwanted intervention by unions and they do not deny unions the capacity to enter a workplace, even if there are no union members in that workplace. No wonder Labor wants to replace AWAs with common-law contracts. It is all about entrenching union power in the workplace. With Mr Rudd as Labor leader, it is the same old Labor Party but with a new paint job. But that paint job is fast peeling off.

This report blows the lid right off Labor’s false claims that the million people on AWAs can simply move to common-law agreements and all will be fine. The truth is now out. Common-law agreements are not a comparable substitute for Australian workplace agreements. They are worse for workers and they are worse for the economy. The only thing they are good for is the unions.

The Mines and Metals Association have quite accurately described Labor’s policy to replace AWAs with common-law agreements as economic vandalism which puts at risk Australia’s reputation as a stable economy—deliberate economic vandalism to the sector of the economy which Labor, I might add, falsely claims is underpinning our current good times. If Labor ever got into power it would be ripping up the underpinning of the economic good times that Australia is currently enjoying. That is why Labor cannot be trusted with our economy. (Time expired)

Privatisation

Senator FIELDING (2.34 pm)—My question is to Senator Minchin, the minister representing the Treasurer. Minister, I draw your attention to the UK government’s recent announcement of an inquiry into the loss of tax revenue caused by high-debt private equity buyouts. Minister, given that Australian taxpayers will lose more than $1 billion in revenue as a result of the Qantas takeover, will the Australian government also investigate the massive tax losses from such deals?

Senator MINCHIN—I will seek further information from the Treasurer specifically on that subject, but my recollection is that I observed in the media that inquiry by the British government and our Treasurer responding in the media by noting that he had also observed that inquiry and asking Australian Treasury officials to monitor the conduct and outcome of the British investigation of the matter. As I said in the last Senate session, obviously the phenomenon of private equity deals of this kind, while not new, has certainly grown in volume and does present certain challenges for policymakers around the country in getting the balance right in terms of observing the proprieties of a free market and minimal intervention but at the same time ensuring that we do understand the consequences of the potential for growth in such activity and its effects on the commercial and financial marketplace. I think I acknowledged in the previous Senate session that the tax implications are something that policymakers around the world will have to increasingly take account of when consider-
ing this matter. In that sense, we welcome the British initiative. As I said, my understanding is that the Australian Treasurer has directed our officials to monitor that and report to him on the outcome of the British inquiry. I will endeavour to find further information for Senator Fielding from the Treasurer on the matter.

Senator FIELDING—Mr President, I ask a supplementary question. I thank the minister for his answer to the first part of my question. Minister, with private equity sharks encircling major Australian companies like the Coles group and Qantas, and given the importance of tax revenue to Australia, why has the government agreed to tax treaties which limit our tax take on money going overseas to just 10 per cent?

Senator MINCHIN—I will take the latter part of that question on notice because I do not have that information to hand. I say to Senator Fielding that to describe the many and varied professional people involved in private equity as ‘sharks’ is wrong and is not appropriate language for a senator or for this place. No doubt in any field of endeavour there are those with good and bad motives or good and bad behaviour, but to describe a whole field of professional endeavour in that way is wrong. Private equity does have its place in the commercial market. There are many instances where the knowledge by management and shareholders of the existence of the opportunity for private equity businesses to purchase shares is a force for good. It must always be the case prima facie that shareholders are free to sell their shares, which are their property, to whomsoever they like, subject to reasonable regulation of that matter. I am happy to follow up on the latter part of the question but I would ask Senator Fielding to be more reasonable and balanced in his language. (Time expired)

Housing Affordability

Senator FIERRAVANTI-WELLS (2.38 pm)—My question is to the Minister for Community Services, Senator Scullion. Will the minister inform the Senate of Australian government programs and initiatives which are assisting Australians to buy or rent their home? Is the minister aware of any alternative policies?

Senator SCULLION—I thank the senator for her question and recognise her long-standing interest in housing affordability not only in the Illawarra but also in the wider New South Wales constituency. The greatest assistance in housing affordability that this government could ever give to Australians is by providing a fantastic and sustainable economy. As all in this place should know—although I understand there are some on the other side who are in denial—this government has delivered just that. Unemployment is now at 4.5 per cent, a 32-year low. People who are considering buying their own homes should also consider the 10.9 per cent unemployment that was left for this government to deal with. There are over two million new jobs and wages have increased by 19.8 per cent. We have a strong and stable economy which enables more people to be in a position to buy their own home.

Under the Commonwealth-State Housing Agreement this government has delivered $4.75 billion and provides an additional $2.2 billion in rental assistance to assist social security recipients and families on low incomes. The family tax benefit part A, increasing the income tax threshold, as well as the extension to supplements to families with three children are fantastic initiatives which have assisted people at the coalface. And of course there is the major income tax change which means that 80 per cent of Australians now pay less than 30c in the dollar—an absolutely significant incentive that will allow
people to save money to buy their own homes.

Interestingly, despite this fantastic economy, there is no doubt—and all of us who are interested in this area would recognise—that people are having some trouble affording their own homes. It is interesting that the senator alluded to alternative tax policies, because I think that has a great deal to do with people’s capacity to buy their own home. The state and territory governments collect significant amounts in stamp duty and in various other land taxes. Much more could be done in this area in order to improve housing affordability.

**Senator Faulkner**—This sounds like babble.

**Senator SCULLION**—For those on the other side who are interjecting and obviously show no interest in this very important matter, Alan Jones commented on the Today show on 14 February 2007, ‘It’s made much worse by the behaviour of some state governments. One of the reasons is the extent to which the government and in particular the New South Wales government, uses property as a vehicle to raise tax.’ He went on to say—and this is a number which I think they should be concerned with—that families buying a new home in Sydney pay on average $68,000 in infrastructure charges with every new home. This is the new housing affordability tax by the Iemma government. I would not be being so smart about it on the other side.

We do our best. We provide the first home loans grant. Do you know where that goes? In New South Wales it goes straight into the coffers of the Labor Party. State governments continue to have a love affair with money rather than caring about their constituents. *(Time expired)*

**Senator FIERRAVANTI-WELLS**—Mr President, I ask a supplementary question. The minister made reference to policies of the New South Wales government. Could the minister elaborate further on why residents of New South Wales are being dugged by the policies of Labor in New South Wales?

**Senator SCULLION**—As I was saying, the New South Wales government need to stop having a love affair with money and start caring about their constituency when it comes to these issues. The Financial Review of 21 March said that we can expect this housing affordability tax to go to $15 billion this year. Another $1.7 billion from the GST in New South Wales is returned to New South Wales, but do we see any relief for New South Wales people buying houses? Absolutely not. It goes straight into the Iemma skyrocket. That is what is going to continue. Based on the performance of the Iemma government, New South Wales people can make a very good decision on Saturday and vote them completely out of office. That is the only way houses are going to be affordable in New South Wales.

**The PRESIDENT**—Order! Senators on my left, I remind you that shouting across the chamber is disorderly.

**Senator Chris Evans**—And senators on the right as well?

**The PRESIDENT**—Are you reflecting on the chair, Senator?

**Senator Chris Evans**—No, I am not, Mr President.

**The PRESIDENT**—I would ask you not to. I would also ask you to resume your seat. I am on my feet. If you have a point of order, you can raise it.

**Senator Chris Evans**—Mr President, I rise on a point of order. I think you were correct in ruling that the chamber had become noisy, but I would appreciate it if you would also bring that to the attention of ministers who shout for four minutes in allegedly an-
swering a question which was designed to be an attack in the lead-up to the state election and which failed miserably. I urge you to consider both sides of the chamber when making such rulings.

Senator Minchin—Mr President, on the point of order, I would just make the point that ministers, regrettably, have to shout to be heard above all the babble from the other side.

Opposition senators interjecting—

The PRESIDENT—Order!

Senator Faulkner—Mr President, I rise on a point of order. I just want to draw your attention to the fact that Senator Scullion did not screech through you. I think you should insist in future that his screeching be done through the chair.

The PRESIDENT—I have never had to call a minister to order before for overemphasising their voice while answering a question. But I do take the point that there is a lot of noise in the chamber. I would remind all senators, including ministers, that shouting is disorderly. Senator Nettle, do you have a point of order?

Senator Nettle—Yes, I do. Mr President, I would ask you to review your decision to allow that supplementary question. In the past, you have ruled that people can ask questions about alternative policies or other parties, but that supplementary question named a particular party and asked about it. I want you to review that, because in the past you have made different rulings that did not allow that kind of question. I would ask you to review your decision to allow that question.

The PRESIDENT—I will have a look at it.

Senator Faulkner—Mr President, further to the point of order: if you are going to review the supplementary question asked by Senator Nash, which was clearly out of order.

The PRESIDENT—No, it was not out of order, Senator.

Senator Faulkner—I believe it was.

The PRESIDENT—You may believe that, but I can tell you—

Senator Faulkner—Then I would ask you to review that supplementary question.

The PRESIDENT—If you recall, the question that was asked was in terms of why they would not be adopting the particular policies, and that is in order.

Australian Federal Police: Electoral Allowances

Senator LUDWIG (2.47 pm)—My question is to Senator Johnston, the Minister for Justice and Customs. I refer to the raids conducted by the Australian Federal Police on the offices of the members for Bowman, Bonner—

Senator Kemp interjecting—

Senator Faulkner interjecting—

The PRESIDENT—Senator Faulkner and Senator Kemp, shouting across the chamber while someone is trying to ask a question is very disorderly and bad manners as well.

Senator LUDWIG—I refer to the raids conducted by the Australian Federal Police on the offices of the members for Bowman, Bonner and Moreton. Who in the Prime Minister’s office did the Australian Federal Police inform on Thursday, 1 March, that these raids would be conducted the following day? Is the minister aware of the media report on 7 March that the member for Bowman’s office received a telephone call an hour before the raids were conducted? Can the minister confirm whether a tip-off occurred and, if so, can he guarantee that it did not compromise
those investigations? Is the minister aware of whether the AFP is investigating claims that the member for Bowman’s office received a tip-off?

Senator Abetz interjecting—

Senator Chris Evans interjecting—

The PRESIDENT—Senator Abetz and Senator Evans, this is supposed to be question time, not chat time. Come to order.

Senator JOHNSTON—I thank the senator for his question. Firstly, I can confirm that the investigation has in no way at any time been compromised to any degree whatsoever by conduct on any person’s part in the inquiry. On 13 November 2006, the alleged fraudulent use of electoral allowances by federal MPs was referred to the Australian Federal Police for investigation. The Australian Federal Police accepted these allegations for investigation on 30 January 2007. On 1 March 2007, the AFP provided preliminary advice to government, through the Prime Minister’s office, that search warrants would be executed on a number of electoral offices the following day—2 March. On 2 March 2007, the AFP formally briefed the office of the Minister for Justice and Customs on the execution of the search warrants, when the search warrants were being executed, the substance of the matter being investigated and who was the subject of the investigation. On 2 March, the AFP provided the Department of Finance and Administration with a copy of its ministerial briefing.

At no time were any of the activities undertaken by the Australian Federal Police compromised, interfered with or engaged over by any member of the government. The AFP, in terms of their operational requirements, went about their duties without any government interference whatsoever. I am instructed that the information flowing to the Prime Minister’s office on 1 March was in line with a longstanding policy by the commissioner to inform government of matters relevant to government. No flow of information, influence or engagement was forthcoming towards the AFP in any shape or form. They carried out their duties, as is their wont. This government takes no role in operational matters whatsoever. That is all I have to say.

Senator LUDWIG—Mr President, I ask a supplementary question. Can the minister confirm whether or not there was a tip-off and whether the AFP are investigating those claims? I am not sure that, in answering the first part of the question, the minister actually dealt with that.

Senator JOHNSTON—Senator Ludwig, as we all know, has longstanding experience in this area of public administration. He well knows that there is not a snowball’s chance in hell that I am going to answer that question, as the investigation is ongoing.

Anti-Corruption Commission

Senator MURRAY (2.52 pm)—My question is to the Minister for Justice and Customs. Does the government accept that without Western Australia’s Corruption and Crime Commission, Queensland’s Crime and Misconduct Commission and New South Wales’s Independent Commission Against Corruption it would be difficult or unlikely for corruption to be investigated and exposed to the extent it has been in those states? Does the minister agree that corruption does not exist only in those three states? Given the crucial role of these anti-corruption commissions, why is the federal government not interested in setting up a federal anti-corruption commission with a similar charter and similar powers to those state commissions?

Senator JOHNSTON—I thank the learned senator for his question. Coming from Western Australia, as he does and as I do, we share a keen interest in government corruption, unfortunately. What I can tell him
with respect to the Commonwealth’s disposition regarding coercive powers relating to the corruption of parliamentarians and/or federal enforcement officers is that there is an extensive matrix of legislative framework that is available which mirrors, in many respects, the two individual commissions that he mentioned. The Commonwealth has very strong laws directed against corruption. A number of these are set out in part 7.6 of the Commonwealth Criminal Code Act 1995. As I said, they very much mirror many of the powers and format of the two corruption commissions the senator mentioned. Giving a bribe to a Commonwealth public official and the receipt of such a bribe are criminal offences carrying a maximum penalty of 10 years imprisonment. ‘Commonwealth public official’ is defined very broadly and includes, for example, members of federal parliament, federal public servants and federal judicial officers.

The giving of a benefit to a Commonwealth public official, in line with the definition I have just given you, or the receipt of such a benefit that would tend to influence that official in the exercise of his or her duty, is an offence carrying up to five years imprisonment. It is not necessary to prove the official was actually influenced. Abuse of public office is also a criminal offence carrying a maximum penalty of five years imprisonment. This offence is made out where a Commonwealth public official—and I revert to the definition, which includes parliamentarians—uses their influence, exercises their duties or uses information received in an official capacity with intent to obtain a dishonest benefit for themselves or for another person or causing detriment to any other person. The rules, the framework, the regulation, and the model are there, I can assure you, Senator.

These are just some examples of the relevant offences. Of course, the Australian Federal Police has broad, extensive investigation powers and powers of coercion with respect to search warrants and other powers. Any person who believes that they have evidence of corruption involving a Commonwealth public official should obviously refer this to an appropriate law enforcement agency—in most cases, the Australian Federal Police, as I have said. It would be a matter for that agency, which of course has oversight of the integrity commission, to assess whether that evidence was sufficient to merit further investigation and ultimately whether charges and a formal prosecution would be required to be issued.

In addition to the criminal penalties that I have set out applicable to corruption offences, an offender is liable to have their Commonwealth-funded superannuation entitlements cancelled pursuant to the Crimes (Superannuation Benefits) Act 1989. So the public official not only can be prosecuted criminally but also can have the benefits they have obtained whilst a public official taken off them. In some respects, this goes further than the state regimes. An MP under sentence for an offence punishable by one year’s imprisonment or longer is disqualified from sitting in parliament. Again, in some jurisdictions this goes further than what the states have enacted.

The Australian Commission for Law Enforcement Integrity is vested with authority to investigate corruption issues involving staff members of a law enforcement agency. A law enforcement agency is an agency that has a law enforcement function that has been prescribed in regulation. (Time expired)

Senator MURRAY—Mr President, I ask a supplementary question. I thank the minister for his answer, but the minister would recognise that his answer focused on offences and penalties and not so much on the investigating capacity of the bodies con-
cerned. Does the minister recall that Mr McGinty, the Attorney-General of Western Australia, described his own commission as a ‘standing royal commission’? Does the minister concede that there is a strong demand for higher political standards and political governance in Australia, and does the minister believe that the government might be of a mind to review this issue and perhaps consider an anti-corruption commission again, based on current experience and trends?

Senator JOHNSTON—I can say that, in terms of standards, given the recent history, particularly in some states—namely my own, unfortunately—I can say that governance and standards are low. We have observed various events which cause considerable consternation in Western Australia. The doctoring of reports by that state parliament to suit commercial interests is of great concern. Could I reassure the senator by saying that the Commonwealth has a very extensive and very successful matrix of rules and particular laws, and of course the Australian Federal Police has very heavy oversight of these matters. On a Commonwealth basis, I would have no hesitation in saying that it is not a matter of standards and governance. I could not say the same for the states. (Time expired)

Ministerial Responsibility

Senator MARSHALL (2.59 pm)—My question is to Senator Minchin, the Minister for Finance and Administration. Can the minister confirm that the former Minister for the Environment and Heritage agreed in August last to pay $150,000 in legal costs to the company Wind Power? Weren’t these taxpayers’ dollars used to settle the action the company had brought against the former minister over his decision to block the Bald Hills wind farm? Didn’t the former minister also rack up $100,000 in Commonwealth legal expenses on a case he was never going to win before settling out of court on the company’s terms? Minister, isn’t it true that your government has played politics with the Bald Hills wind farm right from the start?

Senator MINCHIN—I have no knowledge of the matters to which the senator refers. The question really should be asked of the Minister representing the Minister for the Environment and Water Resources. I take this opportunity to say to the Senate that Senator Ian Campbell was one of the finest environment ministers this parliament has had. He did an outstanding job as minister for the environment. He was properly promoted to the position of Minister for Human Services and was doing an outstanding job in that portfolio as well at the time of his resignation. He will long be remembered for his tremendous service as the minister for the environment. The passion he brought to that portfolio and his tremendous work in a whole range of endeavours in that portfolio will be remembered by this nation and acknowledged as such.

Senator MARSHALL—Mr President, I ask a supplementary question. Is the minister aware that the $250,000 spent by taxpayers to defend the former minister’s illegal decision is almost four times the amount spent by the government in 2005-06 on protecting the orange-bellied parrot? Why was more money spent defending the former minister’s politically motivated blocking of the wind farm than defending a threatened species?

Senator MINCHIN—It is outrageous of the senator to walk in here and accuse a sitting senator of acting illegally. It is an outrageous suggestion and I would ask him to withdraw it.

The PRESIDENT—On reflection, Senator Marshall, I do believe you may have imputed improper motives to a senator. I ask you to withdraw.
Senator Marshall—Yes, I withdraw.

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

PERSONAL EXPLANATIONS

Senator FIELDING (Victoria—Leader of the Family First Party) (3.02 pm)—I seek leave to make a brief personal explanation as I claim to have been misrepresented.

Leave granted.

Senator FIELDING—In today’s Age newspaper, Senator Stott Despoja is quoted in relation to her David Hicks motion from yesterday as saying:

We could have won it. It was lost 32 to 34. If Fielding had voted with us, it would have been a tied vote.

That implies Family First’s vote was the deciding vote, and that is wrong. Even if Family First had voted for the motion, it would still have been defeated. Under section 23 of the Constitution a tied vote in the Senate is resolved in the negative. Senator Stott Despoja knows this very well. She also complains that Family First should have supported her motion because Family First has publicly called for David Hicks to be immediately brought home.

Senator Bob Brown—Mr President, I rise on a point of order. I do not note any personal explanation or misrepresentation at all. The senator is talking about a vote in the Senate and another senator’s comment on that, and the proper time and place to do that is not now.

The PRESIDENT—He has been granted leave to make an explanation, and I would remind Senator Fielding that that is exactly what he should be doing.

Senator FIELDING—Yes, it is very short. For the record, Family First has supported a total of nine motions for a fair trial of David Hicks or his return to Australia.

Senator Bob Brown—Mr President, I rise on a point of order. The senator is trying to defend the indefensible, a failure of his actions regarding—

The PRESIDENT—There is no point of order. Resume your seat. That is not a point of order, Senator, and you know it is not.

Senator FIELDING—The reason we did not support this one was that Senator Stott Despoja’s motion dismisses the US military commission process as a sham. Family First has concerns about the process—

Senator Faulkner—Mr President, I rise on a point of order. This now cannot be considered in any way, shape or form a personal explanation. I am always of the view that leave should be given at the appropriate time, even though I do not think after question time is the appropriate time. It should be after taking note. That is the general practice of this chamber. I take the point of order— and I do not like doing so in relation to personal explanations—because this has gone well past a personal explanation and is now debating an issue. Senator Fielding is entitled to debate an issue but not under the guise of a personal explanation.

The PRESIDENT—Senator Fielding, do you have any more to add to your explanation?

Senator FIELDING—One line: Family First has concerns about the process but does not agree it is a sham.

Senator Bob Brown—Mr President, I rise on a point of order. The last time I sought to make a personal explanation in here, you directed that I wait until after taking note. We cannot have two standards in here.

Senator Faulkner—You shouldn’t have given leave. We all gave leave, but you could have stopped that.
The PRESIDENT—Order! Senator Brown is making a point of order. What is the point of order, Senator Brown?

Senator Bob Brown—If, Mr President, your ruling is that the personal explanation can take place now if the Senate gives leave, let us make a standard of that so everybody knows it is an even playing field.

The PRESIDENT—Senator Fielding stood to seek leave and leave was granted. There is no point of order.

Senator STOTT DESPOJA (South Australia) (3.06 pm)—I seek leave to make a five-second statement.

Leave granted.

Senator STOTT DESPOJA—My comment was taken slightly out of context. I know that a tied vote is a lost vote. My other comments still stand, however.

QUESTIONS WITHOUT NOTICE: TAKE NOTE OF ANSWERS

Broadband

Senator CONROY (Victoria) (3.07 pm)—I move:

That the Senate take note of the answers given by the Minister for Communications, Information Technology and the Arts (Senator Coonan) to questions without notice asked today relating to communications and broadband.

Once again we see a government that is in denial. If you look at just some of the commentary in today’s papers, you see that it spans right across the political spectrum. Terry McCrann writes:

Labor has caught both the Government and Telstra flat-footed with its entirely unexceptional and really quite sensible plan to co-build a national broadband network.

The prime minister’s response was shrill and silly ...

Earth to PM: trying to characterise a plan for a 21st century broadband network as having “no regard for the future” was sort of clunky with a capital C.

... ... ...

The sum to be spent over a period of five years is almost exactly the same in relative terms as the $2.3 billion committed over four years in the 2006 Budget for additional funding of road and rail infrastructure.

He goes on:

John Howard commits $600 million a year for 20th century road and rail. Kevin Rudd commits a similar sum for 21st century broadband. What was that about having regard for the future?

This is a government that is in desperate shape and is clutching at any straw whatsoever. Just so we have it on the public record, since 2002, the Howard government has launched the following broadband programs—and it is a long and pathetic list: the Telecommunications Action Plan for Remote Indigenous Communities, the Australian Research and Education Network framework, the Higher Bandwidth Incentive Scheme, the National Broadband Strategy, the National Broadband Strategy Implementation Group, the Coordinated Communications Infrastructure Fund, the demand aggregation broker program, the Metropolitan Broadband Blackspots Program, the Broadband for Health program, the Broadband for Health: Pharmacy program, the NBSIG Australian government action plan, the Clever Networks program, the Broadband Connect subsidy program, the Broadband Connect Infrastructure Program, the Communications Fund, the Broadband Blueprint and, most recently, the Broadband Guarantee. That is only since September 2002.

This is a government that is treating Australians with contempt. It is a government that refuses to accept that a national high-speed broadband network is a critical piece
of infrastructure that this country desperately needs. It is in shambles after years and years of the government walking around, taking out the political pork barrel at the behest of Senator Boswell, Senator Joyce or its own regional members of parliament, and just throwing billions of dollars out there. Billions of dollars have been thrown out there and what have we got? We are ranked 17th in the OECD and we are going backwards. We need a national broadband network. We need it so that our children have access to the most powerful educational and research tool ever invented by mankind. We need it so we can deliver the e-health initiatives and the remote viewing for aged people who need to be monitored by health professionals. That is why we need a national broadband network. That is why Robert Gottliebsen today said ‘Howard wrong-footed by Rudd’s net quick-step’. He also said:

… the community should celebrate because at least one of our major parties now understands that in three to five years a change is coming to the internet that will make current practices akin to the crystal sets that were the forerunner to radio and the 17-inch black and white TV sets that led to today’s flat-screen TVs.

Elizabeth Knight in the *Sydney Morning Herald* writes:

The general principle of the Labor strategy is fairly compelling for the simple reason it recognises the dire need for Australia to improve information technology infrastructure to move up the productivity curve relative to its international trading competitors.

We have a government that just does not get it. We have a government that is mired in the 20th century. We have a Prime Minister that is stuck in the 20th century. Tragically, he is taking his party with him. Kevin Rudd recognises that we need 21st century infrastructure, unlike Senator Boswell, who is in denial on this issue. *(Time expired)*

**Senator ADAMS** (Western Australia) *(3.12 pm)*—I would also like to take note of answers given by Senator Coonan. Senator Conroy has told us a little about Labor’s broadband plan, but I really wonder just how they are going to get to what he thinks they are going to achieve. Labor’s so-called plan for a fibre-to-the-node network to 98 per cent of Australia is not a real plan; it is just a vague promise to seek industry views. The scary part of this is that they are going to raid the piggy bank—2.7 billion Telstra shares will be sold from our Future Fund to help with their $4.7 billion plan to build a high-speed broadband network throughout Australia.

There is no detail on how the fibre-to-the-node network is going to be rolled out to 98 per cent of the Australian population. We do not know what level of private sector investment will be involved, what regulatory arrangements are being contemplated, whether there will be appropriate access arrangements or how the public private partnership will work. These are just some of the questions that have not been answered. The plan provides no ideas on how Telstra’s cooperation would be obtained for any other competing carrier to submit a viable fibre-to-the-node proposal. Will a Labor government introduce heavy-handed legislation to compulsorily acquire those parts of Telstra’s network that would be essential for such a fibre-to-the-node plan? Labor has fixed on fibre-to-the-node as the only way of delivering high-speed broadband to all areas of Australia. I had a high-speed wireless network installed in my own home in rural Western Australia only last week. For once, I have brilliant access to my parliamentary website and I am able to get my emails while I am working at the farm. What about wireless networks, which will provide a far more efficient way of delivering these services?
Labor has not given any consideration to the effects of its proposal on existing broadband providers in regional Australia or the broadband infrastructure to be rolled out as part of the government’s Broadband Connect program. Labor’s plan involves the abolition of the $2 billion Communications Fund, which is the lifeline for future communications services in regional Australia. But perhaps the most glaring problem with this plan is the fact that it is based on robbing the bush of the $2 billion Communications Fund and stripping a further $2.7 billion from the Future Fund. I am all for targeted assistance funding for broadband but the government has spent or allocated well over $1 billion already on broadband funding alone.

Even Senator Conroy had to admit, when grilled at an industry conference last year, that Labor never really thought that their funding would be enough and that he would have to sit down and work it out. By the sound of what he said today I do not think he has worked it out. A fibre rollout in South Korea cost the South Korean government $US40 billion. Australia’s land mass is so much greater than South Korea’s, yet Labor think $4.7 billion of government funding will be enough. Labor are assuming that the total cost will be about $8 billion. How do they know that it will be sufficient?

At the end of his speech Senator Conroy mentioned Australian Broadband Guarantee and transitional arrangements. I think it is important that I note today that the $162.5 million Australian Broadband Guarantee will provide universal broadband for all Australians. Anyone unable to gain a reasonable level of broadband service at their principal place of residence or small business can receive a subsidised broadband service. Where I live this is very important. It is also very important for those black spots in regional towns.

The Australian Broadband Guarantee builds on the achievements of the highly successful HiBIS and the Broadband Connect subsidy program, which have already provided broadband access to over one million Australian premises. The Australian Broadband Guarantee will particularly target difficult black spot areas to ensure that all Australians can access affordable broadband regardless of where they live. (Time expired)

**Senator GEORGE CAMPBELL** (New South Wales) (3.17 pm)—It is very obvious that the Minister for Communications, Information Technology and the Arts, in her responses to questions today, has not bothered to read today’s newspaper clippings or today’s newspapers, or she would have understood the broad positive response there has been to Labor’s initiative announced yesterday on broadbanding the nation.

Let me disabuse Senator Adams: it is not a vague promise; it is a bold plan for the future. We all know, or we should know, that the mining boom is not going to last forever. They never do. Booms come in and they go off. We need to put in place a plan now to secure the growth of this country into the future, irrespective of what happens with our commodities and our commodity sector. That is what Labor has done by taking the decision yesterday. We are looking ahead to the future.

The government have raised the issue that this is raiding the Future Fund—that it is a smash and grab raid. Well, what better way to use a future fund than to secure the future for our children? That is what Labor is about in putting this plan in place. It is estimated that the new network will deliver national economic benefits, including, for example, up to $30 billion in additional national economic activity a year, making Australian small businesses more competitive, creating new international and domestic markets for
businesses, new jobs for Australians and greater media diversity.

A state-wide broadband network in New South Wales, for example, will boost the state’s economy by $1.4 billion a year, increase employment by 3,400 jobs after 10 years, and raise exports by $400 million over its first decade. This is going to deliver for Australia, not just New South Wales. Every state and every person in this country is going to benefit from Labor’s decision yesterday to look to the future and put in place a broadband fibre-to-the-node network that will be integral to our economic prosperity over the next 20 to 30 years. This network is a critical part of the base of our new economy. In the 19th century there were big nation-building activities like building railways. In the 21st century the biggest nation-building activity will be putting in place the broadband structure.

In reality, what have we seen this week? We have seen the sharp contrast between an ageing Prime Minister, who is talking about failed policies of the past, and Kevin Rudd, who is talking about bold policies for the future. That is the contrast we have seen this week between the leadership of the two major parties in this parliament. The contrast could not have been starker than it was yesterday in the debate over the broadband issue. The government is fighting old and unpopular battles while the Labor Party is looking forward to building a future for our kids.

We know that the knowledge economy is driven by access to information and that information is critical to our success in the future. We need fast, reliable access to the internet, which will be the driver of future growth in our economy. Investment in the future of broadbording is essential. Last year, more than 100,000 people in this country applied for broadband but were turned down because of Australia’s second-class telecommunications infrastructure. The metropolitan broadband black spots program has been an abject failure.

What this government had done in this area is simply not good enough. That is why the Labor Party will invest $4.7 billion on the national broadband plan. This money will be an investment in the future prosperity of the nation. The plan will deliver access to broadband at a minimum speed of 12 megabits per second, a framework for a competitive new generation telecommunications infrastructure rollout and a foundation for future broadband infrastructure upgrades. This is responsible investment in the future. No one can argue that this is a silly policy proposal. (Time expired)

Senator McGauran (Victoria) (3.22 pm)—I was watching the broadcast from the Press Club yesterday when Senator Conroy had his moment in the sun announcing this policy. I suspect that not many people were watching that most lacklustre performance by Senator Conroy, but I was. That was either preceded or followed by Mr Rudd’s own press conference announcing this policy. This is a major policy announcement in an election year, with the election only eight months away or thereabouts. If this is what the Labor Party are going to put down as one of their keystone policies then so be it, because it can be picked to death.

One aspect of this—the raiding of the Future Fund—is, as the Treasurer described, the most reckless and dangerous policy announcement yet. I will get on to the Future Fund. Rest assured that we are not going to forget that or let up, because the mask has slipped—even the mask on Mr Rudd, who has studiously since coming to the leadership tried to play down the big problem that Labor has had in every single election: economic credibility. You finally got a leader who posed enough, faked enough and
conned enough so that people started to think that perhaps there was not much of a difference between the government and the opposition on economics. Supposedly, now you believe in surplus budgets and in zero net debt and in all those other things that you did not support when we were fixing the economy over the last 10 years. Mr Rudd was sold to the public as being the economically responsible leader and the Messiah that the Labor Party has been waiting for for so long, but the mask has slipped.

There are four points that I want to make about this policy. First of all, we are already doing it. The hype, the spin and the con about the lack of broadband facilities in Australia are nothing more than that. This government are already putting some $4 billion towards connecting Australia. We have a $1.1 billion Connecting Australia package, and over $600 million of that has already been laid out. Just recently, we had a $162 million announcement from the minister, guaranteeing the connection of broadband. There is also the $2 billion rural and regional Communications Fund. I make the point that this is already being done. The evidence is there: 90 per cent of Australian households already have very high-tech broadband connections. Time does not permit me to develop that subject any more. It is already being done, so do not listen to the hype.

Secondly, the real losers from this policy announced by the Labor Party are going to be the very ones who need the overriding market support, because the market will not meet their needs: the people in the rural and regional sector. Labor have a commitment to abolish the $2 billion Communications Fund, set up with the money received through the sale of Telstra. That should be made clear to the rural and regional areas. To fund Labor’s new policy, the $2 billion Communications Fund will be abolished.

Thirdly, another point to be made about this absurd policy is that they will be spending government and taxpayer funds for a need that, in essence, the market ought to be meeting. Is it any wonder that Telstra—Mr Burgess, no less—came out yesterday and supported lock, stock and barrel Labor’s policy? Anyone who knows Mr Burgess would not be surprised by the comments that he made yesterday. Is it any wonder, when you are going to roll gold into what they and the market should be doing?

Fourthly is the most reckless part of this policy—and the Labor Party. It has not taken you long to revert to kind. Wasn’t it Mr Swan who warned against the raiding of the Future Fund by our coalition colleagues, the National Party? What a joke that is. You are already into the honey pot. What a disgraceful, reckless policy it is. You are spending the future superannuation and pensions of our public servants. You could not help yourselves, and you have not ruled out more raids on the fund. (Time expired)

Senator STERLE (Western Australia) (3.27 pm)—When Senator McGauran so dearly holds to his heart rural and regional Australia, his comments and contributions in this chamber never cease to amaze or amuse me. I am not sure if he had his National Party hat on or that of the mob that he ran across to when he ratted on them. As per normal, what a pack of psychobabble that was from Senator McGauran.

As I looked around the chamber trying to keep interested while I listened to that drivel, I noticed some children up in the gallery. They are who this is all about—our future generations. I want to congratulate Mr Rudd and Senator Conroy for their vision. This is about a nation-building project for the generations to come. Before we get all tied up in the ins and outs of how we dare talk about getting into the Future Fund, let us make no
mistake: the stone was cast back in July 2005 when the government, with the help of the doormats—as usual—voted to get rid of Telstra. They could not wait to roll over and get their tummies tickled by selling out Telstra.

It is very important that we analyse what Mr Rudd has put forward. When we talk about $4.7 billion for a national high-speed broadband network, a lot of foresight has gone into this, particularly when we look at the $2.7 billion from the Future Fund. The best part about that vision is that that $2.7 billion will be paid back—the profits will go back into that fund. By the year 2020, that fund will be a $140 billion resource.

I would like to note some of the commentary in today’s media and the overwhelmingly positive reception given to Labor’s plan. It demonstrates once again the ideas and visions that Labor has, unlike the tired, worn-out government on the other side of the chamber. I would like to also make comment about the minister. What an absolute underperformance it was again, if I could use those words. I do not know how—

Senator George Campbell—She’s consistent!

Senator STERLE—She is definitely consistent, Senator Campbell—she is consistently confused, there is no doubt about that. Look at the ministerial misbehaviours on the other side. I do not know what negatives Senator Conroy has, but I tell you, I wish I had them in my pocket. It is absolutely amazing that that minister can stand up and dribble on week after week and not answer one question. She talks for five minutes every time and says absolutely nothing. She is that confusing that even her side are embarrassed about it; you can see their heads buried in their laps.

I must give, once again, congratulations to Mr Rudd. Honestly, what is happening here is nation building. Let us not make any mistake about that. Those on the other side go on about how wonderful it is that 90 per cent of Australians have access to fast dial-up broadband. What an absolute load of rubbish! I invite Minister Coonan to come over to Western Australia—not on a jaunt where you have set meetings with cabinet but out to the seats in Perth, around Hasluck, up on the Darling Ranges—an area which Senator Adams knows very well. You only have to travel just over 20 minutes out of the Perth CBD and you cannot get access to broadband! Under our plan—Mr Rudd’s plan and Senator Conroy’s plan—98 per cent of Australians will have access to a national high-speed broadband network.

I would like to make another comment while I have the time. It brings me to an article today by Mr Sid Marris, a respected journalist with the Australian. The commentary in the media has been very positive. Mr Marris is no fool; he really can see what is going on. I want to quote some of his words. Mr Marris said:

Making broadband internet services as ubiquitous as the telephone could add up to $30 billion to the economy and deliver a rise in productivity by improving efficiency and creating new products and markets.

There is universal agreement that improving the speed and size of internet connections will be one of the key developments to turning around Australia’s sluggish productivity growth.

So, to Senator McGauran and those on the other side, I say: you have been asleep at the wheel. You are squandering Australia’s fortunes. There is no productivity growth where you come from. It is all very well to read the polls and make a snap decision about how you are going to throw a few million dollars here and there. Think about the future. That is what this is all about. Mr Rudd and Senator Conroy should be congratulated.

Senator Parry interjecting—
Senator Adams interjecting—

Senator STERLE—When Australia’s media is congratulating them no less than 12 hours after the announcement, if I were on your side, I would be worried too. Well done, Kevin. (Time expired)

Question agreed to.

PERSONAL EXPLANATIONS

Senator BOSWELL (Queensland—Leader of The Nationals in the Senate) (3.33 pm)—I seek leave to make a personal explanation as I claim to have been misrepresented.

Leave granted.

Senator BOSWELL—The ABC news today had a presenter saying:
Coalition senator Ron Boswell says there is no need for a broadband upgrade.

That is not true. They quoted me as saying:
We’ve got adequate broadband for the people out there.

I said those words, but I was adding to a previous answer in which I indicated that the government had put up money to make sure that everyone gets broadband. I was then asked a question about the broadband service that will be provided, and that is what I based my comment on. My comment was accurate because the broadband provided will be adequate. The full transcript of the doorstep tells the whole story. We would not be putting billions of dollars into it if we thought it was adequate.

COMMITTEES

Treaties Committee

Report: Government Response

Senator SCULLION (Northern Territory—Minister for Community Services) (3.34 pm)—I present the government’s response to the 80th report of the Joint Standing Committee on Treaties and seek leave to have the document incorporated in Hansard.

Leave granted.

The document read as follows—

GOVERNMENT RESPONSE TO REPORT 80 OF THE JOINT STANDING COMMITTEE ON TREATIES

Government Response to Report 80 of the Joint Standing Committee on Treaties

Exchange of Letters constituting an Agreement with New Zealand to amend Article 3 of the Australia New Zealand Closer Economic Relations Trade Agreement

Recommendation 1

The Committee recommends Austrade make greater use of its database of businesses to consult at a business level as was done during the negotiations for AUSFTA.

Extensive industry consultations were conducted by the Government throughout the period of bilateral negotiations on the new Australia New Zealand Closer Economic Relations Trade Agreement (ANZCERTA) Rules of Origin (ROO). These confirmed broad industry support for the change in tariff classification (CTC)-based ROO arrangements.

The Department of Foreign Affairs and Trade (DFAT), the Department of Industry, Tourism and Resources and the Department of Agriculture, Fisheries and Forestry (DAFF) undertook industry-wide and individual company consultations. Industry groups consulted during the development of the proposed new ROO included the Distilled Spirits Industry Council of Australia (DSICA), Confectionery Manufactures of Australia (CMA), Dairy Australia, the Wine and Brandy Corporation and Wine Makers’ Federation, the Australian Industry Group (AIG), the Australian Seafood Industry Council, the National Association for Forest Industries, Australian Plantation Products and Paper Industry Council (A3P), Australian Pork, Queensland Sugar, Horticulture Australia, National Farmers’ Federation, the Australian Food and Grocery Council (AFGC), the Plastics and Chemicals Industry Association (PACIA), the Australian Electrical and Electronic Manufacturers Association (AEEMA) and the Federation of Automotive Products Manufacturers (FAPM).
The proposal was also publicized on the DFAT and DAFF websites and in newspaper advertisements in *The Australian* and the *Australian Financial Review* on 16 and 22 July 2005 respectively.

The Ministers for Trade and Industry received representations from a company in July 2006 that its business could be harmed by the introduction of CTC-based ANZCERTA ROO. As a member of the Australian Industry Group, this company had been informed of potential changes to ANZCERTA ROO through the Group’s newsletter in December 2004, but apparently chose not to comment during the Government’s industry consultations.

The Government will continue to consult extensively with industry during free trade agreement negotiations, as was the case for ANZCERTA ROO. Where appropriate, DFAT will continue to use the Austrade database to disseminate information to the Australian export community and to alert Australian companies to any review of market access conditions.

**Dissenting Report - Exchange of Letters constituting an Agreement with New Zealand to amend Article 3 of the Australia New Zealand Closer Economic Relations Trade Agreement Recommendation B**

Negotiations between Australia and New Zealand commence immediately to secure agreement on retention of the RVC method of calculating ROO under the current ANZCERTA for tariff line 3402.20 before the Amending Agreement comes into force.

The Customs Legislation Amendment (New Zealand Rules of Origin) Act 2006 entered into force on 1 January 2007 and brought into effect a new CTC-based approach for the ANZCERTA ROO. This change was overwhelmingly supported by industry as it will simplify the rules for trans-Tasman duty free trade, reduce compliance costs for business, enhance transparency and efficiency in the administration of the ROO and contribute to increased trans-Tasman trade. It also brought ANZCERTA ROO into line with Australia’s more recent free trade agreements.

The Government was approached by one company raising concerns regarding changes to ANZCERTA ROO tariff line 3402.20 only after consultations with industry and negotiations with New Zealand had been completed.

As a result of these concerns, the Government undertook further consultations with Australian industry associations and found that there was no consensus in favour of retaining the regional value content (RVC) method of calculating ROO for tariff line 3402.20.

The Government nevertheless raised this case repeatedly with New Zealand at Ministerial and other levels. The Hon Mark Vaile MP (then Minister for Trade) and the Hon Ian Macfarlane MP raised the issue with the Hon Phil Goff at the CER Ministerial Meeting on 20 September and requested that the RVC rule be retained exclusively for tariff line 3402.20. This request was reiterated to Mr Goff in a letter from Mr Vaile dated 26 September and by Mr Truss in person in the margins of an APEC meeting in Hanoi on 14 November. Mr Goff replied consistently that New Zealand was not in a position to renegotiate at such a late stage a final agreement representing a finely-balanced package which both countries could accept.

The Government will continue to monitor the matter as a possible issue to be raised with New Zealand, as part of the formal review of ANZCERTA ROO which is due within three years.

**FARM HOUSEHOLD SUPPORT AMENDMENT BILL 2007**

**First Reading**

Bill received from the House of Representatives.

**Senator SCULLION** (Northern Territory—Minister for Community Services) (3.35 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.
Senator SCULLION (Northern Territory—Minister for Community Services) (3.35 pm)—I move:

That this bill be now read a second time.

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

Leave granted.

The speech read as follows—

The Australian Government is committed to building the sustainability of the agriculture sector and providing assistance when it experiences severe downturns during rare and severe climatic events.

We are all witnessing the devastation the current drought has caused.

It is the worst drought on record.

At present, more than 44 per cent of the country’s agricultural land has been Exceptional Circumstances (EC) declared.

That covers 63 regions, and a further 4 areas are currently being assessed for EC declarations.

If you pause to think about this, you will realise that several European nations could fit into an area that size.

Some regions are heading into their sixth consecutive year of drought, and more and more farm families are having trouble making ends meet.

To help farmers, small business operators and communities cope with deteriorating conditions, late last year the Australian government announced additional assistance measures and made existing measures easier to access.

These measures included:

- an extension of financial assistance to 2008;
- funding for social, emotional and financial counselling;
- assistance for farmers to get professional advice to manage during drought;
- funding for the Country Women’s Association to provide emergency family and community grants;
- The introduction of drought assistance mobile service units; EC interest rate subsidies and EC relief payments for agriculturally-dependent small business operators;
- changes to the eligibility requirements for EC Interest Rate Subsidies;
- an increase to the cap for EC Interest Rate Subsidies; and
- an increase to the cap and non-primary production income test for the Farm Management Deposits Scheme.

Since 2001 we have provided over $1.3 billion in assistance and we have committed a further $900 million in assistance until 2008.

Now eligible small business operators will be able to access the same support that is already provided to farmers.

The Farm Household Support Amendment Bill 2007 (the bill) will let agriculturally-dependent small business operators access EC Relief Payments and access ancillary benefits, such as a health care card and concessions under the youth allowance and Austudy means test.

The bill gives effect to the current ex-gratia arrangements for small business income support, and changes legislation so that eligible small business operators can access the ancillary benefits.

It is important to note that not all small business operators in rural areas are eligible to access EC assistance.

A small business operator must be able to demonstrate that 70 per cent of their gross business income is derived from providing goods and services for the purposes of farming.

The bill outlines all the eligibility criteria that will determine whether a small business can access EC assistance.

We expect the criteria will make sure assistance is provided to the small business operators most affected by the drought.

The Australian Government is aware that there are small business operators who can also be considered farmers.

Due to the extended nature of this drought, it is beginning to affect this group of people’s ability to make a living from their small businesses and their farm enterprises.
Under the current eligibility criteria for EC Relief Payments, these small business operators may not be eligible for assistance as a farmer, as their off-farm income is too high.

Nor may they be eligible for assistance as a small business operator, as their farm assets may rule them out.

The bill will give support to small business operators who meet both the small business and farmer qualifications, except that they do not derive significant income from the farm.

Specified farm assets and small business assets will be exempt from their assessment for assistance.

The bill will also give effect to two other pieces of legislation:

- the Social Security Act 1991 (the social security act); and
- The Age Discrimination Act 2004 (the age discrimination act).

Changes to the social security act will let eligible small business operators access concessions under the Youth Allowance and Austudy means tests that are already available for farmers.

Under these concessions, assets that are exempt in the Farm Household Support Act 1992 (the Farm Household Support Act) will also be considered exempt if a small business operator receiving EC Relief Payments applies for Youth Allowance or Austudy.

Both The Minister for Employment and Workplace Relations, and the Minister for Education, Science and Training, have agreed on these changes to the Social Security Act.

The Bill also brings into effect a section in the Farm Household support act that outlines that the rate of EC Relief Payments for small business operators is the same as that for farmers – and it is dependent on age.

The attorney-general has provided exemptions under the age discrimination act that let the rate of EC relief payments, for both small business operators, and farmers be calculated according to their age.

The bill makes a number of other changes to the Farm Household Support Act, to bring it into line with the Age discrimination Act.

Sections under the Farm Household Support Act that have age qualifications that don’t already have exemptions under the Age Discrimination Act, will be removed when the bill is passed.

Conclusion

I would like to reiterate that the Australian Government has a strong record of providing assistance to the agriculture sector to manage the impacts of drought in rural and regional Australia.

And we remain committed to providing help whenever and wherever it is needed.

I have been out to these drought-affected areas in recent months and I can confirm that I have never seen a drought that is so harsh and so far-reaching.

I know that the prime minister has also seen how bad it is first-hand.

I would like to thank the farmers, small business operators, community and industry groups who have all contributed to the success of the Australian Government’s drought assistance measures.

My thanks also go to the Ministers and government agencies that have swiftly implemented the drought assistance measures announced in October and November 2006.

Passage of this bill will ensure that our drought assistance can reach those most in need.

Ordered that the resumption of the debate be made an order of the day for a later hour.

COMMITTEES

Public Works Committee
Meeting

Senator PARRY (Tasmania) (3.36 pm)—by leave—I move:

That the Parliamentary Standing Committee on Public Works be authorised to hold a public meeting during the sitting of the Senate on Friday, 23 March 2007, from 9.30 am.

Question agreed to.

CLIMATE CHANGE ACTION BILL 2006

Second Reading

Debate resumed from 30 November 2006, on motion by Senator Milne:
That this bill be now read a second time.

Senator MILNE (Tasmania) (3.36 pm)—It is very important that we acknowledge that the Climate Change Action Bill 2006 is the first bill of its kind in the Australian parliament. It is a bill to seriously tackle climate change. The last time Australia dealt with a target for greenhouse gas emissions was upon ratification of the Kyoto protocol, when Australia demeaned itself in the eyes of the world by negotiating into the early hours of the morning to secure 108 per cent of 1990 levels as the target that Australia would meet in the first Kyoto commitment period, 2008-12. We now know that Australia is struggling to meet what is the world’s most generous target. We will only meet it—in spite of a struggle if we do—because we have had a windfall gain as a result of changes to land use, forestry and land clearance regulations.

At the rate we are going, we are on track to secure 127 per cent of our target of 1990 levels. We have to act now. It is clear that history judges political leaders on whether they respond to the great issues of their time. In my view, history will judge Australia’s political leaders very harshly. Not only have they failed to respond appropriately to the great issues of our time; they have failed knowingly and deliberately. This is not about ignorance, it is not about a situation where some years have gone past where people did not know what the situation was. The situation has been made very clear to us on many occasions. Since I introduced this legislation last year we have had the Intergovernmental Panel on Climate Change delivering its report. On 2 February this year, the debate effectively ended about whether global warming has been impacted by human activities, when the world’s leading scientists made it very clear that there is more than a 90 per cent probability that human-induced climate change is responsible for the levels of global warming we are currently seeing.

In their predictions the scientists also said that we can expect sea level rise as a result of thermal expansion of the oceans and the melting of icecaps and glaciers. They warned what might happen if the West Antarctic or the Arctic icesheets melt. We have already seen from the science a slowing down of the great ocean conveyor. If that were to stop, as it did in previous ages, then Europe would be plunged into an ice age. Until now, we have had from Australian political leaders and business leaders a complete unwillingness to act and the honesty, at least in their responses, is that they do not act because ‘Australia’s competitive advantage is in coal, it is a fossil fuel, it is something we export and we have no intention of changing business as usual or taking leadership’, when other parts of the world have been quite prepared to demonstrate political leadership. The Europeans take this matter extremely seriously, unlike in Australian politics. And I note that the government benches are empty bar two people. History will also record that—that the government does not take the setting of greenhouse gas emission limits seriously.

We will see later in the contributions to the debate that the government is likely to send in its climate sceptics to dispute the evidence, to come up with all sorts of extraneous arguments as to why Australia should not act. But we know from the IPCC report that we face a doubling of carbon dioxide concentrations that could occur as early as 2035, according to Stern, under a business as usual scenario, and that that would lead to global temperature increases of between two degrees and 4.5 degrees. However, the Prime Minister only recently said that a global average temperature rise between four and six degrees would make life ‘less comfortable for some,’ demonstrating his complete and utter ignorance of this matter.

At the same time, the Minister for the Environment and Water Resources, the Hon.
Malcolm Turnbull, talks about the possibility of a sea level rise up to one metre on the east coast of Australia—again, demonstrating no knowledge whatsoever of what the impact would be in terms of long-shore coastal erosion, estuaries, wetlands, Kakadu et cetera. The ignorance we hear from government ministers and the Prime Minister, who are charged with acting in Australia’s best interests, is extraordinary.

The next report of the Intergovernmental Panel on Climate Change will come out in April this year. The last one was on the science, warning us about increased carbon dioxide concentrations and about increased sea level rises and telling us of the links between climate change and drought, more extreme weather events, floods, fires—and we had those in Australia this summer. But the Prime Minister and his ministers continue to disassociate extreme drought with climate change, because they do not want to be judged by history. It is too late for them. History will judge 11 years of inaction on climate change, because it is 11 years that we could not afford to waste.

In fact, the choice of whether to act will be made by our generation, but it will affect life on earth for all generations to come. We have a decade to stabilise and reduce greenhouse gas emissions to the point where we can contain global temperature rise to below two degrees, if we are lucky. We already know the impacts of less than one degree of global temperature rise. Imagine that on a much larger scale. Imagine our river systems, imagine what will happen to our coastal areas—the extremes that we are already suffering, with another degree of temperature rise and then another degree on top of that.

So this is a moral and an ethical question. A leaked report of what we can expect—and, once again, we will have ‘Shock, horror’ from politicians who already know the answers to these questions—says that in April they will bring out another report and it will say: ‘Tens of millions of others will be flooded out of their homes each year as the earth reels from rising temperatures and sea levels. Things are happening and happening faster than we expected.’ And so on. Tens of millions will be flooded out of their homes each year. We are talking about our Pacific neighbours here. We are talking about Bangladesh. We are talking about global insecurity on a scale that we can hardly imagine. Already we have had Kiribati telling us that at least 40 of their islands are being marked for evacuation—30,000 people with nowhere to go—and Australia still refuses to accept a definition of environmental refugee in the UN convention on refugees.

To get to the specifics of the bill before the House today: it would require the government to ratify the Kyoto protocol as a first step. I do not have to go into that; everybody understands. We have a moral obligation to uphold our responsibilities under international law. If we do not want to abide by international law then we endorse a lawless world. They are our only choices. The Greens certainly believe in Australia’s obligations under international law. We are also committed to a post-2012 global treaty of binding targets.

The second thing the bill does is set national greenhouse gas emission targets for 2020 at 20 per cent below 1990 levels and 80 per cent below 1990 levels by 2050. I welcome the fact that in the media this week the shadow minister for the environment congratulated the Europeans for setting a target of 20 per cent below 1990 levels by 2020. I hope the Labor Party today will stand up and support this bill, because that is the nature of the deep cuts we need to make. Eighty per cent by 2050 will probably be seen as extremely conservative in the not too far distant future.
We are also introducing a greenhouse gas trigger into the EPBC Act to ensure that information about the greenhouse gas emissions resulting from major developments is adequately considered during the approval process. That trigger will be any action likely to result in greenhouse gas emissions of more than 100,000 tonnes of carbon dioxide equivalent in any 12-month period. If we are serious about greenhouse gases, we have to make sure that major projects that are large greenhouse gas emitters are forced into the assessment process at a national level.

This bill also introduces a national energy savings target, an energy efficiency target, to halt the growth in energy consumption by 2008. In effect, the trigger is equivalent to business-as-usual growth in energy consumption. So we are saying that that is the target we need to set to make sure that increases in energy are offset by the energy efficiency target. We want to require large energy users to implement the findings of their energy efficiency audits. We had that debate in here yesterday, and I seek yet another debate on that because we are talking about 250 companies in Australia using 40 per cent of Australia’s energy. If they were required to implement the findings of their energy efficiency audits, we could meet significant targets in terms of energy efficiency.

We also want to increase the mandatory renewable energy targets so that renewable energy contributes at least 15 per cent to national demand by 2012 and 25 per cent by 2020. There is huge excitement around renewable energy. Every day you see in the papers reports from Europe and from the US, where targets have been set at state and national levels, showing enormous expansion and competitive advantage in those new industries. For example, in Spain, wind power generation has now risen to contribute 27 per cent of the country’s total daily power demand. It is the second highest in the world, and we are going to see them increase installed wind capacity to 20,000 megawatts by 2010. That is extraordinary, and Spain is now aspiring to source 30 per cent of its electricity from renewables by 2010—30 per cent by 2010, and Australia’s mandatory renewable energy target is two per cent. At the same time, from California, we have had news about the expansion in concentrated solar thermal, talking about the huge investment going on there.

In Europe, we have had a new directive with regard to fuel efficiency, such that European vehicles and Chinese vehicles will be the most popular vehicles this century because they will be the most fuel efficient. They will be the small vehicles. Australia most certainly ought not continue its perverse incentives for building large vehicles that the public do not want, and the government should immediately change its purchasing policies to abandon support for six-cylinder vehicles and to move across to buying fuel-efficient vehicles and hybrids for the government car fleets.

The Greens bill today also requires the establishment of a system of renewable energy feed-in tariffs to provide a minimum price per unit of produced renewable electricity for a set period to provide investors security on income. This is a fantastic idea. This is what has driven the solar revolution in Germany, whereby energy utilities are required to buy renewable energy at a fixed price for a fixed period of time. That means that, as a consumer, you can go and borrow the capital that you need to install the renewable energy because you know you can sell it. You have a guaranteed market at a guaranteed price for a guaranteed period of time. As a result, farmers, huge shopping complexes and local government have been rolling out renewable energy all over Germany because, once they have paid it off, they will have an additional income, plus they are making considerable
impacts in generating renewable energy. Wouldn’t it be fantastic to have a feed-in tariff in Australia? This is part of this bill, and I hope it will get the support of both the government and the opposition today.

The final aspect of this bill is to immediately end the harvesting of old growth forests, to maintain existing significant carbon stores. We had the embarrassing spectacle yesterday of the minister for forests making a fool of himself yet again in relation to his understanding of climate change and forests. He needs to go down to the Australian National University, where he will get some instruction from the academics about the fact that the soil carbon in an old growth forest, plus the carbon in the trees, is a huge amount of carbon—way beyond anything that the minister talks about with his plantation establishment.

Sir Nicholas Stern has said that deforestation around the world—and we know that it is a major driver of climate change—is putting into the atmosphere more carbon dioxide than the whole transport effort from around the world. We could make a significant difference tomorrow by ending the logging of old growth forests, by protecting those carbon sinks and by stimulating the jobs that would come from the raft of measures that I am putting forward here today.

We have a challenge on our hands. We congratulate the unions, who have come out today saying that there should be some movement here and putting pressure on the Labor Party, which has a mandatory renewable energy target of only five per cent. Greg Combet was today advocating at least a 10 per cent target. His leadership of the union movement with regard to putting forward a framework for dealing with climate change is extremely welcome.

What is obvious to me is that the community is way ahead of its parliament in wanting to address climate change in Australia. Progressive businesses are crying out for government to take leadership. They cannot make investment decisions into the future unless they have some certainty about a price on carbon and some certainty in relation to developing an emissions trading scheme in this country or the imposition of a carbon tax or the combination of both. What we have is politicians on both sides committing vast amounts of money to unproven technologies which, we have already seen from the science, are years off—if ever they will be achieved—whereas, around the world, other countries are actually implementing the technology that can reduce greenhouse gases now.

I return to where I began, and that is that history judges political leaders by whether or not they respond to the great issues of their time. History is going to judge this parliament. I say ‘this parliament’ because, given the time frames, it is senators sitting on that side of the chamber, in this term and the next term, who will make the decisions for the rest of time for life on earth—for generations to come. It is all of us in this parliament now who are going to determine the impacts on threatened species.

We have heard the World Conservation Union telling us that at least 30 per cent of species will be extinct by 2050 because of climate change. One only has to see the photos of polar bears on melting ice floes to see the impacts. Those impacts are affecting our very own alpine species; they are affecting the cider gum, in Tasmania, as we speak. We are seeing invasive species coming down the east coast of Tasmania as ocean currents change. All across the country we are seeing species going to extinction already because of climate change.

I urge both the government and the Labor opposition to support this bill because the
measures in it would create such excitement across Australia. Contrary to the view that it would shut down the economy, it would be the greatest boost to re-energising Australia that this parliament could deliver to the current generation of Australians and to future generations of Australians. I urge you to think beyond where you are now. Think outside the square and support this bill.

Senator LUNDY (Australian Capital Territory) (3.56 pm)—I am speaking on this general business issue of climate change because we all know that climate change is one of the greatest threats to our community, to our nation and of course globally. The Climate Change Action Bill 2006 recognises that the government has the responsibility to take this issue seriously and make plans to tackle the causes of climate change.

Labor will be having a climate summit in the near future to resolve these issues from our point of view. We have a commitment to have a summit that will allow us to listen to scientists, to business and to the community in general about their views on climate change. That will specifically inform Labor’s position on these issues and on what needs to happen next. Labor is extremely conscious that after 11 years of neglect we have one chance to get this right. Our summit, as it has been announced by our leader, Mr Kevin Rudd, will provide the perfect opportunity for us to determine our position on many of these issues and will help us to develop our plans further. I will be referring to the plans that Labor already have in the public arena. I want to acknowledge also that climate change is not just a question of the environment; the obvious follow-on from that is that it affects all people. It affects the economy and it affects jobs. This is something that I will also refer back to.

I would like to put out a few statements of fact. I know that these statements of fact have been widely acknowledged by most in this place, although not all. Climate change is recognised by many scientists, academics, businesses and the public. Many leaders around the world have already acknowledged, firstly, that changes in the earth’s climate and its adverse circumstances are a common concern of all humankind and, secondly, that human activities have been substantially increasing the atmospheric concentration of greenhouse gases, leading to additional warming of the earth’s surface.

That is a statement of fact. It is a fact that the government’s climate change deniers, sceptics and feigned converts are having trouble coming to terms with. I, like others in the chamber I am sure, will be waiting with interest to see whether the government contribution today recognises the existence and causes of dangerous climate change or whether they are to take the sceptic’s view. I guess it depends on who speaks on their behalf.

Despite the warnings and the mounting scientific evidence validating climate change, the Howard government has failed to act—as they have failed to act for 11 years. Under the Howard government’s watch, Australia has become the world’s 10th largest greenhouse gas emitter and, according to the Climate Change Institute, over the past decade government policy has led to a national emissions increase of 10 per cent. While the rest of the world is working to cut climate change emissions, Australia’s emissions are going up. While 27 European Union countries have agreed to work together to cut greenhouse emissions by 20 per cent by 2020, Australia’s emissions are estimated to increase by 27 per cent by 2020. This is a disgraceful record and an indictment of the Howard government.

While this is a frightening and frustrating prediction, it is unfortunately what we have
come to expect from a government of sceptics. Only a week after claiming to be a climate change convert—and I will remind the Senate—Mr Howard backflipped and told the House of Representatives during question time that:

... the jury is still out on the degree of connection—

between greenhouse emissions and climate change. So for 11 years the Howard government have wilfully ignored Labor’s and others’ concerns about climate change. Refusing to ratify the Kyoto protocol has become a symbol of the government not seriously investing in renewable energy and failing to establish a comprehensive policy on tackling climate change.

What has now become obvious from the recent debate regarding climate change is that only a Labor government will take the practical steps needed to combat it and work to protect Australia’s environment and economy and create more jobs. Unlike the government, Labor understands that climate change requires a comprehensive approach. There is no quick fix. That is why Labor is committed to a series of initiatives, including ratifying the Kyoto protocol; cutting Australia’s greenhouse gas emissions by 60 per cent by 2050; setting up a national emissions trading scheme; setting up the $500 million national clean coal fund; establishing a $2 billion green car partnership; substantially increasing the mandatory renewable energy targets; and convening, as I mentioned at the start, a national climate change summit.

A recent Newspoll poll found that 86 per cent of people surveyed believe the government should be doing more to address climate change, and almost 80 per cent want the government to sign the Kyoto protocol. So the government cannot even hide behind the excuse that this is not something that would be electorally popular; it is both electorally popular and the responsible course of action. In stark contrast to both international and public opinion, one day after the Kyoto protocol came into effect, Mr Howard dismissed it as next to useless—I think those were the words he used. The Howard government's very strong rejection of ratifying Kyoto not only is proving devastating for our environment but also constitutes a failure of this government to protect and prepare the Australian economy for the future, not to mention the jobs associated with it.

This blanket refusal to ratify the Kyoto protocol means that Australian businesses are locked out of the current international emissions trading schemes. Labor supports a framework that will allow Australia to take advantage of international carbon trading schemes. With carbon markets set to become one of the world’s biggest commodity markets, Australian businesses and our economy are destined to be the big losers if the government remains so arrogant and stubborn in not ratifying Kyoto.

While the Prime Minister and his new right-hand man, Mr Turnbull, dither over the immediate costs of investing in renewable energies and cutting greenhouse emissions, Australian businesses are missing out on long-term economic gains. Australian businesses are not happy about this. We are starting to see their views being expressed publicly more and more—and I am sure privately for some time now—about what action needs to be taken. They want to be engaged in this new carbon trading system. They want to be able to participate in the global economies of the future.

According to the World Bank, in 2005 the global carbon market was worth $A13.3 billion. The market grew to $A28 billion in the first three-quarters of 2006, more than doubling in value over the previous year. Despite the mounting evidence and growing carbon
market, the minister for finance, Senator Minchin, told the *Age* on 15 March this year that he was still in the sceptical camp. This scepticism in a key portfolio like finance shows how deep-seated is this government’s arrogant refusal to address and plan for the economic impact of climate change. It was quite an extraordinary statement and for it to remain on the record and not be refuted by the government says so much about their backward attitude to climate change.

Labor believes it is essential to establish practical measures to protect Australian jobs in the face of climate change. The government has not grasped the fact that climate change has the potential to threaten Australian jobs or that tackling it can create new jobs for Australians—for example, researching and developing renewable energy technology. This ought to be a no-brainer, but we have watched the underspend in some government programs and we have watched this government dance around the issue in the most pathetic way for so many years.

The tourism industry is just one example of an Australian industry where jobs are directly threatened by climate change. I have spoken before in this place about the Great Barrier Reef and its annual contribution of an estimated $6 billion to the Australian economy, supporting thousands of jobs and local small businesses. Whole towns are built on the economy provided by the Great Barrier Reef. But now we know: scientists have made it clear that the Great Barrier Reef is at risk of being bleached and eventually destroyed by increasing sea temperatures as a result of global warming. Not only would this be a massive environmental loss to Australia and the world, the earth, but the jobs and the human impact would be very real when you take into account the tourism industry and economy in that region that would also vanish along with the reef.

Tourism is a specific industry that needs to be addressed. I note that this government is very proud to stand up and boast about the latest tourism results. Even though they were not that good, it did not stop them from boasting about what was out there, particularly with some aspects of international and domestic tourism. It is those kinds of statistics that will change and that will diminish if climate change continues at current rates. This government cannot have it both ways. They cannot stand up and promote what they claim is their good work in the tourism industry and then turn around and ignore climate change, because the two are now forever inextricably linked.

Mr Howard wants us to believe that the best way to protect Australian jobs is to do nothing. I will move on from tourism and use another example. He has cited the coal industry in particular as an industry that will lose jobs if action is taken to combat climate change. He is saying that, if we do anything about climate change, coal industry jobs will go. He has put that out there as a definite statement. That again shows the government’s complete lack of understanding about the issue and its total lack of initiative in dealing with the many and varied effects of climate change.

In contrast, Labor has a clear plan. A Labor government will work to reduce greenhouse emissions while protecting Australia’s $23 billion coal export industry and the jobs of the people whose livelihoods depend on that industry. Earlier this month Mr Rudd; Senator Chris Evans, the Leader of the Opposition in the Senate and Mr Peter Garrett, our shadow minister for the environment, released a discussion paper entitled ‘New directions for Australia’s coal industry: the National Clean Coal Initiative’. The paper outlines Labor’s plan, including: firstly, the setting up of a clean coal fund worth $500 million to generate at least $1.5 billion in
new investment by working with the private sector; secondly, setting up a national objective for clean coal generated electricity to enter the national electricity grid by 2020; and, thirdly, increasing funding for the CSIRO by $25 million over four years to assist it in researching and developing clean coal technologies.

Another initiative that Labor has announced to tackle climate change and invest in Australian jobs is the green car partnership. It is certainly a clean, green policy. A Labor government will establish a $500 million green car innovation fund, designed to generate no less than $2 billion in investment in the automotive industry. The green car innovation fund will boost industry research into developing low emission vehicles—such as hybrid, flexible fuel and low emission diesel vehicles. This will ensure that Australia can play a leading role in the global development of green car technology. What a laterally thinking initiative. This is the kind of lateral initiative that Senator Milne was referring to before.

We know that manufacturing is of critical importance to the Australian economy, and we have a proud history of car manufacturing in Australia in this country; but we also know that we face a challenge. Those people who bothered to watch Al Gore’s *An Inconvenient Truth* will know that, right at the end of that movie, there are a whole series of initiatives identified that governments and individuals can take. A substantive one of those was to do with what we can do about the cars we drive. Well, this is part of the answer to the problem. It is true: we are not all immediately going to change the way we live our lives or drive or cars. But, by putting in place a far-sighted green car partnership of this nature, Labor is signalling where we need to go for the future. It gives people who find themselves employed in car manufacturing hope that someone is taking care of the long-term future of their particular industry. I know that announcement was warmly welcomed by that sector.

I would also like to welcome specifically the contribution by the Australian Council of Trade Unions. I note that this was reported in today’s papers. Labor welcome this significant contribution by the unions and we will be pleased to ensure that they will be represented at Labor’s climate change summit. Just recently, on 12 March, Greg Combet, the Secretary of the ACTU—accompanied by Mr Garrett, the Labor Party’s shadow environment minister—visited the Austar mine in the Hunter to talk about how the unions and Labor can work together on the challenge of climate change.

Australians know that there is no quick fix and that it is only the Labor Party that can deliver the sorts of far-sighted partnerships and strategies to work together needed to achieve change, not just in the immediate future but in the medium to long-term future as well. Unless we get elected so that we can start putting those policies in place now, it is just not going to happen under the coalition government. We will be no better off. It is like we are in a time warp with the Howard government.

I will conclude today by referring to the Joint Standing Committee on the National Capital and External Territories’ recent briefing from the Australian Government Antarctic Division. On the issue of climate change we know that what is going on in the polar regions of the earth is of major significance and can provide a very deep and concise insight into the impact of and predictions for climate change. I was very interested to hear about the Antarctic Division’s research, particularly into ice cores, to assist, studies. Indeed I note that the research being conducted by the Antarctic Division is not only comprehensive in terms of addressing climate...
change and related issues but also could be a
great deal more comprehensive if they were
provided with adequate research funding. I
think this would enhance their capability in
that regard.

For the record, the Australian Antarctic
Territory does cover a vast proportion of the
Antarctic continent. With that responsibility
comes an extraordinary opportunity for Aus-
tralia to play a much greater role than it is
currently playing in guiding that scientific
data, research and information going into
political considerations about the impact of
climate change. Senator Milne has already
referred to things like changes in the ocean
currrnts. When you take into account the
significance of the Antarctic continent, you
start to understand why research in this area
of the world is so critical to the movement of
our oceans, and to the movement and nature
of our atmosphere and how it all ties to-
gether.
I will conclude by saying that Labor will
have a national climate change summit. We
will be addressing the specific types of issues
and propositions contained in the bill before
us today; it will guide us. Our main priority
through that summit will be to listen to sci-
centists, businesses and the community. We
need to be informed in making long-term
decisions about climate change and in devel-
opping perhaps one of the most important ar-
eas of public policy for generations to come.
Labor must get this right, and we will put
ourselves in an optimum position to get these
policies right through our national summit on
climate change.

Senator EGGLESTON (Western Austra-
ila) (4.15 pm)—We seem to have this debate,
initiated by the Greens, quite frequently in
the chamber. There is no doubt that the cli-
mate of the world is changing. We all agree
on that. The evidence of climate change is all
around us. I am told that, during the last win-
ter in Europe, there was very little snow on
the Austrian and German alps. We know that
there have been icebergs floating off the
coast of New Zealand, suggesting that the
Antarctic icecap is melting. It is quite appar-
ent that there is a change in the climate.
We know that, over the last 30 or 40 years,
there has been a lot less rainfall in the south-
west of Western Australia. We come to this
part of Australia and find that an enormous
drought has been affecting the south-east and
that towns like Goulburn, which is not too
far from here, are on very strict water restric-
tions. Also, we hear that Melbourne is in
danger of running out of water in the not too
distant future. So climate change is real, and
the government and everybody else, I am
sure, in positions of responsibility accept
that.

It is said by some that climate change is
due to greenhouse gas emissions, and it well
may be. There are other people who point to
the fact that, over the centuries, the world’s
temperature has risen and fallen and that, at
the moment, we are cycling out of an ice age.
It has also been suggested that these changes
are due to variations in the orbit of the earth
around the sun. It does not really matter too
much, I suppose, what the exact cause of it
is, but, obviously, we have to accept the real-
ity that climate change is occurring.
I had a look through Senator Milne’s sec-
ond reading speech on the Climate Change
Action Bill 2006, which she incorporated
when she first introduced the bill into the
Senate, and noted that she was quite critical
of the Howard government. She said that,
over the years, the Australian government
had refused to take action to address global
warming. That is something which Senator
Wong has often said in this chamber and
which is, of course, complete and utter non-
sense. In fact, the Howard government has
had a very strong policy on dealing with cli-
mate change and with issues related to the need to get sources of energy other than hydrocarbon fuels.

The Howard government is very proud of the fact that it established the world’s first greenhouse office. No other country in the world had a greenhouse office in its government, but the Howard government established one very early during its period in office. So it is nonsensical for people on the other side of the chamber to argue that the government has not been concerned about climate change, because it has been concerned from day one of its term of office. Another Howard government initiative, which it is equally proud of, was to establish the world’s first policies on water. It shows, as I said, that the government has been concerned about climate change from day one.

Since the Howard government came to office, part of Australia’s comprehensive climate change strategy has been the investment of some $2 billion in environmental and other issues. This has leveraged $6.5 billion in private sector investment in climate related issues. Some of the key elements of the Howard government’s climate strategy have included supporting world-class scientific research to build understanding of climate change and its impacts. After all, we do have to know what is causing it and what its impacts will be.

We have undertaken broad measures to reduce our greenhouse gas emissions and to meet our Kyoto targets, even though we have not ratified the Kyoto treaty. We have had very wise reasons for not doing that—which I might come back to, but, briefly, they relate to the Kyoto treaty being very flawed. It does not cover the world’s great emitters. It would make very little difference to the world’s levels of greenhouse gases if Australia were to sign the treaty, but signing it would have dire consequences for the Australian economy. It would mean, among other things, that we could not use our cheap coal resources, and that would in turn cost jobs in the coalmines of Queensland, New South Wales, Victoria and Western Australia. This would then impact on other industries because the cost of power would go up. Whether or not the Labor Party and the Greens are prepared to concede that point, the fact remains that signing Kyoto would cost Australian jobs. That is not something the Australian government are prepared to do, especially when we are meeting our Kyoto targets, in spite of the fact that we have not signed the treaty.

In addition, we have been supporting the development and commercialisation of low-emission technologies, which are essential for future deeper cuts. These include renewables, clean coal and carbon sequestration programs. We have evidence of one of those being proposed for Barrow Island, off the north-west Australian coast. When the gas comes in from the Gorgon deposits, the carbon dioxide will be sequestered well below ground and it will not contribute at all to greenhouse gas emissions.

The Howard government have been identifying regions and industries which are vulnerable to potential impacts of climate change and we have been working with them to adapt to changes. We have also been pushing for an effective global response involving all major emitters of the world, including China, India, the United States and Canada, so that there really will be an international treaty which reduces greenhouse gas emissions. But it certainly is something for the future and certainly not something that the Kyoto treaty is achieving.

The Australian government have committed over $2 billion to responding to climate change. Our climate change strategy recognises our reliance on fossil fuels and renew-
able sources. The government’s strategy provides a pathway for moving Australia’s energy sector to a low emissions future. It includes the $500 million Low Emissions Technology Demonstration Fund, the $100 million Renewable Energy Development Initiative, the $75 million Solar Cities trial, the $20 million advanced electricity storage technology initiative and the $14 million wind energy forecasting program.

In Senator Milne’s second reading speech, she talked about increasing mandatory renewable energy targets. Of course, mandatory renewable energy targets were an initiative introduced by the Howard government. The Howard government have recently increased the renewable energy targets so that we now have a target of 20,000 gigawatt hours by 2020. We are supporting programs such as wind, solar and hydroelectricity to ensure that Australia is making the most of renewable energy. That is another example of how responsible the Howard government have been in addressing climate change issues.

There are other areas of the environment in which we are working. We have invested billions to improve the resilience of the land, with a $10 billion national plan for water security and a $2 billion national water initiative. As Senator Lundy and Senator Milne may recall, when this government first came in, one of the first things that was done was to establish the National Heritage Trust, which was first funded with $1 billion from the sale of Telstra. More recently, we have established a $1.4 billion National Action Plan for Salinity and Water Quality. The Australian government is aware that Australia and the world must be open to every viable option. The anti-nuclear, anti-geo-sequestration, anti-technology and anti-growth brigade would condemn the world to a latter-day Dark Ages. That is why Australia has helped to establish the Asia-Pacific Partnership on Clean Development and Climate, which brings together some of the major emitters in the world—which together are responsible for around 50 per cent of the world’s greenhouse gas emissions—to develop clean energy technology. It just makes sense that, if we are going to have a treaty which really does something to reduce greenhouse gas emissions, that is a treaty that Australia should be willing to sign quite happily.

The simple reality is that the Kyoto treaty, which the Greens and the ALP keep saying Australia should sign, is not going to achieve its objectives and it would cost Australians very heavily in terms of jobs. It would have a negative economic impact and it is something that we should not sign. The fact is that a mammoth 75 per cent of global emissions are not covered by the Kyoto protocol, and that severely limits its efficacy. It is estimated that Kyoto will probably reduce greenhouse gas emissions by a mere one per cent by the end of the first commitment period of 2012. This compares to a need, based on the best science currently available, to reduce global greenhouse emissions by some 60 per cent, based on 1990 levels.

Kyoto is a flawed treaty and it is certainly not something which the Australian government has any intention of signing. Although I am sure that the ALP speakers who rise in the Senate to promote the signing of the Kyoto treaty are fully aware of its disadvantages, they persist in holding it up as something which we should adopt, while knowing full well that Kyoto is no more than a symbol of the need to do something about climate change if we can. While it is a symbol, it should be recognised as perhaps a worthy endeavour, but in fact there are many other ways of dealing with climate change which are more practical than signing the Kyoto treaty.
We know from an analysis conducted by ABARE, the Australian Bureau of Agriculture and Resource Economics, that, if we were to close down completely, turning off every school, hospital, car and truck—as Labor and Green policies would have us do—a rapidly expanding Chinese economy would negate the reduction in greenhouse gas emissions in Australia in just 11 months. We know that, if we were to cut our emissions as the Greens and the ALP suggest we do, with a unilateral cut of 20 per cent by 2020 and 80 per cent by 2050, that would have quite significant effects on the Australian economy. For example, we know that petrol prices would probably increase by around 100 per cent, our gross domestic product growth would be reduced by 10.7 per cent, real wages would be about 20.8 per cent lower than they would have been under a business as usual scenario at 2050, oil and gas production would fall by 60 per cent, coal production would be down by 32 per cent and electricity output would fall by 23 per cent. The agricultural industry is also projected to decline by some 44 per cent if these proposed reductions of 80 per cent are imposed by 2050.

The Australian government is very interested in reducing greenhouse gas emissions but also interested in finding practical solutions to support renewable energy and finding other ways of dealing with the great environmental problems that we face today, such as salinity and water shortages. One of the solutions to water shortages in the south of Australia that has been taken up by the Howard government is the idea of using some of the great water resources of the well-watered lands in the north of Australia for the agricultural lands which are suffering drought in the south of Australia. I think that is a great concept, and I certainly hope that it is a possibility that can be brought to fruition, because the north of Australia certainly has great potential.

As I said, the ALP keep perpetuating this rather tired old line that the Howard government has done nothing about climate change, when in fact we have done a great deal. We are very proud of our record on environmental policy. No other government in the history of this country has done as much for the environment or has introduced as many programs and policies to improve the environment of this country as the Howard government. That is a very proud record of the Howard government. In their 13 years in power, the ALP did nothing in environmental policy.

The Greens, sitting on their little pile of high moral virtue over there, can say, ‘You should be doing something,’ and, ‘You should’ve changed things.’ Of course, it is easy to say that, but it is very difficult to do. This government has shown great concern about environmental issues and has put in a lot of programs to ensure that the major environmental problems that this country faces are addressed and that very innovative and clever initiatives are put in place to address them.

That very largely concludes what I would like to say about this. I just repeat: it is a very tired, repetitive mantra of the ALP and the Greens to say we must sign Kyoto. They know full well that the Kyoto treaty would not produce any benefit for Australia or the world and they persistently refuse to recognise the fact that the Howard government has an outstanding record in introducing environmental policies and initiatives.

Senator ALLISON (Victoria—Leader of the Australian Democrats) (4.35 pm)—I did not catch most of your speech, Senator Eggleston, but your concluding remarks were challenging, to say the least.
The ACTING DEPUTY PRESIDENT (Senator Lightfoot)—I think you should start off your contribution, Senator Allison, by addressing your remarks through the chair, if you would not mind.

Senator ALLISON—Indeed. Thank you for reminding me. Senator Eggleston said it was easy to say and difficult to do. The Climate Change Action Bill 2006, like so much else that has been done in this chamber, shows that it is actually easy to do. You have to have some courage. You have to stand up to certain sectors within the community. But, at the end of the day, it is not only easy to do; it is necessary to do.

Regarding the ‘tired mantra’ of signing Kyoto, this government would have us believe that Kyoto did not go anywhere, when in fact it has been crucial in containing emissions in countries that have signed on to it. In fact, if you listen to the government’s arguments, it was crucial for us as well. How often have we heard the Prime Minister and various other ministers assuring us that we are going to reach the target of Kyoto and telling the Australian people that we are on track? Why would we bother being on track with an agreement which has no value? I think Senator Eggleston said it has no benefit for Australia or the world and we should just forget about it. This is a ludicrous concept.

As everybody knew, Kyoto was the first step in a very long process, and Australia was part of it. We agreed with it, went along with it, got a great deal from it and were very much part of the process—but we were not once the hardheads in this government took over. However, I digress.

The Democrats strongly support this bill. There is a growing acknowledgement that governments individually and collectively should act with great urgency to mitigate greenhouse emissions. But the challenge is so great that only a nationally and globally coordinated approach is going to deliver. In our view, governments will, in the not too distant future, be held accountable for greenhouse abatement by the international community as well as by their constituents domestically. The UK government recently introduced a climate change bill in which the greenhouse emissions targets are enshrined in law. That is what this bill does. It is regrettable that what we are debating here today is not a government bill. I would like to think that this will be put to the vote today and passed into law, but we all know as we sit here in this debate that the chances are very slim.

Now that climate change has, at least for the last few weeks, dropped off the front pages of the press, the likelihood is that this government will continue its politics of denial: denial that coal must be eventually phased out, denial that the 10-year drought has anything to do with CO₂ concentrations in the atmosphere, denial that a carbon constrained future will have economic benefits and denial that Australia has a case to answer. It has rejected the truly low- and zero-emissions technology in favour of nuclear and so-called clean coal. It frankly has its collective head firmly in the sand.

Australia is the 10th largest emitter of greenhouse emissions in the world, just behind the UK, which has three times the population of Australia. Australia is the largest per capita emitter and one of the most vulnerable to climate change. Our greenhouse gas emissions are dominated by the stationary energy sector. Electricity represents 50.7 per cent of total emissions, and that is due to grow by 55 per cent between 1990 and 2010. The agricultural and transport sectors are the next largest sectors at 15.8 per cent and 14.4 per cent of total emissions respectively. But the big growth areas are in stationary energy, transport and industrial processes. The only factor that saved our bacon internationally is
the one-off deal at Kyoto for a huge credit from not clearing land—not cutting down our trees—mostly in Queensland. Had it not been for the generosity of the negotiators, our emissions would have exceeded 108 per cent of 1990 levels by a huge margin.

The federal government’s failure to set a course for greenhouse emissions reductions has generated enormous uncertainty in the business sector. You would think this would be of interest to this government. The business sector knows that a tradable emissions permit system and carbon levies are inevitable. Technology is going to have to be transformed. New standards are going to have to be complied with and emissions targets will have to be met. Business needs certainty so investment decisions can be made and stranded assets avoided. The French company AXA estimated in 2004 that about 20 per cent of global GDP is now affected by climatic events and that climate risk in numerous branches of industry is more important than the risk of interest rates or foreign exchange risk.

The Democrats support the creation of an investment and regulatory environment for the innovation of low-carbon technologies and to provide certainty for industry to make that transition to a low-carbon future. We also know that it is necessary to protect our natural habitats and to prepare for adaptation to global warming. The economic restructuring necessary to do this is way behind that of almost all other OECD countries, placing our business sector at serious competitive disadvantage in new markets.

We of course support the ratification of the Kyoto protocol. I do not know how many times we have mentioned it in this place and called on the government to complete that ratification. The government says that the protocol is flawed because it does not include the growing powerhouses of China and India. That argument, of course, stymies any hope whatsoever of global cooperation. Apparently free trade agreements can be negotiated between Australia and one or two other countries, but not an agreement that deals with the greatest threat to the planet involving highly developed countries. Of course, we are out of Kyoto, as we all know, because we follow the United States. Anything Mr Bush says, we are right on board—in this case, backing his recalcitrance and protecting our markets for coal and now uranium. That is the sad fact.

Ratifying the Kyoto protocol not only is the right thing to do for the environment but also will allow Australian government and industry to access and benefit from the project based mechanisms such as joint implementation projects and clean development mechanisms. The head of the UNFCCC said that the clean development mechanism of the Kyoto protocol could generate annual turnover of $A133 billion in green investment flow to developing countries, none of which Australian companies can be part of. The carbon market in the EU emissions trading scheme was worth over $13 billion in 2005. Our farmers missed out on an annual income of $2.5 billion for land clearing avoided.

We also support a national climate change action plan. Australia does not have a nationally consistent regulatory framework to respond to climate change, and various levels of government are pursuing different and changing policies. Some states are introducing their own version of emissions trading and others have a greenhouse abatement program in place. This is not a coordinated approach; this is not a national approach. It is, in fact, a hotchpotch of state government responses. Our economy is highly dependent on energy, on the $26 billion a year in coal exports, on the $32 billion a year in tourism and on agriculture. Few companies are well
positioned to manage and capitalise on the risks and opportunities of climate change.

Coordination and assessment of these cumulative impacts can only be managed through overarching principles that take climate change impacts into account. National coordination of climate change policy is crucial because the impacts, and therefore the policies, are cross portfolio: energy, water, transport, industry, primary industry and so on. We would actually go further and call for a national and coordinated climate change action plan and we would require a minister for climate change. I have no doubt that Senator Milne would agree with that as well.

An Australian Greenhouse Office report shows Australia will not meet its target of 108 per cent of 1990 greenhouse gas emissions by 2010. In fact, greenhouse emissions are projected to rise to 127 per cent higher than 1990 levels by 2020. The AGO report confirms that the Australian government’s current and committed policies are inadequate. We cannot meet our Kyoto target. The challenge is to lower CO₂ concentrations in the atmosphere to levels that avoid dangerous climate change, and to keep them that way. This means massive and urgent cuts followed by a balance in which CO₂ emissions match the earth’s capacity to absorb them. On average, around 45 per cent of all greenhouse emissions remain in the atmosphere and the rest are absorbed by natural systems. This has been the case for at least the last 50 years.

Greenhouse mitigation requires stabilising and then reducing emissions over the long term. In order to be sustainable, greenhouse emissions from human activity must equal the earth’s capacity to absorb them. Our objective, therefore, must be not just to deliver major cuts in emissions but also to have the planet reach what I call homeostasis—a sustainable balance where emissions are no higher than the earth’s capacity to absorb them. The government’s immediate policy objective should be to achieve the Kyoto protocol target of limiting emissions to 108 per cent in the period 2008-12. To achieve this it is going to have to find an additional six million tonnes of greenhouse gas abatement—and there is only three years to do that. That is the equivalent of a three per cent reduction in the stationary energy emissions of this country.

We also support the annual greenhouse gas inventory and national communication. We say we also need transparency in the methodologies that are behind the calculation of Australia’s emissions, particularly around land use, land use change and forestry. I note that the CRC for carbon accounting, which would have been useful in this process, no longer exists due to the government removing its funding.

We support a framework for involvement in international trading schemes. But, having said that, we think that a higher priority right here and now is for Australia to introduce domestic trading schemes so that we can be prepared for an international trading scheme down the track. We support emission reduction targets. The targets in this bill are for 20 per cent below 1990 levels by 2020 and 80 per cent by 2050. We have some doubts about the latter target. This certainly provides certainty for industry but we would like to see flexibility built in, in case more—or even less—action is required as more information comes to hand. Forty-seven years from now is a very long way off and we would sooner stick to the principle of achieving the balance that I referred to—to restore safe levels of CO₂ emission and concentration.

We support a national energy savings target, also known as an energy efficiency target. We have been strong advocates for that
in this place in the last few weeks. We would go further and introduce incentive mechanisms for energy efficiency supported by a strong baseline of energy efficiency regulation. We support a minimum price for renewable energy. We support a feed-in tariff for specific renewable energy technologies but we prefer the creation of specific markets for carbon, ‘black’, emissions trading; renewable, ‘green’, emissions trading; and energy efficiency, ‘white’, trading.

Like the Greens, we have for many years been advocating the end of harvesting old growth forests, for many reasons that are well laid out in the bill. As the population grows so do greenhouse emissions and their impact on natural habitats. We think it is essential then to de-link greenhouse emissions from economic growth—and the expansion into natural habitats that that growth implies—to prevent more species being threatened and lost. We think it is critical that the environment is protected from uncoordinated singular development activities that have cumulative impacts that already threaten the compromised habitats and environment systems. We need to move to other practices which increase the carbon sequestration in the soil and biosphere, and of course to maintain and protect existing old growth for its value in storing carbon, protecting habitat and promoting adaptation.

We strongly support the increase in the mandatory renewable energy target and we have moved countless amendments in this place to do that. In this bill the target has been pushed up, as we know it is possible to do. It is a proven and successful market based measure that was introduced in 2001. The concept originally was that it would deliver an additional two per cent of our electricity supply from renewable sources. But, as we all know, the promised two per cent target was so watered down that it was met within three years. Renewable energy had a 10.5 per cent market share before MRET was introduced and now, in 2007, that is down to a nine per cent market share. So clearly, although more renewable energy is being generated, it failed as a mechanism to increase the total percentage. In fact, instead of being two per cent, it looks as if by 2010 it will represent less than 0.5 per cent of total electricity use.

We know that renewable energy has enormous potential to meet our energy needs, with solar, bioenergy and geothermal opportunities being barely explored in this country. The renewable energy target could be doubled and the industry could respond without even a groan. Combined with energy efficiency targets to reduce the overall consumption, it is possible to increase the relative renewable energy contribution to much higher levels than we have—in the order of 30 per cent by 2015 we understand would be reasonable. The Democrats moved an amendment in parliament in June 2006 to increase MRET to 20 per cent by 2020. Naturally the government did not support the amendment. No doubt it has wiped its hand of MRET. MRET will finish in 2010 and leave the renewable energy sector in the lurch.

We support amendments to the Energy Efficiency Opportunities Act. We have spent time this week debating what is missing from that act. The uptake of energy efficiency is a front-line tool in the transition to a carbon constrained future. It is the least-cost greenhouse abatement activity and it has very positive economic and productivity benefits. Yet energy efficiency is underutilised, with the government having only introduced voluntary measures. Other sectors, including agriculture, are not included in the Climate Change Action Bill, but we think that they are important. We need action in the agricultural sector in the research, development, demonstration and commercialisation of
low-emission technologies. I would like to stress the importance of action in all sectors of the economy in the transition to that carbon constrained future.

It is understood that enough carbon can be stored in the living biosphere, particularly in the tropics of our planet, to offset all of the atmospheric carbon emissions since the beginning of the industrial revolution. Australia has great opportunities in sequestering or storing carbon in the soil, and the agricultural sector will be a large beneficiary of carbon-trading schemes, as well as a beneficiary of turning climate change around—if we can possibly do that—or avoiding dangerous climate change events.

Increasing carbon in the biosphere can be achieved through soil carbon retention or biosequestration, such as tree planting. There are a number of practices that can increase soil carbon retention, such as organic and low-till practices. They all coincide with good soil management and enhanced soil fertility. Change in management practices and crop choice, such as growing perennial vegetation rather than annual grasses, can sequester carbon in the longer term. Having deep-rooted plants helps store carbon in the soil. If you are dealing with a forested situation, the leaves fall and rot away and store carbon in the soil. The greatest challenge is in quantifying carbon sequestration. This requires basic research to be done and the development of methodologies to account for the carbon. It is essential that methodologies for measuring soil and biosphere carbon sequestration are developed so that the agricultural sector can take the opportunity that should be provided to them with emissions trading. The Democrats would like to reward and support farming communities that transfer to low carbon or carbon sequestering agricultural practices. A solution to greenhouse abatement and transition—(Time expired)

**Senator BOB BROWN** (Tasmania—Leader of the Australian Greens) (4.55 pm)—In speaking to the Climate Change Action Bill 2006, I congratulate Senator Milne for bringing the first climate change action bill to this parliament. It is something that should have been introduced here when the Howard government came to office in 1996, but they failed to act. This country is in a ‘back of the pack’ situation because of that failure to act, when we should be leading the world in terms of rescuing this marvellous little planet of ours from what Angela Merkel, the Chancellor of Germany, described just a fortnight ago as a calamity facing humankind.

If only our Prime Minister had woken up; if only this government would wake up. What an insult it is to the enormous concern about climate change in this nation of Australia, where any primary schoolchild could tell you of the need for action such as that in Senator Milne’s bill. There is greater concern and intelligence about the matter in an average school class than there is around the cabinet table of this country of Australia. Here today that is exemplified by the failure of the government to produce one minister to speak on this bill. Not a minister; not a secretary—just a gaggle of backbenchers. They are lined up to talk this bill out—to filibuster it—so that there will not be a vote. But we had the government voting no to climate change action brought forward in this manner by the Greens through Senator Milne.

We had Senator Eggleston as the first cab off the rank for the government, saying that it does not matter what the cause of climate change is. He put forward the theory that it may be due to the earth wobbling on its axis. Government members, it does matter, and we know what the cause is. The world’s scientists have been warning about that since the 1960s. The matter was first postulated by Arrhenius back in 1895. Before this govern-
ment came to office, thousands of scientists, including more than 100 Nobel Prize winners, in their first warning to the planet had said to all the leaders of the world, ‘We must act to stop the destructive impact of human behaviour on this planet or within 40 years we will be seeing not only mass extinctions of species but the planet becoming less tenable for the life of human beings, the big species which we know is the cause.’

What was the reaction to that? In the Australian press, it made no front pages. It was buried on page 9 in the Hobart Mercury but it did not make many newspapers. Had it been a warning of a stock exchange collapse, it would have been on the front page. Had it been about money and profits, it would have been on the front page. But it was not. It was just about the planet, so it did not matter. It is as if there is a disconnect between our leaders—Prime Minister Howard and President Bush—and the planet. There is a failure to understand that we are here because of this planet and that we depend upon it. It does not need us, but we need it. It gives us not only sustenance and life from its living fabric but also inspiration, adventure, joy and fulfilment. And its living fabric is being wrecked at the greatest rate in human history, and we know that that is because of our depredations. A sequela of that is climate change.

There is no escape: whether you are in the most remote wilderness on the planet or in the most densely populated city, climate change is not only stalking the future but impacting upon you now. Yet we have in the prime ministerial office in this country, after 10 years of scepticism of climate change, a no vote to a climate action bill—they say, ‘No, we won’t take action.’ Senator Eggleston resorted to the unethical defence that Prime Minister Howard and several of his ministers have brought out over the years—‘We don’t want to do it because other countries in the world won’t match action at this time.’

Just a fortnight ago Angela Merkel, Mr Blair and the leaders of the 29 European Union nations said: ‘We will take action. We’re going back to our countries to introduce a Senator Christine Milne bill. It will have a target of a 20 per cent reduction in greenhouse gases by 2020’—as in the bill Senator Milne brought into this place last year and we are debating this afternoon. The leaders of Europe said: ‘We will aim to have a 20 per cent reduction in greenhouse gases by 2020.’ And that is what the European leaders are doing. Do you know what they were asked? ‘Oh, but aren’t you going to suffer a business disadvantage?’—the thing that terrifies Mr Howard, Mr Costello and their coteries. They had this simple response: ‘The world is threatened and we must take a lead.’ They did not say, ‘No, the coal companies want to keep making their profits; they have us under their thumbs.’ They said, ‘We’re concerned about catastrophe stalking humankind and all life on this planet, and we must act.’ But here on the other side of the planet we have a government that will not act, that has not acted, that has been delinquent and that has sold out this country, this nation and its future.

Let this be said: the last decade of studied ignorance of climate change will cost this country billions of dollars to catch up on. Sir Nicholas Stern, the chief economic advisor to the Blair government and former chief economist to the World Bank, will be in this city next Wednesday. He has done something that the Prime Minister and our chief economic decision maker, Mr Costello, have not done—that is, he has studied the impact of climate change on the world were we not to act as Senator Milne’s bill would have us act. The outcome makes for very daunting reading. Besides the catastrophic environmental effects on the planet by carrying on as this
government has done and projects to do, the impact on the gross domestic product by the time the next generation is our age will be some 20 per cent, or $US9 trillion.

What the Howard government is doing is simply saying, ‘No, we won’t act, because the coal industry doesn’t want us to and Australia’s children and grandchildren can pay the penalty in terms of hundreds of billions of dollars per annum for our inactivity now.’ If you do a back-of-an-envelope calculation you will find that just the exudates from the coal exported from Australia will go very close to damaging the economy of our children or grandchildren by an amount equivalent to the current Australian budget per annum. Yet the government could not get a minister in here to debate the issue. The government could not find a secretary, because it does not give a damn about climate change. It does not want to defend it. It does not want to support it. It does not have an opinion. It simply wants to say no, as it has said for the last 10 years.

If you look at the Costello budget of May last year, you will look in vain for climate change. The two words are not there. We can expect that, in the May budget, there will be some billions spent. I will tell you why, Mr Acting Deputy President: because this greedy, small-minded, venal government is more concerned about itself than it is about the planet and the nation’s wellbeing. So we have the situation where there will be money spent this year on climate change, though last year it was not even mentioned. That is because the government is getting back the polling that shows the Australian people are very worried indeed about climate change and the impact it will have on their children.

Just yesterday I was reading the report of the APIA, the Australian Pensioners Insurance Agency, and they were asking older folk, aged over 50, around the country, ‘What is worrying you?’—and climate change is right at the top. They recognise that most of us in that age category will not be around when the major impacts of climate change come along. But do you know what? They are worried about their kids. Do you know what this government is worried about? The coal multinationals. Do you know who the policy favours? The coal multinationals. Do you know who the policy of this government has let down and will hurt, regardless of whether this bill gets up? Australia’s children, their children and this nation’s environment.

Here we have a negative government confronted by positive Greens, and it does not know what to do about it except to say no. Elsewhere in the world you might have thought Colorado was a conservative bastion in the United States. This is what the governor of that state had to say less than a month ago: Governor Bill Ritter told the media that he envisaged the state getting an increase of $US1.9 billion in GDP by doubling its use of renewables by 2020, and that this would see renewables meeting 20 per cent of the state’s total energy demands. Guess what? That is the exact selfsame figure that Senator Milne has in her bill for Australia to reach.

We just heard Senator Eggleston say, ‘We don’t want to take on strategies that will fix this problem, because they might harm our economy.’ Read for that: ‘They might harm the interests of the coal barons’—who, by the way, do not live in this country. They are not here. They export their profits overseas. Governor Ritter had a different idea. He said:

More clean, homegrown energy means more jobs and higher wages paid for Coloradans. Increasing our use of renewable energy would bring over 4,000 high-paying, high-skilled jobs and over $US570 million in wages paid to our state.

In releasing his report, the governor also said:
a 20% renewable energy goal would also result in significant reductions of soot, smog, and mercury pollution. Also, since wind and most solar resources use a negligible amount of water compared to fossil fuel sources, Colorado could save over 18 billion gallons of water by 2020.

What a remarkable complementarity there is between Colorado and so much of Australia, except one thing—that is, political sagacity and a long-term view. If there is one thing that must be of equal concern to most Australians, along with the government’s delinquency in failing to support this bill—there are no amendments, no positive contribution, not a senior government member fronting up to put the government’s point of view—is Labor’s approach to the bill. Labor will not support it. They are going to have a summit. What do you do when you do not know what you are going to do? You call a summit. This is after the previous 10 wasted years and, before that, 10 years of Labor failing to act on climate change and 10 years after the warning bells were well and truly sounding around the world. So that leaves the Greens and the Democrats, and let me congratulate Senator Allison on her contribution. She came in as Leader of the Democrats and took the lead on this bill. I say again: there is not even a frontbencher from either side of the two big parties here to contribute to the bill. What disdain for the Australian public!

Government senator—Senator Lundy is here.

Senator BOB BROWN—Senator Lundy is a shadow on the front bench and, through you, Chair, the interjectors opposite are deciding which government minister should come in for this debate.

Government senators interjecting—

Senator BOB BROWN—Yes, ex, has-beens, but which of the government ministers will come and front this debate? What a total disgrace they are. I challenge Labor to support this bill, because Senator Lundy did not do it. I do not know whether you know, Mr Acting Deputy President, but we are certainly not hearing it from anybody on the Labor benches. Do you know why? You will know, Mr Acting Deputy President, but I must not tempt you. I will tell you why. Labor do not want to set targets, either, because the coal industry does not want them to set targets. In the last 48 hours ExxonMobil have said they want a carbon tax. Watch it! Sir Nicholas Stern, who will be here next Wednesday at the Press Club, says $110 per tonne is the price that is required to get us back on track. You will not find ExxonMobil supporting that. If we get a proposal for a carbon tax from either side of the big parties, we will get some proposal—one-tenth or one-fifth of that price—which will fail to have the impact that we need to have if we are really thinking about this nation’s future.

The Greens proposal—this bill—would greatly enhance the Australian economy. It would be a massive job producer. It would be an enormous boost to technology so that the Australian citizen—the billionaire we saw on SBS last night—would not have to repeat the solution to his obstruction in this country and go to China and make his billions out of renewable energy. He was essentially forced out of here by the Howard government’s delinquency. Isn’t it time we took the advantage of this legislation to boost business, to boost jobs, to boost export income and, most importantly of all, to secure and to keep the intergenerational compact we should with our kids and our kids’ kids?

Senator WORTLEY (South Australia) (5.15 pm)—I rise to speak on the Climate Change Action Bill 2006 and acknowledge that it calls on the government to take specific action in relation to climate change. Labor will be guided by our planned national climate change summit with respect to further details of Labor’s plans to address cli-
I am pleased to outline our plans to date and to call the Howard government to account on its disgraceful neglect. Climate change is a serious issue with serious consequences and, again, an issue on which the Howard government has a poor record. If it were a report card, you would not want to take it home. It would read: ‘Eleven years of inaction in the face of Australia’s greatest environmental challenge.’

I remember an Australia when summers were summers, winters were winters and rarely did the seasons combine. Our lifestyles were set by the seasons that were clearly defined by the months of the year. You could count on a wet, cold winter. You knew you would get drenched playing netball or watching a local game of footy on a Saturday afternoon. You did not leave home without an umbrella. Our winter birthdays were planned as inside parties. And then, in the summertime, as children we would go swimming after school on weekdays and at the beach on weekends. I recall the simple pleasure of playing with my brothers and sisters under the sprinkler on the back lawn on a summer’s afternoon—sadly, because of our environmental crisis, a pleasure my young son is denied today. There is no playing with water. Back then, our seasons were generally predictable, and we lived our lives accordingly.

Last year, on Christmas Day, Australia was served up all four seasons in the one day: snow in Victoria, New South Wales and Tasmania; a hot and humid day in Queensland; the coldest December day on record in Melbourne; a sunny, hot summer’s day in Perth; and a mild day with a maximum temperature of 17 degrees in Adelaide.

Australia’s climate is changing, and it will impact on each and every one of us. Dr Geoff Love, director of the Bureau of Meteorology, said recently:

I expect climate change to affect all Australians. It is the Bureau’s responsibility to provide decision makers and the general public with accurate observations and information about our changing climate.

Now our children and future generations are faced with the possibility that the Great Barrier Reef could be destroyed through warmer seas; the Kakadu wetlands could be flooded; the Snowy Mountains could have less snow—Australian icons and the backbone of much of our tourism industry and regional economies severely damaged.

The Fourth Assessment Report of the Intergovernmental Panel on Climate Change, the IPCC, is due for release this year. Working Group I to the Fourth Assessment Report released a summary of their report a few weeks ago. According to that summary:

Global atmospheric concentrations of carbon dioxide, methane and nitrous oxide have increased markedly as a result of human activities since 1750 and now far exceed pre-industrial values ... The global increases in carbon dioxide concentration are due primarily to fossil fuel use and land-use change, while those of methane and nitrous oxide are primarily due to agriculture.

The summary says:

Warming of the climate system is unequivocal, as is now evident from observations of increases in global average air and ocean temperatures, widespread melting of snow and ice, and rising global average sea level ...

Further:

At continental, regional, and ocean basin scales, numerous long-term changes in climate have been observed. These include changes in Arctic temperatures and ice, widespread changes in precipitation amounts, ocean salinity, wind patterns and aspects of extreme weather including droughts, heavy precipitation, heat waves and the intensity of tropical cyclones.

The evidence is laid out before us. We need climate change policies that will be effective—that will give our children and grandchildren a future.
And the evidence before us too is that we will not get that from the Howard government—the government that last year rushed through legislation in the form of the Environment and Heritage Legislation Amendment Bill (No. 1). It was another lost opportunity to improve on existing legislation, a lost opportunity to address the very real challenges of climate change we are facing in Australia. The government not only failed to take up the opportunity to improve existing legislation but, through the changes, effectively weakened existing legislation. It weakened the protection that the Environment Protection and Biodiversity Conservation Act 1999 provided for Australia’s biodiversity and heritage.

What is the reality? Australia is facing a plant and animal extinction crisis. Twenty per cent of our species are threatened with extinction by the end of the 21st century. Australia now leads the world in mammalian extinctions. So we trail the world in setting the example on climate change and, to our shame, lead the world in mammalian extinction.

The Howard government cannot be trusted with the environment. It has wasted a decade denying the existence of climate change, and Australia is now facing the consequences of more than 10 years of denial and inaction. The government has failed to adequately address environmental challenges. It has failed to deliver on the environment, to the Australian people, to our children and to future generations. There is overwhelming evidence that warming temperatures and associated changes in rainfall and sea-level rise will have consequences both for the world’s environment and for the economy.

Today is World Water Day. Water and climate change are not separate issues; they are unavoidably linked. Future generations will, unfortunately, be the recipients of the severe consequences of climate change. It is our generation, here and now, that must address this issue. According to the CSIRO, by 2030 the water supply for Sydney and Melbourne will drop significantly because of reduced rainfall and higher evaporation from climate change, while their populations will increase by 30 per cent.

Addressing our water crisis requires taking action on climate change. Our environment cannot afford a future of inaction. We cannot afford a future with a government that has wasted more than a decade without addressing serious environmental issues. Only last month, during budget estimates, it was revealed that no analysis at all of the long-term consequences of climate change had been done under this government. This is despite the fact that the Stern report stated that climate change poses economic and social risks in our lifetime ‘on a scale similar to those associated with the great wars and the economic depression’. Yet the government has continued to ignore these immense economic risks to our prosperity and living standards. In fact, the Treasurer, Peter Costello, has not mentioned climate change once in 11 budget speeches.

It was also revealed during Senate estimates that greenhouse issues had not been factored into economic forecasting because their economic impact to date had not been sufficiently large. This is a reflection of a government that has had its head in the sand on climate change for 11 years. Now, in an election year, the government is desperately trying to play catch-up on climate change. We have seen 11 years of scepticism and inaction, while the damage continues. The government has refused to sign the Kyoto protocol and has locked Australia out of a global market valued last year at more than $28 billion.
Australia’s greenhouse gas emissions are set to soar by 27 per cent by 2020. Scientists tell us we need to reduce them by 60 per cent by 2050. Only last week there was an announcement by 27 European Union leaders that they aimed to cut their greenhouse emissions by 20 per cent by 2020. These EU countries have goals to reduce greenhouse emissions by 20 per cent while, due to the current government’s inaction, Australia’s greenhouse emissions are set to increase by 27 per cent. What do we have in Australia? We have a Prime Minister who will not even set a date to start cutting further greenhouse pollution.

Today we have a situation where clean energy companies are leaving Australia and taking Australian jobs with them. Only last week, the Australian company Global Renewables announced a $5 billion deal with Britain’s Lancashire County Council and Blackpool Council. Global Renewable has had to go to Britain to realise its ambitions. Only four weeks ago, another Australian company, Pacific Hydro, announced its move to Brazil. According to its general manager, Rob Grant, the growth in Australian clean energy assets has been held back by Australia’s decision to not sign the Kyoto protocol. So the company is looking internationally for investment opportunities in countries that are enacting positive policies to reduce greenhouse gas emissions and address global warming.

As Labor’s shadow minister for climate change, environment, heritage and the arts, Peter Garrett, stated this week:

We need climate change solutions that maintain existing jobs and create new jobs into the future.

Labor supports the coal industry and wants much more investment in clean coal technologies.

Because climate change is a global challenge it brings with it global opportunities and markets. Australia can’t afford to be locked out of this future.

What the Howard government truly lacks on the issue of the environment is good policy and good leadership. It is out of touch when it comes to protecting the planet for future generations.

Federal Labor, like many European nations, has a comprehensive plan to cut greenhouse gas emissions and tackle climate change. Federal Labor understands that national leadership on climate change means new opportunities for the Australian economy. A federal Labor government will: immediately ratify the Kyoto protocol; cut greenhouse pollution by 60 per cent by 2050; set up a national emissions trading scheme; set up a $500 million clean coal fund to promote cleaner coal and protect jobs in this sector; and boost the mandatory renewable energy target to encourage, amongst other things, greater use of solar and wind power.

This week, federal Labor released a comprehensive discussion paper outlining its plan for the future of Australia’s coal industry. The paper, New directions for Australia’s coal industry: the national clean coal initiative, outlines Labor’s detailed plan to cut greenhouse gas emissions and create and secure jobs in the coal sector. Practical, immediate action and long-term vision on both water security and climate change—that is Labor’s agenda. Labor is committed to bold, clean energy reform.

Senator KEMP (Victoria) (5.28 pm)—I would like to paint a picture of the chamber at the moment, since Senator Milne started off her remarks by discussing who was and who was not in the chamber. It is a picture of why the Climate Change Action Bill 2006 will not proceed and why it will fail. I will outline again the reasons why the government will not support this bill. Labor are not supporting this bill. Senator Milne sits on the back bench, alone. The three other Greens are not in the chamber. Senator Brown
walked in, made his usual extreme comments and then walked out. The Democrats, who apparently support the bill, are not in the chamber to give any support to Senator Milne. It is a sad and sorry sight, and those who are listening to the radio broadcast should be aware of what the scene is like in this chamber.

I must say I felt sorry for Senator Lundy and Senator Wortley. I have respect for both those senators and I tend to listen to their remarks.

Senator Conroy interjecting—

Senator KEMP—Not to you, Senator Conroy; I rarely listen to your remarks. But Senator Wortley and Senator Lundy are capable of making careful and thoughtful speeches. I wonder why neither of them said, ‘We are not supporting this bill’—and they are not. I wonder why neither of them came in and made it crystal clear what Labor’s policies were? Could it be that they were ducking the issue? Could it be that they were playing politics? The answer, of course, is yes. They are under strict orders from Peter Garrett to say absolutely nothing.

I must say, Senator Wortley, one of the saddest things to be said of the Labor policy—such as it is and inadequate as it is—is that, after 11 years in opposition, the Labor Party greenhouse policy is to have a summit. I can honestly say, Senator Wortley, that that is a pathetic effort. The one thing I agreed with Senator Brown on was his comment in this regard.

Quite rightly, Senator Wortley did not speak of the record of the Keating-Hawke government in this area; of course she did not, because they have no record. There is no commitment. All of us know that the Labor Party have serious difficulties in this area. What an astonishing thing that Senator Wortley is sent in to discuss support for the coal industry while we are debating Senator Milne’s bill! This government is supportive of the coal industry but not so the Labor Party.

Peter Garrett was sat on. This is the high-profile shadow environment minister who was fast-tracked to the front bench and whose main aim, which was to attempt to shut down elements of the coal industry, failed—or at least up to the election period. The Labor Party is bitterly divided on this, and I would be interested to hear Senator George Campbell’s views on this issue. You can say what you like about Senator George Campbell but he is a man who is proud of the workers and a man who will stand up for the coal industry. I would be very keen to listen to a debate between Senator George Campbell and Mr Peter Garrett on this issue. I suspect that would illustrate very nicely the massive divisions in the Labor ranks.

Let me turn to a couple of remarks that have been made in the course of the debate. I congratulate Senator Eggleston for outlining in great detail the government’s magnificent record in this area. I will not go through the list he put forward to the chamber, but he outlined the seriousness with which the government takes the climate change challenge. He outlined carefully some of the very important initiatives that the government has taken. I listened to Senator Milne’s debate because I was coming into the chamber to debate this. I agreed with Senator Milne on one thing: Senator Milne said that the government will be meeting the Kyoto target—

Senator Milne—No.

Senator KEMP—Yes, you did, Senator. You can go and check the record.

Senator Milne interjecting—

Senator KEMP—‘With difficulty,’ Senator Milne said. I thought that was a significant concession. Senator Brown has now been tempted back into the chamber, correctly, and I think you should also tempt
back the other Greens senators to support Senator Milne. One thing they can say about you, Senator Brown: you were not at a Senate committee hearing. No man has gone missing in action more than you on Senate committees. But I would bring in the rest of the Greens and I would ask the Democrats to come in.

I did agree with Senator Milne that the government is on target to meet the Kyoto target. That was a big concession, but then Senator Milne tried to draw back a little and say, ‘But the target was too soft’—that was Senator Milne’s view. In fact, I think she said it was the most generous amongst major countries—not so, actually. There are other countries in Europe that have targets, Senator Milne, which more than meet the target that was set for Australia.

Senator Milne—I would like you to tell us where.

Senator KEMP—Yes, there are, Senator Milne. I invite you to carefully—

The ACTING DEPUTY PRESIDENT (Senator Marshall)—Senator Kemp, please address your remarks through the chair.

Senator KEMP—I think Senator Milne was heard in silence. It is interesting with the Greens: every time someone differs from them or points out an error, you suddenly get interjections. We sit here and listen quietly to the Greens. We raise some issues and, of course, the interjections then follow. Senator Milne would understand that the Kyoto target was set to recognise the nature of the Australian economy. The Europeans are not noted for giving big concessions to the Aussies, I have to say. So the Kyoto target was set in negotiations and, to the shock and horror of the Greens, Australia is on target to meet the Kyoto target.

Senator Bob Brown—No, it is not.

Senator KEMP—Senator Brown shakes his head. I must say, Senator Brown, when I listen to you debate I can understand what extremism is in this country. Senator Brown and his colleagues are extremists. I will be explaining to you carefully why they are. Senator Brown came in and he postured, as he always does, waved his hands around and said: ‘Look. It’s terrible there aren’t government ministers in here. It’s terrible there aren’t Labor shadow ministers.’ I might say, ‘It’s terrible there aren’t any Greens in here,’ to be quite frank. Anyway, it is your bill and you cannot apparently roll out your own people. Then he said, ‘We want the government to debate this.’

I looked at the speakers list. The speakers list has been carefully arranged by Senator Brown and Senator Milne. Where did they put the government speakers? I will tell you where they put the government speakers—the last four speakers in this debate are government speakers. What Senator Brown wanted to do was to make sure that the government had the last say in this debate, rather hoping of course that the Greens had been able to get their own views across. Senator Brown, you have played funny games, as you often do. You have been caught out this time. So what do the government think? We get the speakers list and we see that we are all shoved down the bottom of the list except for my esteemed colleague Senator Eggleston. The Labor Party is given priority. Senator Brown, you wonder why sometimes you are not taken seriously; it is because you play these rather childish games.

The ACTING DEPUTY PRESIDENT—Senator Kemp, I have asked you to address your remarks through the chair.

Senator KEMP—I raised the issue of extremism in politics. Australians are not extreme, to be quite frank. Australians understand the complexity of the climate change
issue. Australians want action to be taken in this area. But Australians reject extremism. Let us look at what is proposed in this bill. The proposal is ultimately for an 80 per cent cut in emissions. The Greens’ position is for an 80 per cent cut in emissions. This is what happens when there is a 60 per cent cut in emissions: petrol prices would rise by approximately 100 per cent—so the Greens would have to go to the next election talking about petrol prices at $2 a litre because that is obviously their policy. Under a cut in emissions below what the Greens are suggesting, GDP growth would be cut by about 11 per cent. Real wages—and I refer to Senator George Campbell, who has written extensively on real wages over the years—would be 21 per cent lower than they would have been under another scenario for 2050. Coal production would be down by 32 per cent.

We know that Senator Brown’s view is to wipe out the coal industry. I am pleased to hear Senator Wortley at least give some support to the coal industry, and in particular to pick up the government’s policy about clean coal. I thought that was good. You were not quite gracious enough, Senator Wortley, to concede that this is a Howard government initiative; but nonetheless you gave it your support. What we are seeing, I believe, is utterly extremist politics.

They have decided that Australia should sign on to Kyoto. But let me read a list of some of the countries in Europe which were referred to so extensively by Senator Milne and Senator Brown. Spain is over its Kyoto target by 36 per cent. Australia, as I understand it, is on target. Denmark is over its target by 25 per cent. Italy is over its target by 20 per cent. Ireland is over its target by 17 per cent. Portugal is over its target by 20 per cent. Norway is over its target by 22 per cent. And yet Senator Milne comes in here and tells us how well the Europeans are doing.

I think it is absolutely extraordinary that the real facts of this case are not being put on the table. Why are we scared of the real facts in this case? Let us have an honest debate on this. If Senator Brown wants to debate this again and is prepared to give the government speakers a chance to get up early in the debate to put their case, as distinct from this time, then maybe we can have one. Let us get the facts straight. Senator Milne should have indicated—

Senator Bob Brown—Mr Acting Deputy President, I rise on a point of order. If the government moves that we extend this debate into the evening, the Greens will support it.

The ACTING DEPUTY PRESIDENT (Senator Marshall)—There is no point of order.

Senator KEMP—Of course that is another weak stunt because, as Senator Brown well knows, the program is set for this evening. You have been caught out again, Senator Brown. Do not play these games. Let us have an honest debate. We are more than happy to come into the chamber and have an honest debate. We have an issue that we have to take some real action on to deal with the issues of climate change. The Labor Party’s policy apparently is to have a summit. We shall wait anxiously to see the results of that summit: whether Peter Garrett will get his way and close the coal industry down or whether Senator George Campbell will get his way and provide support for the industry and support the government’s policy for developing technologies to encourage clean coal.

The idea that somehow this government have come to this recently is extraordinary. Senator Brown made a big song and dance about how the government are playing catch-
up in this area. Senator Brown said that nothing has been done while this government have been in office. I have just done some quick checking. I asked: when did we establish the Greenhouse Office? The answer is April 1998. Senator Brown said that nothing had been done, but the Greenhouse Office was established in April 1998. The debate was continuing at that time. It was not honest for him to pretend that nothing had happened.

Senator Brown then said that nothing has been done in relation to budgetary arrangements for greenhouse issues. I looked at that claim because I thought it was extraordinary. I know that we are spending a lot of money in this area. I have now discovered that the Australian government are leading the way, investing in a range of measures through our $2 billion climate change strategy. Senator Brown suggests that there was nothing in the budget. The fact that the Greenhouse Office was established in 1998 apparently means nothing. We note that there is a $2 billion strategy. Why don’t you get the facts right? Why don’t you carefully go through the facts so that we can have a proper debate on this issue?

In the end, Australians will reject extremist positions. They always have and they always will. The problem that the Greens have is that they are total extremists. There is no possibility of a debate with Senator Brown when he tries to fix the debating list in the way that he has. Of course, he forgot that the broadcast time starts at five o’clock. Unfortunately, Senator Brown, your manoeuvre did not quite pay off. I put that on record.

The government have a very strong record in this area. We have had a range of very effective ministers for the environment: Senator Robert Hill; Dr David Kemp, whom I know very well, was a very effective minister; and you would have to say that Senator Ian Campbell led a very strong debate in this area—and all credit to him. Malcolm Turnbull has now been given the portfolio. So it is no wonder that the Labor Party are worried.

Let me, in the concluding moments, comment on some of the other matters that were raised in this debate. Senator Wortley indicated—again, picking up the Senator Brown theme—that nothing had been done. I wonder why Senator Wortley did not mention the Australia-China Joint Coordination Group on Clean Coal Technology, which will provide strategic guidance, oversight and impetus to a range of clean coal activities in Australia and China. I wonder why that was not mentioned in your remarks, Senator Wortley. This is a very important initiative and one in which Australia is again leading the world. We can take great pride in our initiatives.

Senator Brown said nothing was being spent on the climate challenge. Three new solar cities, which have been announced for Queensland, South Australia and New South Wales, will install 3,000 solar panels on private and public housing and other buildings. Why not mention these initiatives? Senator Wortley shakes her head. You will have to wait until the summit to be able to tell us what the Labor Party will do, and you will have to resolve the conflicts in your own party about what you do with the coal industry. I do not think you should shake your head at me in that way.

The ACTING DEPUTY PRESIDENT—Senator Kemp, please address your remarks through the chair.

Senator KEMP—Mr Acting Deputy President, unfortunately, we have had what I think is a very average debate. We have had a very misleading debate from the Greens. I cannot speak for the Democrats, because they are not in the chamber and I do not like
to make comments about people when they are not in the chamber. The Labor Party were told not to support the bill and try not to give the impression that there was big action occurring, because we are all waiting for the Labor Party summit. I think that is a very weak position. My advice to Senator Wortley and Senator Lundy is that, next time you are sent in to debate an issue like this, make it clear where you stand and get your orders so that you are able to make a stand. I know Mr Rudd’s view is that you run very hard on both sides of the street, that you try to convey different messages to different people. This approach by the Labor Party is coming unstuck, and it will come unstuck because you simply cannot fool the Australian people all the time. To be quite frank, to my mind the Labor Party was given a very weak position in this debate. As I said, I felt very sorry for Senator Wortley and Senator Lundy.

Senator Conroy interjecting—

Senator KEMP—Senator Conroy has come in. Senator Conroy, I do not know whether you are speaking in this debate—I suspect you are not. I suspect you have been chained up, and rightly so. I think it would be very unwise for the Labor Party to let you loose in this debate. I will tell you why: I know your views on this and they are not strictly on message. (Time expired)

Senator IAN MACDONALD (Queensland) (5.49 pm)—I rarely disagree with Senator Kemp, but I have to on this occasion. He said that the debate was ‘very average’. It has certainly risen to a higher plane in the last 20 minutes, Senator Kemp, because your speech has put some class and quality into this debate. I know that Senator Kemp is a very humble person—full of humility. He mentioned a string of very successful Liberal Party environment ministers and he did it quite well—Senator Robert Hill, an exceptionally good environment minister; Dr David Kemp, a very good environment minister; Senator Campbell, absolutely marvellous; and our current minister, Mr Turnbull, is demonstrating what caring for the environment is all about. What Senator Kemp did not mention was that a string of great coalition ministers and the policies that they adopted were all put together when he was the coalition shadow minister for the environment prior to the 1996 election.

We all remember well how, in those days, the Labor Party used to get the tick in the box for ‘Which party is best to look after the environment?’ That was as a result of Richo’s fairly nefarious approaches to the environment. He was not interested in the environment; he was just interested in getting power and whatever it took—and it took a bit of a pretence of being interested in the environment. Former Senator Richardson had fooled a lot of people. Senator Kemp single-handedly turned around the approach of the Australian people to the environment and who would be best to look after it.

It was an interesting time, as I remember, Senator Kemp. What some might have said were more radical environmental organisations came on side and assisted you, because your policies were so good. To a degree, it was your effort that helped with the tide that returned the Howard government. Those who were genuinely interested and involved in the environment—not in the tricks and the left-wing activism that Senator Brown is renowned for—followed the policy that Senator Kemp had prepared in opposition and supported the government.

I did have a prepared speech, but I have been thrown off my track by Senator Kemp’s revelation about petrol prices going up under Senator Brown’s proposal. I understand from what you said, Senator Kemp, that if there was a 60 per cent cut in emissions—and I
understand Senator Brown is calling for 80 per cent—

Senator Bob Brown—Mr Acting Deputy President, I rise on a point of order. I would just draw the ex-minister’s attention to the fact that this is Senator Christine Milne’s bill and he should be addressing that.

The ACTING DEPUTY PRESIDENT (Senator Watson)—There is no point of order, Senator Brown; sit down.

Senator IAN MACDONALD—Senator Brown, you are the leader of the Greens—for the moment; I understand there is a bit of murmuring on the back bench about the leadership quality in the Greens at the present time. It has been going on for a while. I cannot but think how sexist the Greens are—due to the fact that Senator Brown maintains the leadership position. Senator Brown has been here for a long time—some would say too long—so we have heard this debate before. We have heard all of these discussions before. But Senator Kemp alerted me to the fact that if we had a 60 per cent decrease in emissions, that would lead to an increase in petrol prices of approximately 100 per cent. I find that absolutely amazing. I would even start to doubt you, but you quoted that from ABARE, the Australian Bureau of Agriculture and Resource Economics, a very well-qualified and respected organisation that is not prone to making outlandish claims.

I just wonder, as a representative of regional Australia, from North Queensland, what it would mean to our economy if we had a 100 per cent increase in fuel prices. Senator Brown and Senator Milne would not understand. They come from the state of Tasmania, which is a lovely state with lovely people, lovely forests, a lovely timber industry that is sustainably managed, a great fishing industry and a good tourism industry that is working side by side with production sawmills. It is a great little state, but it is a little state. I know that you also come from that lovely state of Tasmania, Mr Acting Deputy President Watson, but it is only a little state. If petrol prices go up 100 per cent, it will have an effect on Tasmania but only a small effect. If you come from a state like Queensland, as I do, with vast distances from town to town and from the sources of production to the ports or the manufacturing areas, the imposition of a 100 per cent increase in the cost of fuel would be catastrophic. And this is what the Greens are proposing.

All of the hundreds of thousands of people who are listening to this debate on the radio should be aware that Senator Brown, Senator Milne and their party want to increase petrol prices by more than 100 per cent, and people should be aware and understand the catastrophic effect that would have on a state like Queensland and on Northern Australia in particular. In addition, I understand that ABARE says that GDP growth would be 10 per cent lower, oil and gas production would fall by 60 per cent, and coal production would be down 32 per cent. I hang around in an area of North Queensland which is near the Bowen coalfields; I live not far from there. The people who work in the coal industry there are all good workers—and for some strange reason they still vote for the Labor Party; I cannot fathom that—and they are making an enormous amount of money. They well deserve it, I might say, but they are making huge wages in their work in the coal industry.

That is an industry that has been nurtured and promoted by the Howard government, and it is an industry that will be an environmental model when our clean coal technology gets going. The miners in the Bowen coalfields area, who make a lot of money, also put a lot of money back into the local economy. They buy houses, they go to the pub, they go on holidays and they buy cars.
It is tremendous for the North Queensland economy to have all this money floating around. Senator Brown and his team would have all of that stopped. Can you imagine, on top of the doubling of fuel prices, the catastrophic effect it would have on Queensland if coalmining was to be reduced, as Senator Brown has proposed? If that happens, you can shut down half of Queensland, and the other half would be in a pretty poor state. Mr Acting Deputy President, I wonder if you could guide me: does this debate finish at 6 pm or 6.30 pm?

**The ACTING DEPUTY PRESIDENT**—Six o’clock.

**Senator Bob Brown**—Mr Acting Deputy President, I rise on a point of order. That leaves only three minutes, but, if the government speaker wants to put this to a vote now, the Greens will be supporting it.

**The ACTING DEPUTY PRESIDENT**—There is no point of order.

**Senator IAN MACDONALD**—I had a prepared speech for quite a period of time, and I know that Senator Ronaldson had another 20 minutes prepared, because we have an interest in this. We have a good story to tell from our government. You think everything will be cured if we sign a bit of paper—the Kyoto protocol. Of course, none of the big emitters have done that. Signing the Kyoto protocol will not make one iota of difference to climate change in Australia. I know that Senator Ronaldson has a couple of very salient points that he wants to make before this debate comes to an end, so I am going to throw away the rest of my speech and allow Senator Ronaldson to have a few minutes on this very important subject.

**Senator RONALDSON** (Victoria) (5.58 pm)—Thank you most sincerely, Senator Macdonald; that is very gracious of you. I was enjoying your contribution. In your former role you were well recognised as a fantastic minister. It is an absolute joke that the only way Senator Bob Brown is dragged into a matter that he has an interest in is when someone like Senator Kemp alerts him to the fact that he is not down here. Of course, he scuttled back quickly. I remember vividly the Telstra bill, and the Greens were opposed to it. Who was out the front, on his mobile phone, and did not have the intestinal fortitude to come into the hearing? The great joke about today, as Senator Kemp has alluded to, has been the Australian Labor Party, whose only policy—as Senator Milne indicated—is a summit. After 11 years, the best thing they can do is to have a summit. They have no policies. The Australian Greens have no answers. This government has got $2 billion on the table and it is meeting its Kyoto commitments—and that is acknowledged. *(Time expired)*

Debate interrupted.

**DOCUMENTS**

**The ACTING DEPUTY PRESIDENT** (Senator Watson)—Order! It being 6.00 pm, the Senate will proceed to the consideration of government documents.

**Sugar Research and Development Corporation**

Debate resumed from 1 March, on motion by **Senator Ian Macdonald**:

That the Senate take note of the document.

**Senator IAN MACDONALD** (Queensland) (6.00 pm)—I want to take note of the report for 2005-06 of the Sugar Research and Development Corporation. Over the years in my former role as a minister I had quite a bit to do with research and development corporations, mainly in the fisheries and forestry area but I also had a lot of interaction with the Sugar Research and Development Corporation. I was delighted last Thursday night in Townsville to renew my association with the Sugar Research and Development Corpora-
tion at a conference they were holding titled Generation Next.

This conference—and it was the formal dinner as part of that conference which I attended—was run by the Sugar Research and Development Corporation plus other sponsors, including CSR, Westpac bank and a number of other high-profile sponsors. Unfortunately, I do not have my notes in front of me. The Generation Next conference was all about getting young cane farmers involved in thinking about the future, thinking about how the next generation, 'generation next', could assist in getting a viable and sustainable industry and one that was positive towards the environment.

The sugar industry has been criticised—perhaps fairly in the past and not so fairly in recent times—for environmental damage, particularly to the Great Barrier Reef from run-off of chemicals and soil from the land into the Barrier Reef lagoon. That is still happening to an extent. Not all farmers accept this and are prepared to do something about it, but I was delighted at the Generation Next conference to see that the young farmers were interested in these issues and were prepared to do something about them. As well as that, they were looking at other ways that the sugar industry could be sustainable into the future.

As I remember, growing up in a sugar area—where money just grew out of the ground—a huge price was being paid in those days for sugar and it did not really require a lot of effort, and people got into a certain culture. Nowadays of course things are much more difficult. There is huge international competition. The sugar industry in South America is enormous and it can change overnight—they can increase production, reduce it, divert it into ethanol or put it onto the raw sugar market at very short notice. There is real competition. There have been real problems with the world price over the years, which caused disaster in the industry. Senators will well remember the $440 million sugar rescue package that the Howard government provided for the sugar industry a couple of years ago.

The new generation of cane farmers are conscious of this. They are determined not to let the industry fall into the economic and environmental problems that it had in the past. It was a delight to be with these young people and to see their enthusiasm, their open-minded approach and the way they looked at new ways of doing things. Bob Granger, the Chair of the Sugar Research and Development Corporation, should be very proud of the work that was done at the Generation Next conference.

I think it is essential that the government, indirectly, through the SRDC and other means, gets young people involved in looking at a different culture, looking at a different way of doing things and making sure that the industry will be there forever, will be sustainable and will not need propping up by the government every decade or so. The work of the SRDC is fabulous in that regard. I give every credit to the Sugar Research and Development Corporation’s board and staff for what they do and for the 2005-06 report, which is tabled and under discussion in the Senate today.

Question agreed to.

Consideration

The following orders of the day relating to government documents were considered:

Tourism Australia—Report for 2005-06, Motion of Senator Ian Macdonald to take note of document agreed to.
COMMITTEES
National Capital and External Territories Committee
Report

Debate resumed from 1 March, on motion by Senator George Campbell:

That the Senate take note of the report.

Senator HOGG (Queensland) (6.06 pm)—I rise tonight to look at the response to the report of the Joint Standing Committee on the National Capital and External Territories entitled Antarctica: Australia’s pristine frontier: the adequacy of funding for Australia’s Antarctic program. This was a very important report, as all reports of committees of this parliament are, into the funding specifically for the Antarctic Division and its home base in Kingston in Hobart, Tasmania, and of course our bases on Antarctica itself.

The committee report specifically focused on the adequacy of funding. I think that was very important. The report was very exhaustive in the sense that it took evidence not only here in Canberra but also in Hobart itself. The report basically found that, for a long period of time, funding for the Australian Antarctic Division had been fairly tight. That was reflected in the evidence given by the division itself. At page 13 of the original report, it was noted at paragraph 2.4:

In informal discussions with the Committee, the Division reported that there had been no new money invested in the AAD for many years.

That is something that is not new to the current government, and was also the case before 1996 with the previous Labor government. Over a long period of time, this excellent organisation has been the subject of some tight funding, which has, of course, made its operations difficult. Nonetheless, it has achieved a set of marvellous outcomes given the shoestring budget that it has been run on.

The report was tabled in June 2005. The government’s response unfortunately took until Thursday, 1 March 2007 to be delivered. That was a bit unfortunate because some of the recommendations that were made—and the report was completely bipartisan—went to making some initial and immediate grants available to the organisation to further what the committee identified as some important works. The issue of the ability to access Antarctica itself was central at that time. It is a matter of history that, in the 2005-06 budget, the government allocated $46.3 million to provide an air link with Antarctica; that was most welcome indeed. That initiative of the government, which was the first major boost to the Australian Antarctic Division in a long time, has certainly made the operations of the Antarctic Division a lot more appealing to many other scientists who found the trip down to Antarctica on the Aurora Australis a little bit too much even at the best of times.

That budget initiative back in 2005-06 is now coming to fruition. We saw this last Friday when the committee once again followed up its interest in the activities of the Australian Antarctic Division and received a very comprehensive briefing on how the division was faring with a number of its activities. Central to this was the fact that it has now taken possession, through a lease arrangement, of an Airbus A319 aircraft that will have the capability to land on the ice runway, which was under construction but is now completed in Antarctica. This will enhance opportunities for scientists to travel over the summer months and to stay for short periods to undertake important scientific research. This research is not necessarily seen in our everyday lives; it looks at long-term issues such as climate change and the benefits that our society can glean from understanding our past and how climate has changed over a long period of time.
When we were visiting the Australian Antarctic Division the other week, it was interesting to hear that they ranked 166,000th out of 100 million websites in terms of the number of strikes. That might not sound very high in the pecking order but, in terms of the number of websites that are available and the number of actual strikes, they are right up there with the leading sites throughout the world. They have to constantly update and upgrade their site because it is accessed not only by scientists but also by students and the public alike.

Whilst that has been a good initiative and a very commendable initiative on the part of the government, it is my view that organisation itself still has little capacity to operate totally effectively on the budget that is provided to it; this is fairly historical. It appears to me that the organisation has little capacity to return the efficiency dividends that the government demands of many departments and agencies. The Australian Antarctic Division deals pretty much with the nuts and bolts of scientific research. Its main consumables are items such as fuel, clothing, food and spare parts—all items whose prices increase with the CPI. The efficiency dividend that the Australian Antarctic Division must return ends up in some instances being funded out of other programs and projects because it is being funded for less than the CPI. Therefore, it has to trim its sails unnecessarily in some places, and some projects undoubtedly suffer as a result. From my perspective, there seems to be no fat in the budget of the organisation. I think this is a little bit unfortunate.

When one considers the recommendations that the committee made back in 2005, they were not outlandish by any means. The committee suggested in that report that funding be provided for a scoping study to look at a dedicated marine research vessel. It did not go down the path of suggesting that there should be a new vessel but instead suggested that a scoping study be done. The response of the government, tabled on 1 March, basically said, ‘Look, we’re putting in the Antarctic air link,’ but I think that that missed the point. The point was not just about putting in the air link; there may well have been a need for a further dedicated marine research vessel, given the dual role of the Aurora Australis.

We also went into extra funding for the International Polar Year activities and suggested that there should be additional funds made available immediately to help plan that year. That will be upon us in 2007-08 but no additional funds were given. The government’s response was that they could meet any requirements out of existing funds. That was disappointing. We also asked for additional grants to be made in the period 2004-05 to 2008-09 by doubling the grants to the Australian Antarctic Science Grants scheme to $700,000. Again, the government disagreed with that recommendation, but I and my colleagues thought that it was a highly commendable recommendation to be embraced.

Senator IAN MACDONALD (Queensland) (6.16 pm)—Australia’s Antarctic Division, and our work in the Australian Antarctic Territory is a real success story for Australia. It is a success story of which the Howard government is very proud and is certainly very much a part of. I remember the controversy over the air flights from the mainland to Antarctica and I am delighted to see that it is almost a reality. I have to give credit to Senator Ian Campbell—my predecessor in the role of parliamentary secretary responsible for the Antarctic back in 1996—because it was Senator Campbell who first looked at the idea and started some work going. In the couple of years that I was in charge of the Antarctic Division we certainly pursued that. It is quite obviously a long-
term process, because it is now some eight years after I left the portfolio and the process is almost complete. The flights are, as I understand it, about to start. So congratulations to all of those who have been involved. I know the Antarctic Division have done a fabulous job.

Senator Patterson interjecting—

Senator IAN MACDONALD—Senator Patterson reminds me that she is one of the few senators who had the courage to take on travel to the Antarctic on the *Aurora Australis*. Her influence and the influence of then Senator Knowles proved instrumental in ensuring that the government focused on the Antarctic and the Antarctic Division. All of the input from people like Senator Patterson and Senator Knowles has helped achieve a great story for Australia.

I want to turn to the report and comment on a couple of areas. Recommendation 3 was about the government allocating an additional $50 million, the committee said, to the budget of the department over a 10-year period to be administered under Australia’s Antarctic program specifically for remediation of past work sites in the Australian Antarctic Territory. The government’s response indicates that that recommendation is supported in principle. The government response goes on, quite rightly, to point out that the total cost of remediation of past activities has not yet been fully determined and any budget implications can only be considered when all requirements are known.

Australia is leading the way in remediation of former sites down in the Antarctic. I know there are other countries—I certainly will not name them—who go there, do some things, build some buildings, commit some environmental vandalism with the waste they leave about, and then do nothing about it. Australia’s original bases were left better than most, but still are a problem. It has been a major concern of the Howard government to try and remediate some of those. We have actually put a lot of money into it. It is not a cheap exercise. Once you get people down there, how do they remove material from the sites without exacerbating some of the problems and then ship it back to Australia for disposal? What do you do with that material when you get it back to Australia for disposal? There is a bit of the NIMBY—shades of the uranium waste debate—in the decisions about where you put this waste. But the Australian government and the Antarctic Division have done a sensational job over the years in doing the right thing as good world citizens in remediation of past works. I certainly congratulate them.

The other matter I want to refer to briefly is recommendation 4, which talks about the cultural heritage management of Mawson’s Huts. I was delighted yesterday that Mr David Jensen, who is the chairman and chief executive officer of the Mawson’s Huts Foundation, just happened by sheer coincidence to pop into my office to renew our acquaintance and the very close working partnership that he and I had back in the times when I was the Parliamentary Secretary for the Environment and he was, at the time, I think, the chairman of the board of AAP, operating out of Sydney. Mr Jensen has a passionate commitment to Mawson’s Huts as a very significant part of Australia’s heritage. Although few Australians will ever see Mawson’s Huts in the flesh, so to speak, the work that has been done by Mr Jensen, members of his foundation board, and other committed people like him, in preserving Mawson’s Huts is creditable in the extreme.

Those huts form a very significant part of the history of Antarctica. I am privileged to have on a wall in my office a photograph signed by Sir Edmund Hillary of Mawson’s Huts and some of the restoration that was done. They were issued as a fund-raising
gesture some 10 years ago by the Mawson’s Huts Foundation. Having that photo on my wall continually reminds me of Mawson and the great work he did as one of Australia’s pre-eminent explorers down in that very special continent.

Over the years, the foundation—and there are other groups that have been involved, too—has done a lot of work in restoring the huts that Mawson once used. It is expensive work. It is not easy. Anything you do in Antarctica is expensive. You have to get very special equipment. Because it is a heritage construction, you have to deal with it in a way that heritage architects would approve of. Then you have to get them and the equipment down there. The place where these huts are is remote from other Australian bases at the current time. It is an enormous problem. A lot of work has been done. A lot of money has been raised. There have been a lot of very generous corporate donors who have contributed to the foundation. As well as that, Peter Costello, as Treasurer over the past 11 or so years, has also been very generous on behalf of the Australian people. A lot of government money has gone in to support the foundation.

The foundation, Mr Jensen was telling me, is sending another expedition down there in the not too distant future through a kind of favour of a tourist ship that goes down there. I wish I had my notes so I could indicate the name of that ship, because I would like to give that organisation a bit of a plug. They take tourists down there. They are allowing this expedition, which is going to do restoration work at Mawson’s Huts, to get on board. That will facilitate their attendance at Mawson’s Huts and enable them to do that restoration work. That work will require extra money. I have no idea what is in the budget, particularly these days, but I am keeping my fingers crossed that the approaches to the Treasurer for some additional government funding for Mawson’s Huts restoration work come to fruition. I will be watching the budget very closely to see if the great work that the foundation does will again be supported by the government.

I enjoyed the speech from Senator Hogg on this issue. He has obviously become an Antarctic fanatic, as most people tend to become once they get involved. Senator Patterson knew nothing about the Antarctic until she went down there, and now she is one of the most knowledgeable people—

Senator Patterson—I would not say that. I am passionate.

Senator IAN MACDONALD—‘Passionate’ is probably a better word than ‘fanatic’. She is a passionate supporter of what happens down there. Congratulations to all of those involved. I am pleased that the committee had a close look at our Antarctic territories. The government response is a very good response. It deals with each recommendation in a very positive and forthright way. As I say, I congratulate the Antarctic Division, the Mawson’s Huts Foundation and others on the work that they have done to enhance Australia’s reputation in its Antarctic territory management. I seek leave to continue my remarks later.

Leave granted; debate adjourned.

Legal and Constitutional Affairs Committee
Report

Debate resumed from 1 March 2007, on motion by Senator Payne:

That the Senate take note of the report.

Senator BARTLETT (Queensland) (6.27 pm)—I have only two minutes to speak further to the Unfinished business: Indigenous stolen wages report before we break for dinner and then for other business, but I want to use those two minutes to emphasise the urgency of this matter. This is a unanimous
Senate committee report. Senators from across the political spectrum and from a range of states found that there had been systematic and comprehensive fraud perpetrated on Indigenous people in many states and territories of Australia over decades. That fraud has not been recompensed adequately by any means, and certainly not in my own state of Queensland. There has been some response, but, as I would remind the Senate, recommendation No. 6 of this report specifically recommended that the Queensland government revise the terms of its reparations offer to the victims of the stolen wages fraud so that, among other things, people are not required to indemnify themselves from further legal action in order to accept the pittance that was offered and so descendents of those who were defrauded are able to access some claims.

I was in the town of Normanton in the Gulf Country of Queensland last week and had a meeting with about 30 or 40 Aboriginal people, some of whom are in their 80s. They were recalling decades of underpayment, non-payment or confiscation of wages—purportedly for safekeeping. The building on the reserve that they were forced to live in when they were forcibly rounded up decades earlier had been paid for by money confiscated from their own inadequate wages. They are getting pretty tired of waiting. This is an urgent matter and it does involve the federal government. I would once again urge all members of the committee to keep the pressure on about this. I urge Minister Brough to act on this and to pressure the state governments around the country, including the Queensland government, to act. People are tired of waiting. Many of them are getting old. The evidence is clear. The time for action is now.

Debate adjourned.

Consideration

The following orders of the day relating to committee reports and government responses were considered:

Economics—Standing Committee—Report—Qantas Sale (Keep Jetstar Australian) Amendment Bill 2007. Motion of the Leader of the Family First Party (Senator Fielding) to take note of report agreed to.

Native Title and the Aboriginal and Torres Strait Islander Land Account—Joint Statutory Committee—Report—Operation of native title representative bodies—Government response. Motion of Senator Bartlett to take note of document agreed to.

Finance and Public Administration—Standing Committee—Report—Transparency and accountability of Commonwealth public funding and expenditure. Motion of Senator Ludwig to take note of report called on. On the motion of Senator Kirk debate was adjourned till the next day of sitting.


Finance and Public Administration—Standing Committee—Report—Departmental and agency contracts: Second report on the operation of the Senate order for the production of lists of departmental and agency contracts (2003-06). Motion of the Parliamentary Secretary to the Minister for Health and Ageing (Senator Mason) to take note of report called on. On the motion of Senator Kirk debate was adjourned till the next day of sitting.


Sitting suspended from 6.30 pm to 7.30 pm
AGED CARE AMENDMENT (SECURITY AND PROTECTION) BILL 2007

Second Reading

Debate resumed.

Senator ALLISON (Victoria—Leader of the Australian Democrats) (7.30 pm)—Individuals should be provided with all necessary information and relevant options and then encouraged and supported to make their own decisions, including the option to refuse to have the matter reported. The United Nations Principles for Older Persons is based on empowering older people and maintaining their dignity.

Compulsory reporting systems for older people that are similar to child protection systems strip older people of their dignity and reinforce the ageist perspective that older people are automatically fragile and need protection. The system being proposed would seem to be a breach of the rights of residents of residential aged-care facilities to determine who receives personal information about them.

We also need to think about the potential that such an approach has to actually discouraging older people from seeking assistance. If they believe their conversations will not be confidential, and that they will lose control over what happens, they may be less likely to let staff know what is going on.

I will be moving an amendment during the committee stage which will give residents of aged-care facilities—residents with decision-making capacity—the right to not have an alleged or suspected assault reported if they so decide. We will also be moving an amendment that allows for internal reporting of resident to resident and resident to staff episodes of abuse rather than compulsory reporting to the police.

As was pointed out in submissions to the inquiry, many residents of aged care have some form of cognitive impairment and inappropriate behaviour to some degree is not an uncommon occurrence. This is not to say that this behaviour should not be responded to but simply that behaviour management is a more effective response than reporting to the police. Compulsory reporting of this behaviour runs the risk of placing a huge burden on police forces to investigate incidents but does nothing to actually ensure that they are being managed in a way that provides the best care for all involved. Some incidents may need police involvement but many will be better handled by staff putting in place processes to manage that behaviour.

We are also aware that under the proposed regime any report must be made both to the police and to the Department of Health and Ageing. It would seem that this runs the risk of compromising cases where a criminal conviction is required. Given that the Department of Health and Ageing already has processes in place to assess the standard of care provided by a facility, it is unclear what additional benefit is provided by requiring reporting to the department. I will be moving an amendment to remove this unnecessary and costly duplication.

The bill also underpins its reporting arrangements with protection for those who report the abuse. This is a measure which is long overdue. The Senate committee inquiry report into aged care, Quality and Equity in Aged Care, recommended two years ago that the Commonwealth look at whistle blower protection. In fact, recommendation 17 of the Senate report recommends:

That the Commonwealth examine the feasibility of introducing whistleblower legislation to provide protection for people, especially staff of aged care facilities, disclosing allegations of inadequate standards of care or other deficiencies in aged care facilities.
A year ago, in March 2006, the Democrats moved an amendment to introduce whistle blower protections into the Aged Care Act. At that stage Labor supported our amendment but the government did not. It is encouraging that the government has finally decided to take some action on this matter but it is disappointing that that action is so limited.

The protections in this bill will cover only staff and aged-care providers who make reports of sexual and physical abuse. Residents, their families, friends and advocates are not protected from victimisation if they make a report. And if anyone complains about some other form of neglect or abuse—or, indeed, other inappropriate conduct—there is no protection. We do not think that is good enough. I will be moving an amendment to cover residents, their families, friends and advocates as well as staff who report on any form of abuse or neglect.

A further measure in the bill is the establishment of a new and independent aged care commissioner, replacing the existing Commissioner for Complaints. The previous Commissioner for Complaints was limited within the scope of the previous legislation to undertake investigations and to take action. This bill enhances the role of the commissioner and also the manner in which complaints are handled. It is worth noting that concerns were raised in the committee inquiry that the aged care commissioner would not be sufficiently independent from the Department of Health and Ageing and that limits on the functions of the commissioner would reduce the usefulness of the role. We urge the government to address these concerns.

I will be moving our standard appointments-on-merit amendment in relation to the aged care commissioner. The Democrats have persistently and consistently put forward the proposition that the minister should determine a code of practice for selecting and appointing board members in terms of merit, independent scrutiny of appointments, probity, openness and transparency set out in the criteria by which the selection and appointment is to be made.

There is still a great deal of uncertainty about how this new regime will operate, particularly given that the new principles are yet to be tabled. The changes required by this legislation would appear to have considerable resource implications, not only for aged-care providers but also for the police—resources that might be better directed towards preventing abuse and caring for older Australians.

There is also little evidence that mandatory reporting is effective or beneficial. It would seem essential that the impact of this legislation be adequately evaluated. We need to ensure that any response to this complex issue is effective and that it respects and protects the rights of older Australians. While the Democrats think it would be more desirable to get the legislation right before it is implemented, the very least we should do is evaluate how it is going. We will move an amendment that requires a comprehensive and independent review of the legislation to assess its impact. I move the second reading amendment standing in my name:

At the end of the motion, add:

“but the Senate condemns the Government for failing to:
(a) develop a comprehensive evidence-based approach to elder abuse which includes strategies to protect older people from all forms of abuse in residential and community settings;
(b) fund a comprehensive education campaign on elder abuse for professionals including residential and community care workers, older peo-
ple, their families and carers and the broader community; and

c) provide more resources for community support and respite for the elderly.

Senator MOORE (Queensland) (7.38 pm)—I want to make some comments on the Aged Care Amendment (Security and Protection) Bill 2007 for a wide range of reasons. As a member of the Senate Standing Committee on Community Affairs I was privileged yet again to have the opportunity to listen to a large number of people from the industry and also from families and carers who have genuine concerns about the welfare of people who are ageing in our community. I would like to add to that list the department itself, because the department consistently performs to a high standard, consistently cares about the people who are providing services to aged people in our community and works effectively to implement legislation, sometimes under very limited time frames. I will get that off my chest straightaway!

Once again, I think this legislation has been introduced for all the right reasons. There could be no-one in the community who could question the need for legislation to protect aged citizens. In fact, everybody agrees with that. But in terms of how it is done, yet again we have a process where there is a large, exciting announcement that there will be new legislation brought in to address a need, and that is greeted with a strong response. However, time frames for the introduction of this proposed legislation have been imposed on providers to ensure that their processes meet the requirements of the legislation. Here again we are in that very difficult situation of balancing appropriate care and accountability with the necessary paperwork and accountability mechanisms which must be imposed on providers. There is always a tension there, not through any lack of goodwill or desire to do the right thing in the overwhelming majority of cases, but simply because of, as we heard from a number of providers, the impost of actually introducing the systems, ensuring that they are working effectively and, most importantly, training every person who has a role to play and advising them of their responsibilities, what is expected of them and the protections they have in the system.

The intent is welcome, the energy that has been put in to ensure the process will occur is welcome and the goodwill of all the people who are involved is welcome. However, I still have lingering concerns about all those who need to be fully engaged to ensure that the legislation is most effective. We know that the changes will be brought in and Labor welcome that. However, always when introducing new legislation, the more that people can do before it is implemented, the stronger and greater the chance of success will be and, as I have said before, the greater the opportunity to engage everyone who should be engaged in the process.

I have concern with the time frame, and I will try really hard not to go back to that point and to focus on things that we can agree on for the rest of these comments. The changes themselves, as introduced by the minister in this place, to a large extent respond to community outrage at publicised events of elder abuse. The major words in that statement are ‘publicised events’ because, for every event that did receive publicity about the outrage at people being damaged or hurt in their care, we know many more have not been made public. Once again, we have the tension between ensuring that the issues are identified and addressed and ensuring that people are protected and their privacy is maintained to the best possible level whilst working through a process.
There was considerable discussion during the quite truncated time we had for the inquiry about how we actually ensure that people feel confident and protected in their situation and secure enough to actually make a complaint. The most effective complaint mechanisms that are imposed on a system are only as effective as the people who are able to enunciate the complaint and the resultant system that is put in place to investigate and respond to the complaint. Those two things have to have a common purpose.

Throughout the debate we had in the inquiry there was great discussion about the confidence of people and also the mental and physical ability of people to effectively identify a fault.

There are differing opinions as to whether the nature of the complaint mechanism should be based on a mandatory process. There is still the opportunity during the implementation stages of this process. We on this side of the chamber, as always, strongly recommend ongoing review and constant monitoring of any implementation of a process but, moving forward as the new system is implemented, I think the mandatory process should be supported on the basis that if we set up a system where the outrage is clearly identified, abuse—and I use the word quite deliberately—in any form of any citizen but in particular of our most vulnerable citizens, those who are ageing, is an outrage. Once we actually identify that any abuse is an outrage, we can then engage all the people in the understanding of why this particular legislation is premised on a mandatory reporting mechanism.

Whilst I have great personal sympathy for the arguments around the protection of people’s individual privacy—and that was discussed at length during the committee process—in this debate I am falling on the side of bringing in the mandatory process in the introductory phases and then monitoring that effectively, and continuing with the ongoing community consultation, in particular with the members of the ministerial advisory group, all of whom have expressed great keenness to be involved in this process. If we continue to engage with all those persons who want the system to work and who share the desire for it to work, we would hope in future times to amend the process if required. But certainly by making the public declaration that we are aware that there is the outrage of elder abuse in our community, and by saying that when people are entering into formal aged-care arrangements they and their families must have the confidence that they will be protected, we can cooperate in a process which goes with the mandatory aspects.

One of the elements that will be critical to ensuring that this process operates effectively is awareness of all the aspects of the process that has led to bringing this legislation before the parliament, awareness of the need and awareness of the various forms of abuse that are identified. There is strong evidence to say that the term ‘abuse’ should be extended to cover any form of abuse, not just abuse of the physical and sexual nature that is mentioned in the legislation. I think I heard Senator Allison talk about the wider definition of abuse. It is not just physical abuse, which is often able to be seen and identified; it is psychological abuse, mental abuse and also such things as standards of care.

In the additional comments from the Labor senators who were privileged to be on the committee looking at this legislation, we looked at having the form of protection for whistleblowing and the definition of abuse widened so that it would be any form of treatment which did not appropriately engage and nurture the resident in the aged-care situation. So it could be concerns about meeting other standards in the aged-care fa-
cility or concerns about treatment—even, as we have seen in some cases in Queensland, allegations of almost starvation treatment of residents in aged-care facilities. It was not that there was no food—though I have heard allegations in some places where it has been as horrific as that: that people have not been fed—but more that the quality of food was not effectively responding to dietary needs and giving people the genuine nutritional support that they need, as we all need.

So we would suggest that, in the discussion around this legislation, we look at widening and getting a greater understanding of the term ‘abuse’ and also a wider protection mechanism for anyone who would identify such failings. We have a very strong start in the legislation before us, which values the role of effective whistleblowing. Again, an issue that caused great discussion at the committee stages—and significantly over the last few years—is how the role of a whistleblower is identified and protected.

When I was fortunate enough to be in my previous role in the Senate Community Affairs References Committee, we were engaged in an aged-care inquiry that reported to this place in June 2005. We were privileged at that time to hear a range of evidence, particularly from the families of people who were receiving care in different organisations. The families that came before us were expressing concerns about the care being given to their family members but were also expressing genuine concerns and fear, on behalf of both the person in the aged care and themselves, about repercussions that they could suffer if they made too many complaints, made too much noise or in any way rocked the boat. I always remember some women who gave evidence to us who were frequent visitors to aged-care facilities. I think that they had families there themselves. They used that term ‘rock the boat’ about questioning too closely or making complaint about care. In the discussion around this bill, and perhaps as we move down the line in monitoring the impact of the implementation of this bill as it moves forward, we could look at whether the clauses about which complaint can be made, and also the protection that should flow on to anyone making that complaint, could be widened so that it is not as narrowly defined as it seems to me that it is now.

I think that here, once again, there is goodwill and there is genuine interest in being involved in this discussion, because the key element that precedes this legislation and moves us forward is the desire to ensure that people are safe. That safety also ensures that they are confident and secure in their home care.

I had a number of discussions during the committee process with the witnesses who came before us about the education component, which is absolutely essential in bringing forward this legislation. We can implement the best legislation in the world—hopefully. We can ensure that people have leaflets. We can ensure that they have information sessions. We can ensure that to the best of our knowledge we give information about what people’s rights and responsibilities are in the aged-care sector, as with any other care. However, the confidence of knowing that people not only have got that message effectively and understood their rights but are able to take the next step and exercise their rights is one key element of this process about which I still have some lingering doubts. Again, I have no worry that people do not share the need to have this process implemented. But I continue to have concerns about how you implement an effective education program and then how you make sure, after that, that people do not become too comfortable with the process, forget the process or think, ‘There’s a new crisis that has come upon us so this one’s yester-
day’s news.’ So an ongoing part of whatever monitoring program is put in place as this legislation is implemented should be the concern and continuing engagement of the sector, families and people who are seeking aged care in understanding and developing perhaps their own education mechanisms.

Too often when we are talking about new publicity campaigns and education campaigns we use pre-existing models or we think we know what is best—or, horror upon horrors, we hire another consultant, who comes forward to give us the benefit of their knowledge. On this basis, I urge the department and the government to look clearly at the existing ministerial advisory group process and to use the knowledge which is already there. I urge them to implement the process of a consumer network. Consistently, in discussion of other medical areas, we hear about the importance of using the consumer network to ensure that people’s voices are heard. I think that perhaps in aged care that is a mechanism that we could use more effectively, particularly on something of this kind. It would be very useful to use the people who are thinking about using the system or being in the system themselves to look at how information can best be shared.

In the committee process we had a discussion with a number of people about how to determine a person’s ability to understand their situation. In some cases an exclusion mechanism is put in place to identify the fact that, particularly in aged care, there are people who are not fully competent to understand what is going on around them or perhaps to understand the impact of their behaviours. It is always a vexed area. We were very privileged to hear evidence from people who have great experience in aged-care delivery. There was strong support for the provisions in the legislation which ensure that some people are excluded from causing the involvement of the police in complaints if those people are determined not to have the capacity to understand the actions that they are taking. Once again, it is a very sensitive area and one that continues to need monitoring as we move forward. I think a level of sensitivity has been shown by the department and the people drafting the legislation in acknowledging that exclusion process and working effectively with the providers of care and also with the police.

We heard evidence through the committee process about the involvement of the people who would be at the other end of the complaint. We heard that if we had a mandatory complaints system people would be automatically brought in to respond to the complaints. I hope that as we move forward with this legislation—and I hope you note, Mr Acting Deputy President Ferguson, that I continue to talk about moving forward with this legislation in a positive way—we involve those people who would be the receivers of the complaint so that their knowledge and their expertise is increased in this process.

A degree of concern was expressed by some of the people who came to our committee about how that would actually work. Whenever you introduce a program of mandatory complaint there is a feeling that perhaps there could be a wave of complaints, which would actually minimise the impact. As I said before in this contribution, that could lead to some sort of comfortable response to the whole process. That would indeed be very sad. As I said, we need people to have effective training and an understanding of everyone’s responsibility in this process. That must involve the engagement of those who will be responding to the complaint.

There are greatly experienced people already involved in the aged-care assessment process and also in the review of aged-care
facilities. I hope that added resources will be given to the process so that their numbers will be increased. Their knowledge should be used in order to work effectively with the various state police departments so that people are sensitised to the process. In working with aged people there needs to be respect and understanding. People need to feel a degree of security and comfort with the situation. We do not need to cause further stress and anger to those people who are seeking our help and respect.

There are a number of amendments to be put before the chamber. I am looking forward to the committee stage of this bill because I think we will be able to work effectively in moving forward with the legislation. Again, the intent of this bill is good. We all want to ensure that we have the security of knowing that our older family members—and many of us are moving rapidly towards that age—are safe and secure in aged care. It does not really matter whether that is in an aged-care facility or in their own homes. Safety must be paramount.

The process will involve many different people who may not have experience at the moment in working effectively in aged-care facilities, and that must be acknowledged. I note that the committee has recommended that the implementation process be delayed a little to allow people to get the knowledge that we have talked about. I hope that the government will accept that. I hope that in the implementation of the Aged Care Amendment (Security and Protection) Bill 2007 we will be able to say that we have responded cooperatively to the community’s demands.

Senator CAROL BROWN (Tasmania) (7.57 pm)—I rise to speak today on the issue of aged care in Australia—an issue which, because of our rapidly ageing population, is of increasing relevance to most Australian families. Indeed, with the demands of modern life ensuring that children of ageing parents are increasingly time poor, the demand for quality aged care services is on the rise. With the increase in demand comes an increase in scrutiny of the quality of services provided by aged-care providers. It is arguably this increased scrutiny that inevitably prompted the government to introduce this bill, the Aged Care Amendment (Security and Protection) Bill 2007.

The bill was introduced in the parliament after a number of media reports in February 2006 detailing the terrible sexual abuse and assault of residents in aged-care facilities. While Labor questions why such a bill was not introduced earlier, on the basis of the recommendations made in the 2005 Senate committee report Quality and equity in aged care, which found deficiencies in the operation of the current Aged Care Complaints Resolution Scheme, Labor nevertheless supports the introduction of the current bill.

The purpose of the bill is to amend the Aged Care Act 1997 by establishing a new regime that is designed to help protect elderly people in aged-care facilities from serious forms of abuse, such as physical and sexual abuse. The regime includes: a system for compulsory reporting of physical and sexual abuse of people in aged care; qualified protection for approved providers and staff who report assaults of people in aged care; the establishment of complaint investigation arrangements through new investigation principles; and the establishment of the Aged Care Commissioner to replace the existing Commissioner for Complaints. Such measures are obviously welcomed, as they are aimed at providing some degree of necessary protection for elderly people in aged-care facilities—arguably one of the most vulnerable and dependent groups of people within the Australian community.
The new regime within a limited framework provides for the protection of aged-care residents’ rights to bodily integrity and personal safety, the most basic of human rights, which we the general public take for granted. However, it is important to note that this is only the tip of the iceberg: the bill only provides for limited protection of limited rights of aged-care residents in limited circumstances. Essentially all this bill does is reinforce the basic human rights of aged-care residents—rights which they are often too weak or vulnerable to enforce or to protect themselves.

The limitations of the bill were addressed during the committee hearing and are reflected in the committee’s report, which was handed down on 9 March. The major areas of concern included the limited scope of reportable assaults; the limited detail provided by the government thus far on the investigation principles; the limited time frame given to service providers to adequately implement the new regime; and the limited protection provided to those people who are required to report.

Under the bill a reportable assault is defined as any ‘unlawful sexual contact, unreasonable use of force, or assault specified in the accountability principles and constituting an offence against a law of the Commonwealth or a state or territory, that is inflicted on a person receiving Commonwealth funded, residential aged-care services’. Under this limited definition, the whistleblower protections provided for under the bill will only be available in the reporting of incidents of unlawful sexual or physical assault of residents in aged care.

As the Health Services Union noted in their submission, many other different forms of potential elder abuse exist. They noted a guidance list on elder abuse issued by the Department of Health in the UK, which identified six different forms of potential abuse, including physical and sexual abuse; psychological abuse; financial and material abuse; and neglect and discriminatory abuse. It is likely that the majority of abuse that occurs in aged-care facilities takes the form of psychological and material abuse and neglect but, under the bill, such forms of abuse are not classified as reportable and therefore may not be reported by aged-care providers and their staff, who are not awarded any whistleblower protections under the bill for reporting such forms of abuse.

This situation is unsatisfactory for two reasons: one, because the effect of such forms of abuse on aged-care residents can be just as serious as those stemming from sexual or physical assault; and, two, while aged-care workers will receive some degree of training in relation to this new regime, in practical day-to-day situations they are unlikely to be able to neatly categorise different forms of abuse and are likely to err on the side of caution and not report abuse for fear of losing their job or being ostracised. This was recognised by the committee in 2005 in the Quality and Equity in Aged Care inquiry in which it recommended:

That the Commonwealth examine the feasibility of introducing whistleblower legislation to provide protection for people, especially staff of aged care facilities, disclosing allegations of inadequate standards of care or other deficiencies in aged care facilities.

This is why, in our additional comments attached to the report, we recommended that the bill be amended so as to afford whistleblower protection to people who report on reasonable grounds any form of abuse or neglect in residential aged care facilities.

The issue of the limited scope of reportable assaults ties in with the other main concern raised in the public hearing about the bill: that being the limited scope of the whistleblower protections awarded to people who
report elder abuse. Under the legislation, a disclosure of information relating to a potential case of abuse only attracts protection if the disclosure is made by an approved provider or a staff member of an approved provider, it relates to a reportable assault and is made in good faith.

The Aged Care Crisis Team noted in its submission to the Senate Standing Committee on Community Affairs:

Only a small minority of cases of elder abuse involve breaking the law; so the vast majority of cases do not come under compulsory reporting. Thus, most cases of physical abuse, all emotional abuse, financial abuse and incidents of neglect are not covered.

Whistleblowers are only protected if they report reportable offences. So, again, the whistleblower will have no protection if he/she reports the vast majority of cases of elder abuse ...

Aged and Community Services Australia also noted that the protection provisions ‘do not extend to non-staff members who have a complaint, such as residents themselves, family members and visitors’. The extension of protections to other people, such as residents, who may fear suffering reprisals from providers or staff members if they report may pave the way for a higher number incidents of abuse being reported.

Limited information provided in relation to the investigation principles and the limited time frame are the other two major matters of concern that were raised. Limited information has been provided thus far by the government in relation to the investigation principles and a limited time frame has been given by the former Minister for Ageing to providers to effectively implement the new regime. The department advised that the investigation principles to be made by the minister and to be included in subordinate legislation could not be finalised until the bill had passed. The principles are fundamental to the operation of the new measures as they deal with issues such as which matters are to be investigated and how investigations are to be conducted.

A number of groups stressed in their submissions the need for more detail in relation to the principles, with Elder Rights Advocacy noting in its submission that ‘the devil is always in the detail.’ While the department has undertaken to consult on the content of the proposed principles as they are developed, because of the effect they are likely to have on the new regime, I urge the minister to make such details available as soon as possible so interested parties have the chance, which they have currently been denied, to assess them and to have genuine input as to their fairness and workability.

Stakeholders were also concerned that the commencement date of 1 April 2007 was not feasible and a longer time frame would be practically necessary to effectively implement the new regime. They noted that, with the bill still before parliament and the principles containing all the operational details still not finalised, it would not be practically possible to have the new system in place by 1 April as effective implementation would require at the least enough time for development of materials and the training of staff as to their new responsibilities.

Some groups proposed a delay of eight weeks to enable the full and thorough implementation of the new arrangements. Labor supports this bill in principle as it is aimed at offering some degree of protection to residents in aged-care facilities, a group of people that are amongst the most vulnerable and dependent in the Australian community. It also considers the issue of elder abuse in aged-care facilities one of utmost importance, and one that needs to be addressed.

However, it appears that the government has rushed this bill through parliament in response to reports in the media detailing
elder abuse without fully assessing the issue of elder abuse in aged-care facilities or wider problems with the aged-care system that have contributed to such abuse being covered up and not reported. This is reflected by the bill’s limited scope. It provides for the compulsory reporting of limited forms of abuse by a limited number of people in limited circumstances. It simply awards residents in aged care the right to bodily integrity and safety—rights which all citizens should be able to take for granted.

By not encouraging the reporting of other forms of potential abuse, such as financial and psychological abuse and neglect, the bill does not recognise or in any way combat the increased vulnerability of people in aged care to such forms of abuse. Furthermore, the limited whistleblower protections awarded under the bill to aged-care staff who wish to report abuse once again reflect the government’s ignorance of the practical realities of the workforce as staff are unlikely to risk their livelihood to report potential cases of abuse that may or may not attract whistleblower protections. The nature of the Work Choices reforms means that many staff in aged-care facilities simply cannot afford to be seen to be stepping out of line. More needs to be done to tackle the systemic problems in aged care. This bill only goes some way to addressing a very small tip of a very big iceberg.

Senator WORTLEY (South Australia) (8.09 pm)—I rise to speak on the Aged Care Amendment (Security and Protection) Bill 2007. This is a bill that Labor supports in principle but has argued, and continues to argue, that it does not go far enough to protect Australia’s most frail and vulnerable people: its elderly citizens. These are citizens who are now reaching the closing stages of their lives; citizens who have paid their dues to our society. We are talking about elderly women who scrimped and saved to bring up their children during the Great Depression of the 1930s, some of whom took over their husband’s jobs when their men went to serve the country during World War 2. Many of these women were forced back into their homes when they lost their jobs after the birth of their children. Most never got equal pay for their work or even decent superannuation. I speak also for their men—men who came home physically and mentally damaged after the war. Some came back to broken homes or to children who were estranged from them—children who did not know what a father was. Some never had a chance to find out.

For too long the Howard government has paid lip-service to this most admirable group in our community. Is it due to insensitivity, incompetence or merely flagrant arrogance that the current government has failed to act to adequately protect this most vulnerable group? Now, under pressure in an election year, it has finally tabled its amendment to the Aged Care Act of 1997 with alarming alacrity. More cynical persons than I would suggest that it has rushed this bill through the lower house and into the Senate in only matter of weeks with scant respect for either the citizens whose welfare it claims to protect or the many health workers and carers’ who, under unsatisfactory conditions, have tried to nurture and protect these elderly citizens in comfort and dignity. Many of these professionals and carers are poorly paid, and they have one of the least powerful positions in our workplace.

Labor support the Aged Care Amendment (Security and Protection) Bill 2007. However our concern is that it is incomplete and it just does not go far enough. I argue that the bill is narrow in its viewpoint. It does not deal adequately with the issues of abuse and is unlikely to achieve the desired outcome. I acknowledge also that there are some positives. The new bill’s intention to protect peo-
ple in aged care from physical and sexual assaults is admirable. Its intention to offer providers and staff who report these assaults protection is admirable too. The bill intends to do this by establishing complaints and investigation procedures and arrangements. The appointment of an aged-care commissioner to replace the existing commissioner of complaints is a step in the right direction.

Although the parliamentary committee inquiry into this bill found that there was general support within the community, submissions raised concerns about the scope of the reporting requirements. Common themes among submissions included the requirement to report to the police and the reluctance to report resident-on-resident and resident-on-staff situations. Others raised doubts about the practicality of the system and proposed alternatives to the amendments. Aged and Community Services Australia pointed out that an allegation must be reported whether it is based on reasonable grounds or not, but not suspicions. Should not the same test apply to suspicions also?

Conversely, Australian Unity supported the mandatory reporting of all allegations, even when there were no grounds to suspect a reportable offence, on the basis that requiring reasonable grounds before requiring a report would limit the number of vexatious claims. Australian Unity felt that excessive police involvement was unnecessary because it would overburden the system. It argued that care providers should report only where there were reasonable grounds to suspect assault. Other issues about compulsory reporting were also raised in the committee’s hearing. Claims were made that police and department resources would be overloaded.

The department’s view was different again. It strongly believed that a blanket exemption for all aged-care residents was not defensible. It pointed out that there are over 170,000 people every night in residential care, which represents a complete slice of the human community in Australia. It argued that some had been past perpetrators of very serious crime, some were bullies and others predators. It said that there had been some really grievous examples of resident-on-resident abuse in the past. A number of witnesses and submissions criticised the language used, which they felt was insensitive—for example, phrases like ‘unreasonable force’. Others questioned the clarity and imprecision of phrases like ‘start to suspect’ and expressed concern about the vagueness of the definition of certain basic terms and words.

While compulsory reporting is a desired outcome, it is Labor’s position that the 1.30 rule, as it now stands in the bill, is sketchy and open to misinterpretation and abuse. Labor shadow minister for ageing, disabilities and carers, Senator Jan McLucas, has consistently argued that the bill is being rushed through parliament with little time to examine its detail and, as a consequence, its implications. The principles that underpin this bill were not ready for the Senate inquiry and so were unable to be examined. Senator McLucas has contended that, if the intended implementation date of the legislation, 1 April 2007, had been enforced, it would have created chaos. These views are backed up by the bipartisan Senate inquiry report on the bill. The government has also realised this, as demonstrated by its amendment to delay the implementation of the measures in the bill, with schedule 1 being deferred to 1 May 2007 and schedule 2 to 1 July 2007.

The bill also fails to address some other very important issues. Firstly, the unenviable role of whistleblowers. How much protection do they have? As the Aged Care Crisis Team pointed out in its submission: ‘Whistleblowers are only protected if they report reportable offences.’ Once again, whistleblowers...
will get no protection if they are compelled by their ethics and moral beliefs to take action in seeking justice for those too vulnerable to speak or advocate for themselves.

Another weakness in the bill is that it does not cover many cases of abuse. This, of course, rather defeats the purpose of it, as it leaves most people—victims, their families, nursing homes and whistleblowers—almost powerless to act in these situations. Then there are financial abuses and abuses of physical neglect. What protection is there in the bill for family members or visitors who report physical abuse? What protection is there for an individual staff member who is victimised? If the bill remains as it is, it seems that even the Commonwealth government will be powerless to act in such situations.

The Health Services Union has very serious concerns, too. It wants to ensure:

... that employees would be sufficiently compensated including all financial and other costs involved in the victimisation such as legal costs and compensation for pain and suffering where applicable.

Limitations to the position, power and functions of the proposed Age Care Commissioner was another concern raised in various submissions. It was suggested that the position of the Aged Care Commissioner was not sufficiently separate from the Department of Health and Ageing. Catholic Health Australia also raised the potential risk of conflicts of interest arising which could jeopardise the commissioner’s ability to follow a proper course of action in some incidents. Such criticisms deserve to be looked at far more closely to analyse their validity and to see what they might mean.

It will no doubt come as no surprise that another query relates to the ‘$90.2 million over four years’ package of reforms referred to in the explanatory memorandum. It claimed that there was insufficient information on it in the bill. A more detailed breakdown of how the moneys are to be carved up has since been given by the department, but the committee should have been given this information much earlier. The list of concerns goes on and on, and it would take more time than I have available here today to enumerate them all. What I want to stress, however, is that every one of these queries supports the argument that the bill has been rushed far too quickly through the parliament, before it has been properly drafted. It is equally important to get it right. Time to clear up discrepancies is important.

I speak to this bill with passion. The pensioners, the frail and the elderly are not merely a segment of our society. They are our grandparents, parents, aunts, uncles, cousins, siblings, neighbours and friends. Ultimately, they will be us. Too often, these clever and dignified elders are treated as though they have passed their use-by date. Many are moved around locations like cans of beans on a supermarket shelf. Some are treated as infants or talked down to as imbeciles. Anything this parliament can do to protect them from all forms of physical and mental abuse should be done. We should never forget that this was the generation that shaped our country and gave it its personality. This generation made Australia internationally popular with their humour, honesty and easy going nature. They lived by the work ethic and the importance of family as being central to our society. These values never go out of date. We owe them a debt.

We need to ensure that this bill properly protects older people. We need to address the issues that are outstanding today and then pass legislation that will genuinely address the needs of those to whom our generation and future generations owe so much.
Senator ELLISON (Western Australia—Minister for Human Services) (8.20 pm)—I thank senators for their contribution to the Aged Care Amendment (Security and Protection) Bill 2007. Since announcing the measures to address sexual and serious physical assault in residential aged-care homes last year, this government has listened closely to stakeholders, and their advice has been critical to the government’s understanding of the needs of this sector and how best to implement appropriate reforms, including through the bill before us.

By working with the sector, we have been able to ensure that the nature and degree of regulation in this bill is reasonable—and I want to acknowledge the work done by the former Minister for Health and Ageing, Senator Santoro, in relation to this. A summary of the issues raised by the senators who contributed to this debate reveals that certainly everyone is in support of the intention of this legislation, but there are differences as to how this should be achieved and the extent to which the legislation should be taken.

The government believe that we have the balance right, and I will deal with a number of issues in turn. The legislation requires that approved providers report allegations or suspicions of unlawful sexual contact or unreasonable use of force on a resident in a residential aged-care service. The report must be made within 24 hours to both the police and the Department of Health and Ageing. While it was the government’s original intention that all allegations of abuse be compulsorily reported, representations were received from the sector in relation to the very sensitive issue of assaults carried out by residents suffering from dementia or mental impairment. Therefore, the bill provides the capacity to exempt reporting of certain allegations or suspicions of assault in circumstances prescribed in principles. This provides some flexibility to address specific issues as they arise. One of the issues proposed to be addressed in the principles is abuse by residents with mental impairment. In this case, it is proposed to provide a discretion not to report and to allow a clinical response through an appropriate behaviour management plan rather than a police and department response.

The bill underpins new compulsory reporting arrangements with protections for staff and approved providers who make disclosures about reportable assault, including protection from civil and criminal liability. The bill also enables a court to order that an employee be reinstated or be paid compensation if their employment is terminated because of the protected disclosure. I appreciate that the question of whistleblowing was the subject of some comment, and I will return to that shortly.

The bill establishes a new and independent Aged Care Commissioner to hear complaints about action taken by the new Office of Aged Care Quality and Compliance and the conduct of the Aged Care Standards and Accreditation Agency. The new office will have the power to investigate all complaints and information; it will have nationally structured intake and prioritisation of all contacts by high-level, specifically trained staff; and it will have the power to determine whether a breach of the approved provider’s responsibilities has occurred. Where a breach is identified, the office will have the power to require the approved provider to take appropriate action to remedy the breach. This will make it easier for people to lodge complaints, it will ensure more timely resolution of complaints, and it will provide greater feedback to all parties.

There was, of course, an inquiry into the bill by the Senate Standing Committee on Community Affairs, and I thank those senators who participated in that inquiry. The government has responded to the recommen-
dations of the committee, and I am pleased to say that, overall, the committee supported the bill and has recommended the passage of this legislation. The government has listened carefully to the issues and concerns raised by submitters and by the committee itself, and I will address each of the committee’s recommendations in turn. Recommendation 1 of the Senate committee is:

That in recognition of the additional responsibilities the Bill places on approved providers especially in relation to training staff members and instituting new systems, the commencement date, particularly in relation to the reporting provisions, be deferred for a period of at least one month.

In response to this recommendation, I will be moving a government amendment to the bill to extend the implementation time frames. The new complaints investigation arrangements and the establishment of the new Aged Care Commissioner will take effect from 1 May 2007, and the compulsory reporting requirements and whistleblower protections will take effect from 1 July 2007. This provides extra time for any staff communication and necessary changes to internal systems and procedures. In relation to the time frames for investigation of complaints, the government is proposing an extension of only one month rather than an extension of three months as is proposed for compulsory reporting. This is because the investigation processes will relate primarily to the roles and responsibilities of the Department of Health and Ageing and the Aged Care Commissioner.

In contrast to the compulsory reporting requirements, very limited changes will be required to be put in place by approved providers in relation to the new investigation processes. It is, however, proposed that the time frames for implementation be extended by one month to enable further consultation with stakeholders on the proposed content of the investigation principles. Recommendation 2 of the Senate committee is:

That the Department of Health and Ageing carefully and closely monitor developments in relation to the compulsory reporting regime… and that care is taken to ensure the reporting mechanism operates as intended.

The government also accepts this recommendation. The department intends to closely monitor both the compulsory reporting requirements and the complaints investigation arrangements, and agrees that there will be much to learn from the outcome of these arrangements in the first year or two. The data collected by the department during that time will also be significant for informing future public policy in this area. Recommendation 3 of the committee is:

That the Bill be amended to extend the whistleblower protections to aged care residents, the families of residents and aged care advocates …

The ALP and Australian Democrats also made recommendations suggesting broadening the whistleblowing protection for any form of abuse or neglect. The important point to note here is that aged-care residents, their families and advocates are not required by law to make reports of abuse, and therefore are not afforded statutory protection under the legislation. Rather, such people may choose whether or not to report, and may do so openly, confidentially or anonymously. The government will not be supporting any amendments to broaden the whistleblowing protections for the following key reasons. Firstly, as currently drafted, the bill protects staff and approved providers because they are required by law to report in the case of approved providers. They do not have the option of making an anonymous report in the case of staff. If they make a report to an approved provider, then they are most at risk of having their employment relationship affected by any disclosure they
make. It is therefore appropriate that special protections be made for these people.

Secondly, by contrast, residents, families and advocates may provide reports confidentially or anonymously, and this is widely recognised as providing one of the greatest possible protections against reprisals. The Aged Care Act already includes stringent protections for information disclosed to the department and prevents subsequent disclosure by departmental officers, with criminal penalties for noncompliance.

Lastly, if other people choose not to report information confidentially or anonymously and they are as a result subject to defamation action, they would continue to have all of the usual common-law defences available to them, including truth and public interest. On balance, the government considers that the bill as currently worded provides appropriate protections and does not therefore propose to support any amendments to extend the whistleblowing protections.

A number of issues were raised, and they will no doubt be dealt with during the committee stage in dealing with proposed amendments from the opposition and the Democrats. As I say, there is one government amendment, which I have outlined, in response to the Senate committee recommendation. I think that the other issues that have been raised are best dealt with during the committee stage. The bill itself is an important one.

There was a concern raised by Senator McLucas which I will touch on in the second reading debate. It was about the requirement for a medical diagnosis of cognitive or mental impairment in order for an approved provider to exercise the discretion not to report an assault by a resident. The detail of this discretion is proposed to be provided in the principles, thus providing the flexibility for changes to be made to the proposed arrangements over time if this is required. The government has listened to the concerns raised during the Senate inquiry and, based on these, proposes that, rather than requiring a medical diagnosis to determine a cognitive or mental impairment, approved providers will be required to have an assessment made by appropriate health professionals, which could include, appropriately, qualified registered nurses. The government will continue to consult with the aged-care sector through the Aged Care Advisory Committee and also other stakeholders who made submissions to the inquiry on the detail of the arrangements of the principles which I have mentioned.

In summary, the reforms detailed in this bill give even greater confidence to the people of Australia about the already high-quality care that is provided in our aged-care homes today. I thank all those who have been involved and I commend this bill to the Senate.

Question negatived.

Original question agreed to.

Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

Senator McLucas (Queensland) (8.32 pm)—I thought it might be appropriate to try and cover off some of the issues that I raised in my speech on the second reading that the minister has partly addressed in his summing up. There are two issues in particular. Minister, the question that you did not have an opportunity to address is the question of reasonable grounds. The legislation provides that, when a suspicion is held on reasonable grounds by a person of there being a sexual offence or abuse of the kind that is covered in the legislation, that should be reported. But, if there is an allegation, that allegation does not have to be on reasonable grounds. This was canvassed during the inquiry. It
was put to us that allegations are made on many occasions by people who are suffering from dementia. If an allegation of sexual abuse is made by a person with dementia, that allegation—the way I and many others read the legislation—must be reported. The question that was not clarified during the inquiry and that I am asking to be clarified here is why a suspicion must only be reported if it is on reasonable grounds but an allegation must be reported even if it is not on reasonable grounds. In residential aged care we are dealing with many people who suffer from dementia, and I think this is a point that the sector in particular would like some clarification of. That is the first issue.

You addressed the second issue, Minister, in your summing up, and that goes to when a diagnosis of mental impairment is made and how that is recorded. You indicated that that will appear in the principles and that there needs to be some flexibility. The diagnosis of mental impairment is absolutely essential for an approved provider to operate in certain ways. I am keen to know how that diagnosis will be recorded. If it can be made, as you said, by an appropriately qualified registered nurse, I would like to know what the appropriate qualification of that registered nurse is. And is it not possible for an approved provider who is not playing the game properly to simply tick the box for every single person in their facility and deem that they have a mental impairment? That is not what is intended in this legislation, but I am concerned that that is what may in fact occur. Finally, the question that I and certainly the aged-care sector need to know is: when will these investigation principles be available? They are fundamental to the operations of this proposed act and without them we can honestly hardly make decisions about how it will occur.

They are the three questions that I am looking for a response to: why do there have to be reasonable grounds on a suspicion but not an allegation, when will the principles be available, and what is ‘appropriately qualified’ when it comes to a registered nurse who can make a diagnosis of mental impairment?

Senator ELLISON (Western Australia—Minister for Human Services) (8.37 pm)—I understand that the principles I mentioned will be available within the next fortnight or so. That is the time line. In relation to the question of a suspicion based on reasonable grounds versus an allegation, the government believes that it is imperative that allegations of reportable assaults be reported whether or not the approved provider believes there are reasonable grounds. I am advised that there have been circumstances in the past where allegations made by residents had not been initially believed by the approved provider but an abuse may have actually occurred.

If I can apply that more generally, an allegation is perhaps much stronger than a suspicion. You can suspect something happened, but an allegation is someone stating that in fact it did happen. A suspicion is accordingly on a weaker basis, and I would suggest that is why the reasonable ground is attached to that. In fact, in the criminal law we quite often talk about a suspicion based on reasonable grounds. You can have suspicions which are quite unreasonable. They can be quite fanciful; they can be quite paranoiac. I think to couple that with ‘reasonable grounds’ is appropriate. But where there is actually an allegation—somebody is saying something has happened and there is a bald assertion of abuse—then the government believes an allegation of a reportable assault must be reported. I do not know if that goes the whole way to answering Senator McLucas’s question.

In response to the concerns raised by the aged-care industry in this matter, the government intends to include a provision in the
principles that, where a subsequent allegation is substantially the same as an earlier allegation, the approved provider will not be required to report the subsequent allegations. It is important to note that the provider must report an allegation when it is made for the first time whether or not the provider believes there is a basis to the allegation. The government believes that this is an appropriately cautious approach to this issue which balances the concerns of the industry about reporting repeated unfounded allegations with the need to believe and action allegations made by residents even where there may be a cognitive or mental impairment.

The details of the principles—which, as I mentioned, will be available in the next fortnight—will be finalised in consultation with the aged-care sector through the Aged Care Advisory Committee. The inclusion of this matter in the principles will allow adjustment over time should this be required after arrangements are in place. That is the flexibility of the principles that I mentioned. They will not need to come back to the parliament; they can be adapted to suit the circumstances which have been learnt from experience. On the question of appropriate qualification on the part of the registered nurse, this is again something that will be dealt with in the principles which I have mentioned. I am not sure if that covers all of the questions put by Senator McLucas. If I have missed one, perhaps I could be reminded of it.

Senator MOORE (Queensland) (8.41 pm)—Minister, I am seeking clarification of one of the comments that you have just made. I note that the principles will be released shortly. In terms of the clarification that you gave Senator McLucas about repeated allegations, does the information you gave us apply to all repeated allegations or only those made by someone who has been declared to have a mental impairment? Senator McLucas’s original question related to allegations and statements made by someone with that diagnosis. When you responded to her question, you talked about repeated allegations. I just want to clarify to whom that refers.

Senator ELLISON (Western Australia—Minister for Human Services) (8.41 pm)—The issue of repeated allegations which I mentioned will apply to all repeated allegations and not just to those made by a person with a mental impairment or a cognitive impairment. Before I move government amendment (1), I table a supplementary explanatory memorandum relating to the government amendment to be moved to the Aged Care Amendment (Security and Protection) Bill 2007. The memorandum was circulated in the chamber on 20 March 2007. I move government amendment (1) on sheet RG222:

(1) Clause 2, page 1 (lines 7 and 8), omit the clause, substitute:

2 Commencement

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<table>
<thead>
<tr>
<th>Column 1</th>
<th>Column 2</th>
<th>Column 3</th>
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<tr>
<td>Provision(s)</td>
<td>Commencement</td>
<td>Date/Details</td>
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<tr>
<td>1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table</td>
<td>The day on which this Act receives the Royal Assent.</td>
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Note: This table relates only to the provisions of this Act as originally passed by both Houses of the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

(2) Column 3 of the table contains additional information that is not part of
As I mentioned earlier, there is only one government amendment. The amendment was foreshadowed by the former Minister for Ageing, Senator Santoro. The government has moved an amendment to the bill before us to extend the time period for implementation. While it was originally proposed that the legislation take effect as soon as possible—by 1 April 2007—the aged-care sector raised concerns during the recent Senate inquiry about the limited time they would have to put systems and processes in place to meet the new requirements. The Senate committee also recommended:

That in recognition of the additional responsibilities the Bill places on approved providers especially in relation to training staff members and instituting new systems, the commencement date … be deferred for a period of at least one month.

The government has listened closely to the concerns raised by the sector and, as a result, I have moved an amendment to the bill to extend the implementation time frames. The amendment provides that the new complaints investigation arrangements, including the establishment of the new Aged Care Commissioner, will take effect from 1 May 2007. The compulsory reporting requirements and whistleblower protections will take effect from 1 July 2007. This will provide extra time for any staff communication and for necessary changes to internal systems and procedures. Compulsory reporting raises complex and sensitive issues and it will be beneficial for providers to have more time to understand and implement the required changes in this important area. I should, however, make it very clear that, while the requirement for compulsory reporting will not be mandated until 1 July 2007, approved providers will continue to be encouraged to report any assaults to the police and the Secretary of the Department of Health and Ageing.

In relation to the time frames for the implementation of the arrangements for investigation of complaints, the government is proposing an extension of only one month rather than an extension of three months as is proposed for compulsory reporting. This is because the investigation processes, which will be included in the principles made under the act, will relate primarily to the roles and responsibilities of the Department of Health and Ageing and the Aged Care Commissioner. By contrast to the compulsory reporting requirements, very limited changes will be required to be put in place by approved providers in relation to the new investigation processes.

It is, however, proposed that the time frames for implementation be extended by one month to enable further consultation with stakeholders on the proposed content of the investigation principles. I think that this amendment once again demonstrates that the government is listening closely to the concerns of stakeholders and is doing everything possible to assist them to meet the new requirements and to ensure a world-class aged-care system. I commend the amendment to the committee.

Senator McLUCAS (Queensland) (8.45 pm)—The Labor Party will, of course, support this amendment. The amendment reflects in some respects the recommendation of the Senate inquiry. But for the minister to say that this is the government responding to the sector is a bit rich. It has only been after very strong representations during the inquiry, and then some quite strong correspondence—particularly between Aged Care Queensland and the Aged and Community Services Association, and various senators—that the government has acted. The reality is that if the government had stuck by its 1
April implementation date the investigation principles—the law on which the responsibilities of approved providers would have been based—would not have been in place. We would have been asking people to abide by legislation that they had not seen.

So of course the Labor Party will support the delay of the compulsory reporting requirements until 1 July. We also support the extension of time for the establishment of the commissioner of complaints, although I think we could have actually done that within the appropriate time. But for the government to say that it is being responsive and accepting of commentary from the sector, I think, to be frank, is a bit rich.

I hope that the department uses this opportunity to have conversations with the various police forces that will be involved in the delivery of this legislation. As I said in my speech during the second reading debate, indications at the time of the inquiry were that they had only had time to have conversations with a couple of states and, I think, the ACT. There were questions about the extent and the quality of the conversation that had been had. There is a lot of work to do before this legislation can be enacted properly. We are requiring legal obligations of approved providers of residential aged care and the least we can do is tell them what the rules are before they have to comply.

Question agreed to.

Senator ALLISON (Victoria—Leader of the Australian Democrats) (8.49 pm)—I move Democrats amendment (1) on sheet 5214:

(1) Page 2 (after line 2), after clause 3, insert:

4 Independent review

(1) The Minister must cause an independent review of the operation of this Act to be undertaken two years after its commencement.

(2) The person undertaking the review must consider:

(a) the extent to which the purposes of this Act have been attained; and

(b) the administration of the amendments made by this Act; and

(c) such other matters as the person considers to be relevant.

(3) The person undertaking the review must:

(a) have appropriate qualifications and experience to conduct the review; and

(b) not within five years prior to the date of their appointment have been employed by an aged care provider or by a Department of the Commonwealth with responsibility for aged care.

(4) The person undertaking the review must give the Minister a written report of the review.

(5) The Minister must cause a copy of the report to be tabled in each House of the Parliament within 15 sitting days of receiving it.

Amendment (1) simply puts in place an independent review of the operation of the act after two years.

Senator McClucas (Queensland) (8.49 pm)—This is the amendment that puts in place the review after two years. As I said in my speech during the second reading debate, I do not think we can wait for two years to have a review of the operations of this legislation. I think the review has to start on day one. We are very unsure of how this legislation will play out in the aged-care sector. There are serious concerns about whether or not there will be over reporting or reporting of events that will mean that police get tired of coming to aged-care facilities—not dissimilar to what happens in child protection. There are concerns about the whole opera-
tion of the act if it were to be passed—and I think it probably will be.

I do not think we can wait for two years for that review to occur. The review has to start immediately. We have to be watching extremely closely what is occurring in aged-care services right across Australia. But, as I said in my speech in the second reading debate, the two are not mutually exclusive. We will support the Democrats amendment in the knowledge that the Labor Party will be watching very closely the implementation of this legislation. I hope that the government will as well.

Senator ELLISON (Western Australia—Minister for Human Services) (8.50 pm)—I would just like to place on record that the government agrees that there should be continual monitoring of the implementation of this legislation. For a number of reasons it does not agree with the Democrats amendment, although I understand the reasons for it. I said earlier that the department intends to closely monitor the compulsory reporting arrangements and the new complaints investigation processes and is the first to agree that there will be much to learn from that process. The data collected by the department during that time will also be significant for informing future policy.

The government has also established the Aged Care Advisory Committee, which comprises a broad range of stakeholders, such as peak industry bodies, approved providers, professional health bodies and consumer groups. The government expects the Aged Care Advisory Committee to continually monitor the implementation of this legislation and to consult the government as it always has done. The department will also continue to work closely with police in all jurisdictions to receive their feedback on the operation of the compulsory reporting arrangements and on any areas in which improvements may be made. The department is already working closely with police to ensure that both the police and the department are well placed to receive any reports of reportable assaults. There are other scrutiny processes, such as estimates and the usual Senate scrutiny, which are available to examine any legislation or the implementation thereof. We will be closely monitoring the implementation of this legislation. I am placing that on the record. We also have the Aged Care Advisory Committee, which is well placed to advise us on this. We believe in ongoing monitoring, rather than waiting two years for a review.

Senator ALLISON (Victoria—Leader of the Australian Democrats) (8.53 pm)—I would be more than happy to have that review after one year or even six months, if that is useful. What form will the documentation of this monitoring that you are proposing take? Will it be publicly available and will it be available to the Senate? If so, at what stage?

Senator ELLISON (Western Australia—Minister for Human Services) (8.53 pm)—The data that I mentioned, which will be collected by the department, would be available to the Senate through normal inquiry. Senate estimates would be the primary place to ask for that. The minister could be asked as well. It will be open to scrutiny. We have the Aged Care Advisory Committee, which has been publicly established. It is not something which is being hidden from view. As well as that, you have the various police forces around the country—they are not part of the federal government—and they too will no doubt have their views about how this is being complied with. Senators who are interested would also be able to obtain from the various state governments the police point of view as to how this is being carried out.
Senator ALLISON (Victoria—Leader of the Australian Democrats) (8.54 pm)—If I could press the minister on the data that he is referring to which will be available to us at estimates, will this data report the number and the nature of complaints that have been made, the facilities involved, the outcome of those complaints, the police attendance or otherwise, the charges that might have been laid and the outcome of that? How frequently will we be able to have access other than through estimates to that data?

Senator ELLISON (Western Australia—Minister for Human Services) (8.55 pm)—The reporting will be subject to the usual coverage that is given to complaints of a criminal nature. There will also be privacy aspects. One would not necessarily be expecting senators to ask for the names of those involved. If it were a court matter that would be public, but privacy principles would have to be observed. I do not see that there would be any problem with releasing the number of reports or the outcomes.

We have had similar questions in relation to investigations carried out by the Australian Federal Police. I would see it being answered in much the same way. If it were subject to an ongoing investigation, there would be limitations. If the matter were before the courts, obviously there would be limitations as to what information could be provided. It would be sub judice. But I would not see any trouble in saying what offences were alleged or the number of them. I would see privacy problems if you wanted to know details about the person who was a victim, such as their name. I do not think that anybody would be asking for that. You can see the parameters that I am trying to set here. They are the normal parameters applied to any investigation carried out by law enforcement. The information would be there for Senator Allison, subject to those limitations which apply across the board to any investigation or complaint.

Senator ALLISON (Victoria—Leader of the Australian Democrats) (8.57 pm)—I have one further question. Will there be an annual report prepared by the Aged Care Commissioner and will that contain all of the statistics? What can we expect?

Senator ELLISON (Western Australia—Minister for Human Services) (8.57 pm)—Will there be an annual report by the Aged Care Commissioner? Yes, there will be. Will it contain reference to the complaints and investigations? No. That will be under the auspices of the department and that information will be available through the channels that I mentioned.

Question negatived.

Senator ALLISON (Victoria—Leader of the Australian Democrats) (8.58 pm)—I move Democrats amendment (1) on sheet 5171:

(1) Schedule 1, item 5, page 7 (after line 19), after section 95A-3, insert:

95A-3A Procedures for merit selection of appointments under this Act

(1) The Minister must by writing determine a code of practice for selecting and appointing the Aged Care Commissioner that sets out general principles on which the selection is to be made, including but not limited to:

(a) merit; and

(b) independent scrutiny of appointments; and

(c) probity; and

(d) openness and transparency.

(2) After determining a code of practice under subsection (1), the Minister must publish the code in the Gazette.

(3) The Minister must review a code of practice determined under subsection (1) not later than every fifth anniver-
sary after the code has been determined.

(4) In reviewing a code of practice, the Minister must invite the public to comment on the code.

(5) A code of practice determined under subsection (1) is a disallowable instrument for the purposes of the Legislative Instruments Act 2003.

This is a standard amendment. Most people in this chamber will be familiar with the Democrats’ standard amendment on merit selection. I urge the government to—for once—support this amendment.

Senator McLUCAS (Queensland) (8.59 pm)—We will be.

Senator ELLISON (Western Australia—Minister for Human Services) (8.59 pm)—Senator Allison quite rightly points out that we have been down this road many times before. I do not want to sound like a broken record, but the government’s position remains unchanged. We will not be agreeing to it. But great care will be taken in selecting the Aged Care Commissioner. The Aged Care Commissioner will have a very serious job in ensuring the accountability of the department in implementing the new investigative arrangements, the aged-care standards and the accreditation agency in relation to its accreditation functions.

Question negatived.

Senator ALLISON (Victoria—Leader of the Australian Democrats) (9.00 pm)—I move Democrat amendment (2) on sheet 5214:

(2) Schedule 2, item 1, page 12 (line 19), omit paragraph 63-1AA(2)(b).

This amendment removes the requirement to make a report to the secretary in addition to the police. As I outlined in my second reading speech, we think this is unnecessary and I suggest that it be removed.

Senator McLUCAS (Queensland) (9.00 pm)—The Labor Party will not be supporting the removal of the requirement to report to the secretary. We think it is important, if a trend is emerging in a particular facility, that not only the police be aware of that but that the department, as the regulator and funder of residential aged care in Australia, be aware that something is occurring in a particular facility. I do not think it is any great imposition on a provider to communicate that information to the secretary. I know that there are some providers who are concerned that this is somewhat big brother like. But I think that, when we are talking of allegations of this nature, it is quite appropriate for the funding agency and the regulator of the service to be absolutely aware, especially if trends are emerging in any particular facility. For those reasons we will not be able to support the Democrat amendment.

Senator ELLISON (Western Australia—Minister for Human Services) (9.02 pm)—The government will not be agreeing to this amendment. I think Senator McLucas has pointed out the different roles that you have with a department on one hand and the police on the other. The police investigate whether a criminal act has occurred. To that end, the police investigate the circumstances of the reportable assault. By contrast, the department is charged with investigating whether an approved provider has met their responsibilities under the Aged Care Act relating to the protection of residents and providing appropriate care and support. That is why we believe that both of them should be involved. There are two very different investigations, two different aspects—one is in the criminal jurisdiction and the other regulating the provision of aged care. The department and the police do work together. I do not see that that would compromise an investigation by the police. I am certainly not aware of any
objection from the police in relation to the aspect that they both be involved.

Question negatived.

Senator ALLISON (Victoria—Leader of the Australian Democrats) (9.03 pm)—I move Democrat amendment (3) on sheet 5214:

(3) Schedule 2, item 1, page 12 (after line 24), after subsection 63-1AA(3), insert:

(3A) Subsection (2) does not apply if:

(a) the person against whom the reportable assault is alleged or suspected to have occurred makes an informed voluntary request that the approved provider not report the alleged or suspected reportable assault as required under subsection (2); and

(b) the person making the informed, voluntary request is capable of understanding the nature and consequences of that request.

(3B) For the purposes of subsection (3A), a person is assumed to be capable of understanding the nature and consequences of a request under that subsection unless there is evidence to the contrary.

(3C) In any matter before a court, the party asserting that a person is not or was not capable of understanding the nature or consequence of a request under subsection (3A) bears the burden of proving that assertion.

(3D) Subsection (2) does not apply:

(a) where a reportable assault is alleged or suspected to have been carried out by an adult person receiving residential care on another adult person receiving residential care; or

(b) where a reportable assault is alleged or suspected to have been carried out by an adult person receiving residential care on a staff member.

(3E) To avoid doubt, an approved provider remains responsible for observing any reporting or recording obligations as set out in the Accountability Principles in relation to an alleged or suspected assault in the circumstances set out in subsection (3D).

One of the objectionable parts of this bill is the taking away of the right of an older person in residential aged care to choose not to report an assault, if they are competent to make that decision. This is unlike any other person in society, who may choose not to make a report. We cannot see, if a person is competent, why this provision should be there. It is a question of equity and a person’s right to privacy and the right to take action or not take action.

Senator McLucas (Queensland) (9.04 pm)—Labor cannot support this amendment from the Democrats, although we understand the intent behind it. During the inquiry and from the submitters it became evident that it is a fact that, if this legislation is passed in its current form, residents of residential aged-care facilities will lose a right that every other Australian has—that is, the right not to report a serious sexual assault or a serious assault of any nature.

You have to weigh that up with the evidence given by Dr Yates, from the AMA, during the inquiry when he was asked about what could happen if a staff member were to assault a resident of aged care, either physically or sexually, and that resident was not cognitively impaired, but he or she said they did not want to pursue the matter. We would be in a situation where that staff member would not be able to be reported to the police or to the department. That staff member then would be in a situation where they could continue to abuse people within that facility or in any other facility in which they worked. For that reason, where you have to weigh up the potential affect on a group of people as opposed to the loss of a right for an individual, I have to come down on the side of the group.
This has been an issue that has troubled me. I do not think it is right to remove rights from any citizen. But in this circumstance I think that the government has made the right decision and that we should be reporting all forms of abuse in those circumstances. As fraught and as difficult as it is, I think in these circumstances in aged care the right not to report is a right that we have to remove from resident. It is difficult, but I think it is the right call.

Senator ELLISON (Western Australia—Minister for Human Services) (9.06 pm)—I echo those sentiments. Of course, the government does not agree to this amendment but let me put it this way: while sometimes the wishes of a particular resident may not be met, the provision of compulsory reporting ensures the safety of all residents is paramount. There can be no pressure on a resident to encourage them not to report, because the approved provider will then be required to report. It is a recognition of the broader need to ensure the safety of others. That is why the legislation adopts a cautious approach by requiring the reporting of all allegations to the police and the department regardless of whether a resident agrees that such reporting occur.

Again, I understand the reasons that the Democrats moved this amendment—it was a concern that was expressed by the Democrats during the Senate inquiry—but the government believes, on balance, that it should maintain its stance on this matter and that the protection in the broad of other residents is a more important and competing interest than the choice as to whether a victim can say they do not want to report. It is a very important issue. It is important to remember that the police and the department will deal with any issue sensitively. Of course, the police can take into account the wishes of an alleged victim as to whether charges are pressed, and that is something they do daily.

Senator ALLISON (Victoria—Leader of the Australian Democrats) (9.08 pm)—It is clear I will not have support for this amendment, but I do point out that the amendment says:

(b) the person making the informed, voluntary request is capable of understanding the nature and consequences of that request

So someone who was sexually assaulting a person who felt it was not necessary to report would not fit into that category. I accept that we are probably talking here, firstly, about a tiny proportion of people and, secondly, about an unlikely event. However, it seems to me to be a right that a competent person is a competent person, so it ought to be the same in nursing homes as it is anywhere else. But I accept that there is no support for the amendment.

Senator MOORE (Queensland) (9.09 pm)—This was a particularly vexed part of the community consultations leading into our committee report, and it came up time and time again. Minister, I would hope that the monitoring process, which you have previously explained, will be part of the implementation of this legislation. Perhaps this particular issue could be itemised as part of the ongoing consideration. As this matter came up so consistently throughout the inquiry I would hope that, when people are looking at the kind of reviewing and monitoring that you have said will be part of this legislation, some consideration could be given to whatever guidelines or review processes are drawn up and that some work is done, particularly on this issue of working with people who are caught up in this process. That may in some way respond to the concern of a number of people who gave evidence to our committee who stated that one of the key issues of concern was how this would affect people’s citizenship rights and their own individual rights. At a time
when we are trying to protect them, we are actually in some way minimising their own choice.

Senator Ellison—I think I can accommodate Senator Moore’s concern by giving an undertaking on behalf of the government that this will form part of the monitoring.

Senator Moore—Thank you, Minister.

Question negatived.

Senator ALLISON (Victoria—Leader of the Australian Democrats) (9.10 pm)—by leave—I move Democrats amendments (4) and (5) on sheet 5214 together:

(4) Schedule 2, item 2, page 15 (line 13), omit “and”, substitute “or”

(5) Schedule 2, item 2, page 15 (after line 13), at the end of paragraph 96-8(1)(a), add:

(iii) a person receiving residential care; or

(iv) a family member or friend of a person receiving residential care; or

(v) a person who, at any time during 2 years before the disclosure is made, has engaged in a series of activities in Australia or elsewhere as an advocate in the area of aged care policy.

Amendments (4) and (5) extend the whistleblowing provision to a person receiving residential care or to a family member or a person who, at any time during two years before the disclosure is made, is engaged in a series of activities in Australia or elsewhere as an advocate of aged-care policy. So it just takes it beyond the current set of whistleblowing persons who are given protection.

Senator McLUCAS (Queensland) (9.11 pm)—Mr Temporary Chairman, I seek your indulgence here as to whether Senator Allison and I can have negotiations in this chamber. Senator Allison, you would be aware that your amendment is very similar to Labor amendments (1) and (2) on sheet 5216. The difference is that your amendment refers to ‘friend,’ whereas Labor’s amendment refers to ‘an associate of a person receiving residential care’. I think we are trying to get the same outcome. I wonder which set of words are the most inclusive. By using the word ‘associate of a person’ rather than using ‘friend’ I was trying to be as inclusive as possible. Whistleblower protection should be afforded to a broader group of people.

This issue was raised by the Victorian advocacy group, I think, quite forcefully during the inquiry. As I recall, Ms Lyttle, Chief Executive Officer of Elder Rights Advocacy said that because this legislation had been so rushed and because the advocacy organisations had not been included in the consultation it was only in the last couple of weeks prior to the legislation inquiry that they realised that they were a part of all this. They had not even included the desire to be covered as whistleblowers in their submission because it had not struck them. It really underlines the rushed nature of this legislation.

Increasingly, advocacy organisations are going to discussions on behalf of their clients and meeting up with quite well-briefed and expensive legal teams, and Ms Lyttle informed the committee that threats of legal action have been made against them. So when the minister says that they would have common-law protections—as you did in your concluding remarks, Minister—there is a lot of cost associated with that. Common-law protections for organisations like elder advocacy groups are not a lot of protection for what they do. They are not well funded organisations. They work very hard doing what they are doing, but you risk being threatened with legal action of defamation by aged-care operators if you simply do what you are in fact asked to do—that is, raise matters on behalf of residents. I do not think it is appropriate that they should not be pro-
ected by these whistleblower legislation protections.

Protection should be provided to aged-care staff but for advocates in particular not to be afforded protection under this legislation I think is an extremely large oversight. I encourage the government to think this one through. We have Commonwealth funded advocacy organisations doing a job on behalf of our community—advocating on behalf of residents who are vulnerable, many of whom do not have families to support them—yet they will not be protected for doing what we expect them to do. We are putting them at risk in an increasingly litigious society if we do not take this opportunity to include them in the whistleblower protections in this legislation. However, I come back to my earlier point, Senator Allison, and wonder if we could work out which is the most inclusive set of words so that we can make a decision about whether to support yours or whether in fact you might like to support ours.

Senator ALLISON (Victoria—Leader of the Australian Democrats) (9.16 pm)—I think probably ‘associate’ includes a broader group of people, and you may find definitional problems with ‘friend’. There would be some who would argue that associates are not necessarily friends. I would be interested in broadening this as much as possible, so I am happy to withdraw that amendment, Chair, and to move to the ALP amendment, which we will obviously support. I seek leave to withdraw Democrat amendments (4) and (5).

Leave granted.

Senator McLucas (Queensland) (9.17 pm)—by leave—I move amendments (1) and (2) together:

(1) Schedule 2, item 2, page 15 (line 13), omit “and”, substitute “or”.
(2) Schedule 2, item 2, page 15 (after line 13), at the end of paragraph 96-8(1)(a), add:

(iii) a person receiving residential care; or
(iv) a family member of a person receiving residential care; or
(v) an associate of a person receiving residential care; or
(vi) a person who, at any time during 2 years before the disclosure is made, has engaged in a series of activities in Australia or elsewhere as an advocate in the area of aged care policy; and

I think I have spoken to the substance of this whistleblower protection. During Senator Humphries’s speech on the second reading debate, I think he misunderstood the intention; however, I will raise that in the next one. This is very straightforward. It says that these groups of people should be protected from any detriment if they report a reportable assault. I will move to change that in the next block of amendments. There are a whole range of people who witness things in residential aged care, not only staff, and they should also be protected from any form of retribution as a result of their reportage. This is simple. If we are really interested, if we really care about the people who live in residential aged care, we should be encouraging a culture of reporting. Those facilities that are exemplary have at the front of their policies on inappropriate dealing with older people that the first thing you have to do is to tell somebody. That is the culture that we have to be encouraging.

We recall from the 7.30 Report program in February last year that, when the woman was abused, it was witnessed by another person, and that person did not report it. How on earth can you live in an institution where somebody sees an event of that nature and does not think that the first thing they have to do is tell? This is the culture that we have to get rid of from residential care. It is only in a
small number of the facilities, but we have to stop it. We have to bring in a culture of openness, transparency, dignity and respect. To do that, we have to provide protection not only to the staff but to all people who may witness inappropriate dealings so that there is not retribution.

During our inquiry into quality and equity in aged care, I am afraid we were astonished at the number of people who talked about retribution. We know that older people feel that they cannot complain, because they might get kicked out or they will not get the care they need. They need protection as well. We have to inculcate in aged care a culture of openness, of transparency, of honesty, of respect. That is what does happen in most of our facilities and, for those that do not encourage that culture, we have to ensure that everybody who witnesses anything is given the protection that they should have. They need protection as well. We have to inculcate in aged care a culture of openness, of transparency, of honesty, of respect. That is what does happen in most of our facilities and, for those that do not encourage that culture, we have to ensure that everybody who witnesses anything is given the protection that they should have. So I encourage the government, particularly in terms of the advocates, to look very closely at this amendment. It is sensible, it is achievable, and it is doable. It is not outlandish, and I think there should have been consideration of extending whistleblower protection.

The government considers that there is a major difference between staff and approved providers on the one hand and people such as residents, families and advocates on the other. The reason for that is that approved providers and staff are required by law to make reports to the police and the department, whereas the other group of people that I have described are not. We have one group, the staff and providers, who have to report. The other group, which is made up of residents, families and advocates, do not have to report. Where there is a duty imposed on someone, we believe there should be reciprocal protection in relation to that duty of disclosure.

The other group that does not have that duty can make reports confidentially or anonymously and can thereby avoid any action at common law. As has been noted in numerous reports relating to whistleblowing, anonymity is one of the strongest protections available to people who make disclosures. This option is not available to approved providers under the new compulsory reporting requirements. That justifies putting in place protections for those providers. Those providers cannot make a report anonymously, whereas the other group that I have described can—the friends, residents and advocates.

We have available the common law, which provides various protections under public interest and truth. The common law, as we have seen, provides a sound basis for protecting any action where someone has a basis for making that report—that is, if you want to not do it anonymously. I think that that is an appropriate balance. Nonetheless, this will be the subject of monitoring. The government does not agree to these amendments for those reasons, but of course all of this will be monitored, as I mentioned earlier.

Senator McLucas (Queensland) (9.24 pm)—I do not want to delay this debate. Ob-
viously the motion is not going to be carried. Minister, I respect the fact that you have come to this recently. I want to talk about the way whistleblowing in aged care operates. I understand your distinction that there are some people who are required by law to report, but are we not trying to support those people who do report, irrespective of their requirement? People want to tell somebody when they see something inappropriate happening in aged care. You are essentially saying that that group of people, because they are not required by law to report, should not have any protection if they want to become involved in whistleblowing. If we are trying to encourage people to be open and transparent, simply saying that you can make an anonymous complaint is not sufficient. Aged care is a small community, and we all know that the fact is that most people end up finding out who has complained.

I will go to the point you made about anonymity. Yes, it is true that a relative can make an anonymous complaint and a resident can make an anonymous complaint. An associate can make an anonymous complaint. But I hardly think an advocate can make an anonymous complaint. If an advocate is working on behalf of a residential aged-care facility, they are almost compelled to front that facility and say, ‘I am here on behalf of resident A, who alleges X, Y and Z.’ They can hardly make an anonymous complaint through a complaints process and fulfil their obligations as an advocate.

An advocate works openly on behalf of a resident but, under this legislation, they will not be protected. Recognising that you have not been close to this—I respect that; I am not critical of that—I refer you to the earliest evidence presented to the Senate inquiry. Ms Lyttle and Mr Aivaliotis from Elder Rights Advocacy in Victoria talked about the increasing amount of litigation or potential litigation that that organisation has to deal with simply because they are acting on behalf of residents in aged care. We are surely not trying to not protect these people, who are simply doing their job on behalf of vulnerable older Australians?

Senator ELLISON (Western Australia—Minister for Human Services) (9.28 pm)—I will just add to my previous comment. I have talked about making anonymous complaints. Confidential complaints can also be made to the department. The person’s identity is dealt with on a confidential basis. The police jealously guard the identity of a complainant, for obvious reasons. It matters not whether it is theft, armed robbery, murder, rape or whatever. The police, across the board, will protect the identity of the complainant, for obvious reasons. To that extent, no matter who you are, if you go to the police they will not divulge your identity. If they did, it would be regarded as highly improper. They do not do so for very good police investigative reasons—so that there can be no comeback against the complainant. I remind the committee of that fact when we talk about the police.

Let us look at the department, because that is the other of half of it. If you make the complaint to the department, the department says that if you are in the other category of resident, family of resident or advocate you can do it anonymously or you can do it confidentially and that confidence will be respected. That then gives that group the protection to make the complaint.

Question negatived.

Senator ALLISON (Victoria—Leader of the Australian Democrats) (9.29 pm)—I move Democrat amendment (6) on sheet 5214:

(6) Schedule 2, item 2, page 15 (line 26), after ‘reportable assault’, insert ‘, or any other conduct amounting to neglect or abuse of any kind.’.
This extends ‘reportable assault’ to be neglect or abuse of any kind. It is not just physical or sexual; it is also psychological or financial, which we understand is a major problem, and it is neglect—so it is neglect and abuse of any kind. We cannot see any good argument for limiting the kind of abuse in the way the government has, and I would be obliged—it is clear the minister is not going to support this—if he could explain why it is that psychological abuse should not also be reported, and, likewise, financial abuse.

Senator McLUCAS (Queensland) (9.31 pm)—We are in a similar situation again, Senator Allison, where the Labor Party amendment, which is next on the running sheet, is not dissimilar to the one you have just moved. I might let the minister respond to your questions and then we can discuss this amendment—to be frank, I think they are equally as good. I do not think there is any difference. We can talk about it.

Senator ELLISON (Western Australia—Minister for Human Services) (9.31 pm)—As I understand it, the amendment moved by the Democrats proposes to extend the protections for disclosure beyond disclosures relating to reportable assaults but also to other conduct amounting to neglect or abuse of any kind. The government acknowledges that elder abuse is broader than the two serious matters considered under the consideration of this bill and that elder abuse can include psychological, financial abuse and neglect. This bill, however, focuses on sexual assault and serious physical assault. It is important to note that any person may at any time report any type of abuse to either the department or the police, and this bill in no way constrains that.

If a person chose to report these other types of abuse, they would be afforded protection by virtue of the fact that they can choose to make a complaint anonymously or confidentially, as I mentioned earlier. The new Office of Aged Care Quality and Compliance will investigate any and all information that comes to its attention regarding any abuse or neglect by approved providers and any possible breach of an approved provider’s responsibilities under the Aged Care Act—and that is very broad indeed.

The Aged Care Act is very clear about the rights of residents, which include the right to live in a safe and secure environment, and the responsibility of approved providers to provide such an environment. However, it is important to distinguish this type of complaint from a complaint about a family member abusing a resident of aged care. The Aged Care Act cannot regulate the activities of family members or friends of residents of aged-care services. While the government acknowledges this can occur—and it is very distressing when it does occur,—the Commonwealth cannot regulate through the Aged Care Act the activities of private citizens and the relationship between family members.

The legislation strikes a balance by ensuring that those who are required by law to make disclosures about certain types of abuse are also protected by law from victimisation. Those who report other types of abuse and who are not required by law to make reports will be encouraged to do so and will also have the protections that are afforded by confidentiality and anonymity. Such people also have all the existing protections available at common law. The government will not be supporting this amendment for those reasons.

I think it is important to bear in mind that this bill is focused on sexual assault and serious physical assault and that there are mandatory requirements in relation thereto for obvious reason—because of their serious nature. However, that does not exclude or
mean that we are dismissive of a broader aspect of abuse, and there is the new Office of Aged Care Quality and Compliance, which will investigate any information of that sort which comes to its attention. It still does not stop people from raising these issues or making a complaint of a more general nature.

Senator ALLISON (Victoria—Leader of the Australian Democrats) (9.34 pm)—I am puzzled at your response, Minister. It is not my understanding that this amendment extends the reportable assault provision other than in the existing bill. This is not the amendment that extends it to other persons. If indeed you say that neglect and abuse of any kind—effectively, I think that is what you just said—are covered then why not make that quite explicit? It is not in the bill; it talks about physical and sexual abuse and does not refer to neglect. I think neglect is a very important area. If there is a worker in aged care who persistently neglects an older person who is in residential care, strictly speaking this legislation does not appear to me to cover it. It is the same with psychological abuse—it can be devastating to an older person. It seems to me from your response that you do not have a real objection to what is being put here by way of amendment, so I suggest we make it very clear and that you accept this amendment. I hope you are checking right now as to what I have just said about this not extending beyond the current group of people who are required to report. I will change the amendment if that is your interpretation of it. We are talking here about reportable incidents.

Senator ELLISON (Western Australia—Minister for Human Services) (9.36 pm)—Perhaps I can ask a question of Senator Allison. The way the amendment is couched, it is relating to the protection of those who make a report. But by the way it is inserted in that section—and, indeed, the brief description given on the amendment sheet entitled ‘extension of reportable abuses’—I think it does give rise to what we are saying. What we are saying is that the Democrats propose to extend protections for disclosure beyond disclosures relating to the reporting of assaults to other conduct amounting to neglect or abuse of any kind. Is it the intention that that also mean that there is a mandatory reporting requirement for all abuse? Is that what the Democrats are intending? Or is this only about the protection? Can you see my point? This bill has mandatory reporting for sexual assault and serious physical assault. Coupled with that, there is a protection for whistleblowing in relation thereto. So with the relevant duty you have a reciprocal protection. The Democrats are purporting to extend the protection for disclosure beyond disclosures relating to those serious assaults I mentioned to other conduct—thereby implying that the mandatory reporting extends to that other conduct. If I can just ask Senator Allison that question, that might clarify my understanding of what her intention is.

Senator ALLISON (Victoria—Leader of the Australian Democrats) (9.38 pm)—It is my understanding that it was about the forms of abuse. Maybe this is another example of where it would be better for me to withdraw my amendment and for us to go to Labor’s amendment, which is perhaps drafted in a way which is more explicit with respect to expanding the types of abuse from physical and sexual. It is spelled out quite clearly in Labor’s amendment. Minister, I would be quite happy to withdraw that amendment if you are in favour of the ALP amendment. I seek leave to withdraw Democrat amendment (6) on sheet 5214.

Leave granted.

Senator McLUCAS (Queensland) (9.39 pm)—by leave—I move opposition amendments (3) and (4) on sheet 5216 together:
(3) Schedule 2, item 2, page 15 (line 26), after “reportable assault”, insert “or any other form of abuse”.

(4) Schedule 2, item 2, page 15 (after line 28), after subclause 96-8(1), insert:

(2) For the purposes of paragraph (1)(d), any other form of abuse may include, but is not limited to, the following:

(a) physical, sexual, emotional, psychological or financial abuse; or

(b) neglect.

Minister, on Lateline in February 2006 there was a story—it was part of a series—about an aged-care worker who was unnamed and would not be identified; and I think that tells us something. This worker, who was unnamed and would not be identified, said:

In the facility, in this particular facility, it was starting to happen before I left more and more and you feel you have—you can’t do anything. You have no recourse to say anything. Because if you do say anything, you are then bullied by management, from right up, the head office right the way down. You have no recourse. There is nowhere—you put in reports and say that this is happening. Nothing is ever done. It disappears never to be seen again.

That is the culture that this amendment is trying to overcome so that all people who witness things—whether they be friends, relatives, staff, associates or advocates of residents in aged care—will feel comforted and supported by a culture of protection for the sharing of information. In some facilities in Australia we do not have that. We need to encourage that. That is why we have moved these amendments: so that all people know that they are protected in sharing information that they believe is inappropriate.

We do hear stories of retribution in aged care. We have to develop a culture that militates against that. We want to be sure that all forms of abuse are able to be reported, not just sexual and physical abuse. They are horrific but they are a small part of the extent of the abuse that occurs. That is in the literature. We understand that. We should be encouraging the reporting of all forms of abuse—from neglect and wilful hurt to psychological abuse. During that series of Lateline stories we heard the story of a facility where people were squirting water pistols in the faces of older people who were in wheelchairs. That is offensive to everybody. If somebody witnesses that—a friend—then they should feel protected enough to report that. But the legislation as it stands does not allow that. By accommodating this very straightforward amendment, we are simply affording whistleblower protection on all sorts of abuse that may occur, not just the very serious forms of sexual and physical abuse.

The minister said earlier when we were debating the Democrat amendment that it does not stop anyone reporting. I am sorry, Minister, but it does. If people do not feel protected—if they feel that Mum might get kicked out if they complain too much—then they will not report. Unfortunately that is the situation that we are in. The minister said you can report any type of abuse. Well, you cannot do that without retribution in some places. That is what we are trying to militate against. We talked earlier about the question of anonymity and how it does not apply to advocate organisations.

The issue that the minister raised about private citizens and family members potentially abusing members of residential aged care I really think is not intended to be part of the scope of this. This is about neglect and abuse within an aged-care facility by anyone associated with that facility. If someone witnesses the abuse of another person in a facility, there is nothing to stop them reporting that; but there is limited action that a facility could take. So that is not the intent of this. This is so that abusive behaviours and neglectful behaviours, especially intentionally neglectful behaviours, can be reported with-
out retribution for all sorts of people who wish to report. It is not difficult; it is not hard. It is only fair to older people that we ensure that everybody who wants to tell their story about something that they have seen can feel protected in doing so.

Senator ELLISON (Western Australia—Minister for Human Services) (9.45 pm)—These amendments are also similar to those previously moved by the Australian Democrats and they clarify that protected disclosures extend to any other form of abuse, including physical, sexual, emotional, psychological and financial abuse or neglect. The nub of the question is whether you extend that protection to the reporting of these forms of abuse other than those which are described in the bill—that is, sexual assault and serious physical assault.

In relation to the department’s treatment of a provider—that is, if the department were to take punitive action against a provider for reporting—the new Aged Care Commissioner would oversee that and would be charged with making sure that the department did not act inappropriately. In relation to a provider taking punitive action against an aged resident because of some complaint, the department oversights that, as I understand it, and action could then be taken.

The government is not persuaded to agree to the amendments, but I say again that this is one aspect that will be monitored. I give an undertaking that this will be monitored by the government. I am referring to the question of the reporting of wider abuse—which has been the subject of this debate and the previous Democrat amendment—and to the question of whether or not a culture of reporting is being engendered. Obviously, that is something we agree with. Whilst the government does not agree with opposition amendments (3) and (4), it will make this one of the subjects of monitoring.

Senator McLUCAS (Queensland) (9.47 pm)—I thank the minister for that. I recognise that this issue has possibly not been thought through, given the events of the last week—but that is the way it is. How will that monitoring occur, Minister? The scope of this legislation is simply serious physical and sexual assault. How will we monitor the culture of being able to make a complaint and whether or not whistleblower protection should be afforded to a whole range of other complaints that will be made? I am unsure as to how it will happen. If we are monitoring the implementation of a compulsory reporting regime around very clear, specific, potentially criminal behaviour, then how are we going to monitor neglect in that environment or the need for whistleblower protection for people who report neglect? It just does not fit in the structure of this legislation. While I accept your commitment that this will occur, and I thank you for that, I would like to know how it is going to happen so that we can also watch how that monitoring might occur.

Senator ELLISON (Western Australia—Minister for Human Services) (9.49 pm)—The mandatory reporting which comes in is recorded, and that would relate to the alleged sexual assaults and serious physical assaults. The department also receives other reports of a wider and more general nature which relate to activity and abuse that both the Democrats and the ALP have sought to include in amendments. The department would merely have to look at whether there has been an increase in the number of reports for which protection is offered and whether there has been a decrease or a plateauing in the number of reports for which protection is not offered.

Could I suggest that, if you saw reports that were the subject of protection suddenly increase, you could deduce two things: (1) the mandatory reporting was working and (2)
the protection that was being offered for that reporting was working. In contrast to that, if you saw a fall-off in reporting of abuse of a more general nature, you would have to ask the question: ‘Why is one increasing and the other dropping off? Are they disproportionate? If they are, why are they disproportionate?’ The department keeps a record of all of these reports—keeping data is part and parcel of its role—and it could draw a comparison between the reporting. If you want to engender a culture of reporting, obviously you would want to compare and contrast the number of reports and the nature of the reports. You would also want to work out whether the mandatory reporting and the protection you were offering to people were working. You could tell that by the number of reports. That would be one way of monitoring it.

Senator ALLISON (Victoria—Leader of the Australian Democrats) (9.51 pm)—With respect, Minister, that does not make any sense. Here we have a regime for protecting people who report, and you are saying that we are going to monitor to see whether there is a disproportionate number of reports and, if there is, we will know that there is something wrong and we might need to extend it. I have misunderstood what you said earlier, obviously. Let us choose one of the offences that does not appear to be spelt out in the bill—neglect. Does the bill cover someone who persistently and regularly neglects a person in residential aged care? Does that constitute a reportable assault?

Senator ELLISON (Western Australia—Minister for Human Services) (9.52 pm)—It is a breach of the Aged Care Act and it is subject to spot checks which are carried out on providers, but it is not the subject of this bill, which provides for sexual assault and serious physical assault.
mentioned in this debate that this issue will be the subject of attention, and it will be.

Senator ALLISON (Victoria—Leader of the Australian Democrats) (9.55 pm)—I think the whole point of this bill is to facilitate reporting. It seems to me that that is the objective. What we are arguing about here is: reporting of what? There is no point in having this bill if the reports are coming through, and there is no barrier to doing that, and everybody is happy with the current arrangement. Minister, you do not seem to understand what we are getting at here, and that is: why would you put into the bill physical and sexual abuse but not psychological abuse, financial abuse or neglect? Can you explain what is so much more acceptable about psychological abuse compared with sexual and physical abuse? This is what we are trying to get at. Why have you chosen those two and not the others? I understand that the bill gives the broader set of protection for the broader set of abuses, but what determined that you would include just those kinds of abuse and not the others? That is the question.

Senator ELLISON (Western Australia—Minister for Human Services) (9.56 pm)—I think that ‘more acceptable’ is the wrong way to put it. None of the behaviours described by Senator Allison are acceptable in any form or shape. But where you attach mandatory reporting, you are breaking away from the law across the board as we know it. It is rare. It is not often that you find in our laws a duty to report. It is a departure from accepted practice. In this case, we are making that departure for serious cases, and those serious cases relate to sexual assault and serious physical assault. To extend mandatory reporting to all of the activity we have been talking about would be excessive. That is the first bit.

The second bit is: do you offer the protection for the reporting of only the serious behaviour or criminal activity? Do you extend that protection to the reporting of all of the activity that has been mentioned? We believe the same argument applies. The protection should be attached to the duty to report; and, in the wider sense, the reporting of neglect, emotional abuse and other forms of abuse can be made anonymously and confidentially, by anyone, to the department. Those activities are contrary to the Aged Care Act. So we are saying: where there is a duty to report, there is a protection to go with it; where there is not a corresponding duty to report then there is not the same protection. What I have said is that this will be monitored, and it can be monitored by the department assessing all the reports it receives over a given time. It will assess the nature of the reports, the number of reports, and who made them. From that, it can draw conclusions as to whether or not the regime in the bill is working. If it is working, that is fine; if it is not, that is something we will have to revisit, if that is the case.

Senator ALLISON (Victoria—Leader of the Australian Democrats) (9.59 pm)—I will not prolong this debate much longer, but I would point out to the minister that neglect can be as bad in its outcome as serious physical abuse. You can neglect a person by starving them. We have already heard of cases, rare indeed, where food is withheld from people and they are not fed. So neglect can be a very serious form of abuse indeed. You might argue financial abuse is not life threatening, and that is probably right. You might argue that emotional abuse is not life threatening—and perhaps that is true—but I am not so sure about psychological abuse. I think that can lead to very harmful outcomes, including mental illness.

I think it is a great pity that the government has drawn the line here, because we are
talking about highly vulnerable people. If you are in a nursing home or even a hostel these days then you are going to be pretty vulnerable. As we know, people do not last very long when they enter nursing home and residential care. I strongly object, Minister, to the government taking this line—in particular with neglect, but I also think that psychological abuse ought to be covered by the provisions of this bill. We will certainly be pursuing this into the future, but in the dying moments of this debate I ask you to reconsider.

Senator McLUCAS (Queensland) (10.00 pm)—I have one question. I am really disappointed that the government has not taken the opportunity to extend the types of reporting that will be protected under these whistleblower elements. This goes to the nature of this legislation. This legislation tells people that they have to do something if they see something; they have to report. I accept that. It is a different approach to the more collaborative and positive approach of encouraging a culture of openness and transparency. We should say to everyone involved in aged care: ‘We value these people so much, they are so important to us, that anything that you see should be reported within the facility, and then you will be protected. If you see abuse of the nature that Senator Allison talked of, like someone deliberately removing food when they should not be or people not being changed when they should be changed, then you should talk about it.’ This is the culture we want in aged care so that all of us are there for the good of the residents to do the right thing.

But, no, the attitude of the government is: ‘You will report sexual and physical assault and we don’t really care about the rest.’ That is what this legislation says. If they adopted these amendments, we would be saying very clearly to the residents and their families, staff and everybody else in aged care: ‘These people are valuable and if you see anything that you think is inappropriate’—because it would be the culture of the organisation, not a direction from the minister—‘because it is the right and proper, human thing to do, you have to tell somebody.’ That is what we should be engendering in this legislation, but we are not.

I am concerned, Minister, that you are saying that we are going to be able to monitor the reports that are coming in. I put to you that people do not report neglect to the department and this will not encourage them to do that. The Aged Care Standards and Accreditation Agency may make some assessments of where neglectful behaviours in a facility might be occurring, but there is not a culture of reporting to the department things that you see as a matter of course. You say that there is going to be a difference that will be measurable, but that is just not technically feasible. It does not happen now. We do not measure things and there is no requirement to report. It is a very arbitrary measure. I think anyone looking at the way aged care operates would basically laugh at that being a measure of the success or otherwise of this legislation. Minister, I really am beseeching you. These are important amendments and I want you to consider them closely.

Senator ELLISON (Western Australia—Minister for Human Services) (10.04 pm)—Because of the importance of the issue, I rise again. There has been some querying of how we could monitor it and the paucity of detail. I will deal with that first. On my advice, the department receives around 6,000 calls a year which are either complaints or offering information of some kind. I would suggest that from that you could get a pretty broad picture of what is going on. However, we fully recognise that that by itself in the past has not been sufficient; that is why we have this bill here for mandatory reporting of seri-
ous incidents. But people do complain. They do phone up the department. We have the new office of aged care accreditation with new staff, and they will be carrying out that scrutiny. So I do think it is something that is capable of being monitored. On that basis, I again make the point that the government will be ensuring that it is monitored, and the government still does not see its way clear to supporting these two amendments.

Question negatived.

Bill, as amended, agreed to.

Bill reported with an amendment; report adopted.

Third Reading

Senator ELLISON (Western Australia—Minister for Human Services) (10.07 pm) I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

SCHOOLS ASSISTANCE (LEARNING TOGETHER—ACHIEVEMENT THROUGH CHOICE AND OPPORTUNITY) AMENDMENT BILL 2007

Second Reading

Debate resumed.

Senator CARR (Victoria) (10.07 pm) I wish to speak to the second reading of the Schools Assistance (Learning Together—Achievement Through Choice and Opportunity) Amendment Bill 2007. This is another one of those newspeak, Brave New World titled bills. It has a particularly charlatan ring to it from the very beginning—namely, the title.

This bill amends the provisions relating to the Investing in Our Schools program as well as providing funds for two other school programs: capital grants for non-government schools and the Literacy, Numeracy and Special Learning Needs Program. Investing in Our Schools provides small targeted capital grants directly to government and non-government schools. In her second reading speech on this bill, the Minister for Education, Science and Training, Ms Bishop, noted that the Investing in Our Schools program had proved to be very popular. She said that this was one of the reasons that additional funds were to be appropriated.

What struck me as odd about her remarks was that she failed to mention that, for government schools—but not for non-government schools—a new lower cap has been placed on the grants that any individual school may receive. As is normal in these questions, the opposition supports in principle any move to provide additional funding for schools. This bill does that, so we are supporting it. However, we will not go along quietly with the nonsense that the government promotes when it talks about these issues. Accordingly, I move:

At the end of the motion, add:

"whilst the Senate welcomes the additional funding for the Investing in our Schools program, it notes that when making the announcement the Minister was silent on the change of criteria for government schools halfway through the life of the program and condemns the Government for:

(a) leaving many government schools ineligible to apply for additional funds by reducing the funding cap from $150,000 to $100,000; and

(b) failing to guarantee the future of the Investing in our Schools program beyond the current funding round".

What we have is a clear position in terms of the respective views in this parliament. The Labor Party takes the view that there can be no higher priority than the education of our kids and young people. Education is about the future prosperity of the nation. Education
is about our continued security. It is about social cohesion and social harmony. It is therefore unfortunate that what the minister fails to mention in her second reading speech that the effect of this bill is to actually lower the amount of the grants that are available for government schools in the Investing in Our Schools program. As I said in the second reading amendment, the ceiling for grants will be lowered from $150,000 to $100,000. In other words, what this government is doing is shifting the goalposts mid-program. It has suddenly told government schools that they can just scrap the applications they have prepared for the $150,000 grants—throw it out and write another one—because there is now a reduction by one-third of the amount of money available.

When the program was announced as part of the coalition’s 2004 election commitments, the then Minister for Education, Science and Training, Brendan Nelson, indicated in a letter to all school principals:

… the maximum amount an individual school community will receive is $150,000 over the next four years.

The same amount was included in the guidelines for previous rounds of the program, and the advice issued on the Department of Education, Science and Training’s website at the time said that schools could apply for several projects up to a $150,000 limit over the life of the program. The guidelines for the latest round, however, which were released on 19 February this year, indicate that government schools are now only eligible for $100,000 in funding.

The government has reneged on its commitment as far as government schools are concerned. It has pulled the rug out from under their feet. Even those government schools that have already received a grant of less than $100,000 will only be able to receive a grand total of $100,000. Only the schools that have been lucky enough to have received $150,000 to date will benefit from the more generous level of funding. On the other hand, non-government schools are eligible for grants that are completely uncapped. The sky is the limit. In the most recent round of funding, I understand that 12 non-government schools received more than $1 million each. While a third of the funding available to the non-government sector is capped at grants of $75,000 per school, I stress that there is no absolute cap for the remaining two-thirds of the funding for the non-government school sector. We have two sets of rules operating. Isn’t this the way this government approaches much of public policy? Government schools have had their maximum grant level slashed by one-third to just $100,000, while non-government schools are able to apply for over $1 million.

As the minister herself said, this has proved a popular program. Many schools have decided to take advantage of it. But in the face of it, there is no reason why different rules should apply to schools in the two sectors. There is no reason at all, and I look forward to the minister’s explanation as to why it is that these double standards apply. If the government’s schools policies were based on fairness and need then surely the rules for this program would be exactly the same across government and non-government sectors. Government schools would be able to apply for $1 million just as non-government schools can. You would expect that that would be a fair and open approach to this matter. That is not the way this government operates. As I understand it, for the non-government sector funds are targeted at the neediest schools, but there are at least as many needy schools in the government sector that might benefit from the generous amounts available through this program to some of the non-government schools.
The government is far from even-handed in its policy approach to school funding. It fails dismally the fairness test. It fails to fund all schools on the basis of need. Labor is committed to funding schools on the basis of need and fairness. My colleague Stephen Smith has made that very clear. Yesterday Mr Smith, the shadow minister for education, made four very clear and unequivocal points about Labor’s new policy for schools. This policy is yet to be worked out in the finer details, but Mr Smith and Mr Rudd have made it clear to the Australian voters that Labor’s policy approach will be based on the following four points. Firstly, Labor believes that a greater investment should be made at all levels of education, including in schools and schooling. Secondly, Labor will fund all schools on the basis of need and fairness. Thirdly, Labor will not cut funding to any school. Fourthly, we will not disturb the current AGSRC indexation arrangements for schools funding.

Those are the four clear commitments on schools funding that Labor has made. These four principles underlie Labor’s schools policy. The voters of Australia can be confident that we mean every single word of those four principles and we will not deviate from them. We are not going to this year’s election with the policy we took last time; we have a new policy. The new policy is yet to be worked out in detail but Labor has said that we will work together with the stakeholders in the school sector on the details of that policy. I know that my colleague Mr Smith looks forward to doing exactly that. Our new policy will be fair to non-government schools; it will also be fair to government schools because it is a principle based on need. That is the fundamental underlying principle of Labor’s policy. We cannot be clearer than that.

I note that, on the subject of Labor’s schools policy, the Prime Minister has taken my name in vain in the House. I notice that he was trying to put words in my mouth yet again. On Tuesday the Prime Minister quoted me as saying, in a debate of a few years ago, that Labor believed that private schools were an addition, not an alternative, in terms of providing reasonable access to quality government schooling. If it is in Hansard, I probably did say that, but the Prime Minister—our rattled, nervous Prime Minister—was trying to make out that I meant that Labor did not support the establishment of private schools. Nothing could be further from the truth, and my words, as quoted, make that perfectly clear. My remarks were about choice in schooling. I said that private schooling represented an additional choice for parents, on top of the choice—a choice that must be available to all parents—to send their kids to a quality government school. The genuine choice of a government school must be available to all families, rich or poor, in the country and in the city.

Many parents in fact exercise their choice to send their children to a non-government school. That is their right and Labor supports them in that choice. That is the point I was making. I was not saying, and I was not implying, that Labor did not support that choice. And I was certainly not saying that private schools ought to be closed down, or ought not to be established. Mr Howard was completely wrong in the way in which he presented my remarks. Mr Howard might be clever, but he sometimes gets things very wrong.

Mr Howard is right, however, if he thinks Labor accords high policy priority to public schools. We always have and we always will. That is the case if for no other reason than the majority of Australian students—almost 70 per cent—attend government schools. There is an underlying matter of principle at stake. It is the principle I referred to in pass-
ing a moment ago. It is the principle that high-quality government schooling—public schooling—must be available to all kids in Australia, no matter who they are and no matter where they live. Your life chances should not be determined by postcode. It is a right of all Australians to have genuine equality of opportunity.

That principle is not worth the paper it is written on when it comes to this government’s approach, because it is not backed up by sound, fair policies based on the principles of funding according to need. While supporting families in their choice of schooling, Labor recognise that most Australian students attend government schools, and we are committed to ensuring that those children in government schools get an education of the highest quality. It is the responsibility of any government to guarantee that all children have access to high-quality public schooling. In government, Labor will work together with the states and territories to ensure that this is exactly what happens in Australia. Our children should be getting the best education in the world. Our children are entitled to that, and that is what Mr Rudd’s education revolution is all about. It is about ensuring that the national education system, at all levels, is up there with the best in the world. Our public schools must be up there with the best in the world.

I now turn to the particulars of this bill. I noted in my remarks at the outset that this bill fails the fairness test and fails to allocate funds based solely on need. Labor supports the bill on the basis that it provides additional funding to schools, especially to needy schools. We are concerned, however, that the bill reduces the amount of funding available to individual government schools through the Investing in Our Schools program. It shifts the goalposts for government schools. It shifts the goalposts of public education in Australia. That is simply not fair. I note further that the program finishes up in 2008. This year, 2007, is the final year for applications under this program. The needs that this program were designed to address will not disappear in 2008; there will continue to be needy schools. I look forward to the government announcing what its intentions are in terms of the replacement for this program.

The government is open to the charge that this program—this essentially ephemeral program—was no more than a political stunt designed in the last election. It was not a cheap stunt—we have to assert that—because it has now cost $1.2 billion all up over four years. It is another one of Mr Howard’s clever stunts. Because of Labor’s concerns about the unfairness of the bill, the opposition has moved a second reading amendment in the terms that I have outlined. I trust that that position will be carried by the Senate.

Senator NETTLE (New South Wales) (10.22 pm)—The Greens are proud supporters of public education and we believe that governments at all levels must prioritise the needs of government schools. This is a principle that is held dear by the Greens, because it springs from one of our four founding principles: pursuing social and economic justice. It is sad that this basic principle—that appeal to the Australian sense of a fair go—has been so forgotten in the current education debate. It appears to have been usurped by the argument for individual entitlement and choice. This view is the one that the government embraces and, from its recent announcements, to a large extent the opposition does too.

The individual entitlement position is this: schooling is about parental choice and opportunity. Hence the bill that we are dealing with, which outlines that. This is how the government argument goes: schooling is about choice and it is the government’s re-
sponsibility to facilitate parental choice, and to do so fairly government funding should be distributed on a per child basis as their individual entitlement, irrespective of educational outcome. That is the key point to understand about the individual entitlement or choice argument. It says nothing about education outcomes. It is not about making Australia smarter. It is not about the education interests of the whole community. The government is not interested in arguments about future wellbeing; it is only about the individual interests of those rich enough to exercise choice in schooling.

The principle that the Greens believe in is that schooling is about education outcomes. It is the responsibility of government to ensure that all Australian children get the very best education that they possibly can in this country. By any measure, the most effective way of achieving this is by providing the very best public education system we possibly can. Private education cannot do the same job. By definition, private schools are about exclusion and they do not want to educate all Australians. If we are true to this principle of education outcomes, we must ensure that all Australian children get access to the best quality public education that our community can afford—no exceptions and no excuses.

The Schools Assistance (Learning Together—Achievement Through Choice and Opportunity) Amendment Bill 2007 is the latest in a string of schools bills from this government which fly in the face of this principle. It is all about the exceptions and excuses that riddle the special interest driven federal school funding policies we see in this country. This bill deals with a number of school funding programs: the Investing in Our Schools program, the capital grants program and the Literacy, Numeracy and Special Learning Needs Program. To the extent that these programs deliver much-needed cash to public schools, the Greens are not going to oppose them. We do, however, register our objection to the continuing unfair and, frankly, irresponsible diversion of federal education dollars into the private sector, a diversion which continues in this bill.

This bill delivers an additional $181 million for the second round of applications under the Investing in Our Schools program. This $181 million is divided into $127 million for public schools and another $54 million for private schools, thereby reflecting the 70-30 split intended in the original announcement that promises $1 billion for the Investing in Our Schools program, with $700 million for public schools and $300 million to private schools. The Greens are not fans of the Investing in Our Schools program. We are critical of its design and we are critical of its implementation. In terms of design and implementation, which this bill is concerned with, the scheme is demonstrably unfair.

Going back to the principle of education outcomes, one would have thought that the best way to get value for taxpayers’ money would be to assess what capital works schools needed, which ones had the most acute need and which projects would bring the most benefit and then fund them accordingly. This scheme does not do that. The government has decided, before seeing any applications or making any investigations into the needs of schools, that 30 per cent of all funds will be spent in the private school sector—reflecting the 30 per cent of enrolments that are in that sector—and that 70 per cent will be spent in the public school sector. It has made this choice to put 30 per cent of the funding into the private school sector despite knowing better than anyone else that the private schooling sector has enjoyed more capital investment than the public school sector over at least the past couple of decades and so it already possesses many more and better quality capital assets than
the public school sector, thanks to this funding and other funding that they receive.

The design of the Investing in Our Schools program is predetermined to, at the very least, maintain current inequities between private and public schools. The government has predetermined to spend taxpayer dollars on added extras in private schools that could have been spent on basic essentials in public schools. This decision boils down to the minister deciding to subsidise a rifle range at a private school rather than a toilet block at a public school.

Let us think about that for a minute. How can it be rational, how can it be sensible, to spend scarce education dollars on subsidising rifle ranges in the wealthiest of private schools while some Australian children do not have access to proper toilet facilities? That is the irrational outcome of the individual entitlement philosophy that has captured the current schools funding debate.

But the inequities do not end there. The Investing in Our Schools program also includes caps on the amounts that schools can request. Originally, public schools could apply for up to $150,000, so they were planning to apply for projects up to that amount. But now the government has reneged on that promise and brought down the cap to $100,000, thereby upsetting the plans of scores of public schools that had plans up to the previous cap. The explanation for this is that it will allow more schools to get funding. Why has there been no equivalent process for private schools? Indeed, why is $200 million of the $300 million set aside for private schools uncapped? Some private schools have been awarded grants under this program in excess of $1 million. That is 10 times the proposed cap for public schools. There is no defensible explanation for these inequities. They are simply the product of the powerful special interests within the private school sector that have so captured federal education funding in this area.

But the Greens have a more fundamental objection to the Investing in Our Schools program—that is, that the program should be unnecessary. The fact that we have such a program at all is an admission that we as a community have allowed the capital infrastructure of our schools to deteriorate to alarming levels. What should happen is that a rational, needs based funding model should distribute ample capital funds to schools managed by departments of education with input from individual schools. And the capital assets of those schools should be well maintained and upgraded when necessary. Instead, we get this politically motivated program that is about giving desperate public school communities a few crumbs in the lead-up to elections whilst allowing grateful private schools to get yet more public subsidies to maintain their exclusive facilities.

This bill also continues funding to the capital grants program that delivers top-up capital funding to private schools to make up the perceived losses to target capital works programs that were scrapped by the Howard government in 1996. To the extent that it can be shown that this funding is justified on a needs basis we would support it. For example, if it were targeted to assist remote Indigenous education in the private sector, we could support it. But it is not. It appears that the $10 million just goes to the general pot of money to further subsidise private schools' capital grants. The Greens cannot support this kind of sloppy funding policy and will move to amend this bill to redirect those funds to the public sector, where they are desperately needed. We know this because a lot of research has been done into the state of our public schools. This is a feature of public sector services—they are open to scrutiny. We know what we are paying for and what is needed. It is not so in the private sector.
Of course, both the government and the opposition tell us that to be concerned about the inequities between public and private schools is a debate that, to quote the shadow minister, is 'very much behind us'. This is a declaration of surrender, a surrender of rational policy making to the bullying of special interests. There clearly is a tension in government funding between public and private. To suggest there is not is simply to deny reality. There is a concern about fairness, because one school system is allowed to pick and choose its students and charge fees whilst the other is not. There is a justified debate about how to resolve these problems, and the Greens will continue to play a leading role in this debate.

The Labor Party, however, are hoping to avoid the intractable problem of public school/private school funding inequities by introducing a pilot policy that they are calling Local Schools Working Together whilst also announcing that no private school, no matter how wealthy, will have any government funding cut under Labor. These policies will fail to resolve the tensions I have talked about. First of all, the decision not to cut funding to even the very wealthiest of private schools is a decision to prioritise subsidising luxury add-ons for private schools instead of spending this money on essential basics for public schools. You cannot escape this logic. Under the Labor Party's policy, the only way to provide genuine needs based funding is if your boost to public school funding is so great that it makes all public schools as well resourced as the King’s School in Parramatta or Geelong Grammar. But I do not think that is the kind of funding for public schools that the Labor Party is talking about in this proposal.

Even if you did give that level of boost to public schools—and the Greens would think that was fantastic—the formula that is set up, which the government supports and the opposition has not indicated that it does not support, ensures that you continue to give money to the very wealthiest of the private schools ahead of spending it on public education. You have to get to a system where the King’s School is considered the most needy in order for it to get funding in a needs based funding model. Until you get to that point you cannot describe the model of funding you are putting forward as a needs based funding model. If you are going to give more money to the the King’s School under a needs based funding model then you need to prove to us that the King’s School needs that money more than a small local public school in the west of Sydney. I think you would be pushing it to do that.

The Local Schools Working Together program may make a good headline, but it is very limited in scope and will simply not have much of an impact on the overwhelming majority of Australian students. The policy suggests that we can make resources go further if schools share them. To facilitate this economy of scale, the Labor Party say they will subsidise capital works which will be shared between public and private schools. But this policy raises more questions. Why prioritise resources sharing between public and private schools? Why not target the $62.5 million earmarked in this announcement for public schools at building new facilities in public schools? That is surely just as feasible. Why cannot the Labor Party increase funding to public schools without feeling compelled to include private schools in the scheme?

Funding is supposed to be needs based—and we all know which schools need funding; it happens to be public schools, which have had their funding taken away by state and federal governments to feed the wealthiest of private schools in this country—but it cannot be needs based if you do not fund the needy schools and, instead, continue to fund
and say that you will increase the funding of private schools, as the Leader of the Opposition, Kevin Rudd, has done in the last few days.

The Greens are also concerned that, because the scheme is particularly aimed at new schools, it will further increase the establishment of small, new private schools. I have spoken about this previously. The abolition of the new schools policy in 1996, which previously limited the establishment of private schools and which set up somewhat of a planned system, has been one of the most damaging policies to the integrity of the public school system that we have seen in recent times. The new Labor policy could in fact exacerbate this problem. The Greens believe that the expansion of the private schools system in this way is a problem for Australia, which I have addressed many times previously. Because of the impact that it has on enrolments of local public schools where you provide a funding model which says: ‘We will give you this funding if you set up a new, local private school that does not need to meet the same regulations in terms of quality in educational standards,’ we see these new schools pop up taking students away and out of our public system. But they do not have the same requirements to provide the same quality of education. Overall, this damages the quality of education which is available in schools in Australia, most particularly in public schools but right across the board.

This bill is a symptom of the concept of applying individual entitlement arguments to national education policies—and it is one that, sadly, has won the support of both the opposition and the government—rather than ensuring we have a quality public education system. What is needed in the education funding debate is the courage to stand up and be proud of public schools in this country, to invest in them and to say, ‘That’s the priority; it’s the responsibility of government to ensure that children in this country can access the best quality education that the government can afford to put in place.’ That is the government’s job. It is like government 101: ‘We provide services, we provide the best quality education that we can.’ In the public system, it is the government’s job to provide that quality of education. That is what we need to see, but it is not what we see. Every year, every funding round, every election, we see both the major parties reneging on that core responsibility to provide and fund public schools in this country.

We see successive governments, at state and federal level, take away funding from our public schools in this country and instead put it into already wealthy private schools. That is what we see every time. How can people in here stand up and say, ‘We are the government, we want to be the government, we are going to look after people’s services.’ You cannot do that unless you invest in those public services that all Australian children can access, regardless of their capacity to pay, their religion, their gender or any other bias. That is the great value of our public education system, and governments of all persuasions should stand up and be proud of quality public education systems that they invest in.

You cannot do that with the existing funding models. You cannot do that with the system of funding we have which says, ‘Every time we increase any funding to public schools, we’ll also increase it to private schools.’ You cannot have needs based funding when you are increasing the funding of schools such as the King’s School in Parramatta. You cannot have a needs based funding model where you say, ‘The King’s School in Parramatta really needs that money, so we’ll take it away from the Mount Druitt Public School. We’ll take that money out of the package of government funding.
for public schools’—public schools are government responsibility—’and we’ll divert it to the King’s School in Parramatta.’ You cannot do that and call it needs based funding. It is not needs based funding. When you bring Mount Druitt Public School’s funding up to the level of funding for the King’s School at Parramatta then let us have the debate, but that is not what you do. (Time expired)

Senator CROSSIN (Northern Territory) (10.43 pm)—I rise this evening to provide some contribution to this debate on the Schools Assistance (Learning Together—Achievement Through Choice and Opportunity) Amendment Bill (No. 2) 2006 before us. I just want to place on record my appreciation of Senator Nettle’s contribution, because I think she started to hit the mark there. I know the Senate is sitting at a late hour and we are being broadcast, and I am probably competing with the avid fans of Tony Delroy on the ABC, but it always gives me a good opportunity to talk about the real funding needs of this country. In the last 24 hours there has been much debate in the Northern Territory about the funding of education, particularly secondary education out bush. If we want to talk about the comparison between places such as Kings School in Sydney versus everywhere else, let us talk about your ordinary high school at the end of your street—Glen Waverley High School or Catholic secondary colleges around this country, and there is a place for those. I went to St Columba’s College in Essendon and it is a fantastic school, a grand school.

If only I knew then what I know now. Two weeks ago, I was standing at an outstation in the Northern Territory known as Garrthalala. Kids from that area actually catch a plane every Tuesday morning into this outstation. For those people who might be listening, that outstation is about 100 kilometres south of Gove, home of Mandawuy Yunupingu and Yothu Yindi, people who live near Blue Mud Bay in the Northern Territory and call that place their home. So these kids catch a plane from surrounding outstations into Garrthalala. They get there on a Tuesday morning. They stay there on Tuesday and Wednesday and they fly out on Thursday afternoon. Are they at a boarding school? No, they are certainly not. They pull up their swags on the school’s veranda every night, and they camp on the veranda of the school. So what do they do for meals three times a day? They are rostered on to cook their own meals. They are rostered on in the little kitchen between the two classrooms that has been set up. It provides meals for these kids, at least on a Tuesday and a Wednesday night. Why are there two rooms? Because they have a program running for the boys and a program running for the girls. If you know anything about Indigenous culture, you will know that is the best way for you to get through to these kids.

But I do have to say that they had in front of them half-a-dozen laptop computers. Mind you, they were operating extremely slowly. Not on broadband? No way. On dial-up? Absolutely. By satellite? Well, when the weather is pretty good. So I want you to picture that. Picture that as you also look at the local secondary school or high school that your kid might be going to, and you will then have some appreciation of why in this place we are pretty passionate about defending public schools and why we are very avid in campaigning to make sure that every kid in this country gets not only the best chance at life but a chance at life—to be able to attend some secondary school.

I am aware of the debate from Tracker Tilmouth and people in the Territory in the last 24 hours. I do digress a bit here tonight, I know, but you have to remember that, in the Northern Territory, Aboriginal communities like Garrthalala existed for 27 years under the coalition of the Liberal, National and
Country parties with absolutely no—zero—provision of secondary education in their communities. There was none in little communities like outstations—no way—let alone communities like Maningrida or Wadeye. There are now 3,000 people in that community, so it certainly would warrant a secondary school of some sort.

There have been criticisms that the Northern Territory government are not delivering. I strongly object to those criticisms. If you have followed the funding of Indigenous education as I have done for the last 25 years of my life, you would know that each and every year, despite the rhetoric from this government, for the last 11 years, funding to Aboriginal education has in fact declined. It has been rolled up and rerolled into different programs so that the deckchairs on the Titanic look more numerous than they actually are. But, if you roll it back and analyse it and have the knowledge that I and some of the staff I have worked with have, you would know that the funding has in fact declined, and it has been harder and harder to gain. The changes to the ASSPA program and the PSPI program that I have talked about so many times in this place are examples of that.

Let us look at the Northern Territory government. We find that, in the last five years of the Clare Martin Labor government, at least 63 children who live in places like Garrthalala have now reached year 12—have now obtained what you and I, as non-Indigenous persons in this country, want for each and every one of our kids. Let me tell you: Aboriginal people are absolutely no different here. There is a belief out there that somehow they do not value education. They do, but they want an education system that delivers curriculum that is relevant to their kids. The Martin Labor government in the Northern Territory have been able to at least get 63 kids—and each year that number increases—to pass year 12.

And more and more, each year, we find that they are providing funding to open secondary education provision in remote communities. Are they doing it with any extra support or a leg-up from the federal government? No, they are not. They have to do it with the funds that are given to them from the federal government. How is that funding based? Of course, it is based on the number of kids that attend the school, so it is a bit like a dog chasing its tail, really. There is no assistance whatsoever to say the Northern Territory government, ‘Here’s a couple of million dollars extra this year over and above the IESIP funds we give you to attend to attendance and to set up more secondary schools in the Northern Territory.’ So it is being done out of the existing budget, trying to capture kids who do not come to school at the moment. They have to do it out of funds that they currently get.

I think they have made some amazing gains in the short five years that they have been in power, when you think about the fact that the Country Liberal Party was there for 27 years, and not one secondary lesson in any Aboriginal community was delivered in a classroom in a school in that period of time. When I worked at Yirrkala back in the early eighties, we tried to set up a secondary program for kids there instead of them doing the postprimary program that was around, and we were flatly forbidden by the Country Liberal Party government at the time to do that. They were not going to and refused to fund and resource that outcome.

So, when we talk about the resourcing of public education in this country and we have the debate about whether it should be public or private schools, my debate is about what public schools are going to get this assistance. In particular, in all of this rhetoric and
all of this discussion about who is going to get what out of the education bucket, let us have a really long, hard look at what Indigenous children in this country do not get and what they would need in order to survive and prosper in this country as well as any other person that I am aware of ought to.

The bill before us tonight provides funding to the states and territories for government and non-government schools for the next three to four years, mainly through the Investing in Our Schools Program. It revises the capital amounts for infrastructure grants for government schools in 2007 and for non-government schools in 2007-08. The Investing in Our Schools program was a 2004 election promise made by the federal government. It is a $1 billion promise under which, until recently, schools could apply for up to $150,000 over the four-year term of the program.

But wait—there is more! With this government—tricky, mean and clearly out of touch when it comes to Indigenous people—the goalposts have quite recently been moved. But that is only for public schools, not for private schools. Private schools can still apply for grants of up to $75,000. The amount for government school grants has been reduced to a maximum of $100,000, down from $150,000. The amount that government schools can now apply for has been reduced by a third. I understand that Minister Julie Bishop has defended the move, saying that the government never intended to give all schools $150,000. I see: so you say one thing before the election in 2004 and another thing afterwards. The minister went on to say that an extra $181 million had been provided to the program and that government schools that had received less than $100,000 would be helped. What about those who want to apply for more than $100,000? What about the toilet blocks that Senator Nettle was talking about, for example? What about the schools in remote and Indigenous communities that might want to apply for more than $100,000 and were hoping to get $150,000 under this grant? They can no longer do it.

The government are so inflexible and so blind to the needs of Indigenous communities in this country that they do not say: ‘We’ll move the goalposts even further and perhaps those little, struggling Indigenous schools in remote communities can apply for $200,000. We are so in touch with Indigenous Australia and remote Australia as a federal government that we know that to build a toilet block in downtown Pascoe Vale or in Belconnen, here in Canberra, is half the price of building it somewhere in the Northern Territory that might be 400 kilometres west of the Stuart Highway.’ They do not recognise that in their funding.

Even schools that are struggling in the Northern Territory, out bush, in remote Australia, who would get $100,000 if they were lucky enough, cannot buy the same amount of equipment. The same capital infrastructure will not go as far in a remote community for $100,000 as it will in downtown Sydney. It just will not do that. Transport costs, freight costs and the costs of labour for erecting capital infrastructure are two to three times the amount in remote communities. This government does not even recognise that. You may as well say that $100,000 to a school at, say, Yuendumu or Kintore is, in reality, more like $50,000 or $60,000, because the additional costs they incur trying to bring in those services, those goods and that equipment are two to three times the amount.

It is really disappointing to see that the goalposts have moved for government schools around this country but that they have not moved enough to recognise that Indigenous schools might need double that amount of money. Those schools are in a remote part of this country, so their dollar
will not go as far as it would in some other schools. It is disappointing to notice that once again Indigenous kids in this country will not get the additional assistance that will be needed in the coming years.

This bill will offer more funding to schools. The Labor Party will support the bill because some crumbs from this government are better than nothing. This government has, for 11 years, dragged its feet on the proper funding of public education as a whole. We are the only OECD country to have greatly reduced public education funding. What a reputation that is. In the lead-up to the election, the Prime Minister, Mr Howard, might say, ‘Vote for me. I have a record on public education funding.’ You certainly do. You are the only Prime Minister of an OECD country who has actually reduced funding to public education over your 11 years in office.

Both the Prime Minister and the Minister for Education, Science and Training conceded in question time on 13 February this year that we could be doing a lot better in education. This is a perfect example of that. Both of those elected members of parliament went on to claim that the problems were nothing to do with them but rather the fault of the states or territories or—even the education unions. It was the usual old blame game, rather than acknowledging and accepting the fact that the problem lies with their blinkered ideology, which sees education as an expense rather than an investment. They see it as an expense to be borne by the users as much as possible.

So, no, we will not be spending $150,000 on each government school that might want to apply for a grant. That would cost us way too much. We would not want to invest in the future of this country. We would not want to invest in the future economy of this country by skilling up our kids at this point in time and providing them with proper infrastructure and capital needs at their schools. But what we will do is shrink the budget even more and outlay the money in other areas where we do not get such a good return for our investment.

Private schools have enormous incomes from parents’ fees and they have luxurious facilities. I have heard tonight of archery ranges and pony riding schools. If you could just picture that, standing in the middle of Arnhem Land as I do sometimes. It is a joke. These schools will still be funded by the taxpayer to make their facilities even better. I want to emphasise that we certainly believe that education facilities should be of a high quality. There is no doubt about that. But while this is going on, many small schools in the remote areas that I represent and which I have described at length to you tonight cannot even get their school painted or get a few computers fixed.

The blame game has really gone on long enough. Under this government, our national productivity growth has declined over the past 10 years. This government has been able to ride on the coat-tails of a world economic boom, claiming massive credit which is absolutely not warranted or deserved. This government has been happy to attack teacher training, teachers’ abilities and education outcomes. This government has decided that civics is a must and that schools should have active flagpoles which can only be pronounced open by a government member. That is democracy for you. I know that a new flagpole was launched at Karama Primary School in the last 10 days.

Debate interrupted.

ADJOURNMENT

The ACTING DEPUTY PRESIDENT (Senator Forshaw)—Order! It being 11.00 pm, I propose the question:

That the Senate do now adjourn.
Economy

Senator BARNETT (Tasmania) (11.00 pm)—Tonight I want to expose the great sham of the Labor Party over federal-state finances, especially in my home state, where the state Labor government continues to cry poor when it comes to cutting taxes and providing proper government services. On Tuesday this week the Treasurer, Peter Costello, called on the states to use the buckets of GST windfall they are receiving to cut more state taxes and, in their usual fashion, the states have whinged. Even in my home state, the state Labor Treasurer cried foul and said the state had cut taxes to the tune of $150 million a year. What he did not say was that most of the tax cuts he referred to were forced on the states and on Tasmania by the Howard government to keep faith with the GST intergovernmental agreement between the states and the Commonwealth that was signed in the year 2000. I will say more about that later.

Treasurer Peter Costello pointed out that the windfall gain to the state—that is, what they are receiving in GST revenue over and above what they would have received under the old tax system prior to 2000—will grow from $2 billion in the current financial year to $3.4 billion next financial year and to $5 billion by 2009-10. Every cent of GST revenue goes to the states and territories and, in the current financial year, the total revenue is $39.3 billion. By the year 2009-10, this total is projected to grow to $46.6 billion or $5 billion more than what the states would have got had the federal Labor Party won the 1998 federal election and scrapped the GST.

In my state of Tasmania, the windfall is currently $107.6 million. By current projections it will grow to $125 million next year, then to $144 million. By the year 2009-10, it will have grown to a windfall of $154 million a year—that is, $154 million more a year than if federal Labor and their state cronies had got their way in 1998. It means that in the coming Tasmanian budget in May there will be enough windfall in the GST fund, $100.4 million, in the Tasmanian budget to provide Tasmanians with 25 new ambulances, three new high schools, three new district hospitals and 122 new homes for housing tenants.

From 2006 to 2010, the windfall payments for Tasmania will accumulate to $532 million and, if you include the windfall paid out to my state since the year 2003, the total is projected to be $811 million by the year 2010. The Tasmanian government Treasurer often claims that this money is peanuts in proportion to the $3 billion a year state budget. He forgets that if he had had his way, there would have been no windfall at all.

Let us measure the so-called smallness of the $811 million windfall between 2003 and 2010: at an average of $100 million a year, this windfall could create 2,500 new and full-time jobs a year and wipe out Tasmania’s unemployment, which is currently 13,300, in five years; it could wipe out payroll tax of $210 million a year in Tasmania in almost two years and provide a huge boost for the business sector and employment; it could build 400 housing division homes—and that is estimated at $250,000 a unit; it could build five high schools—for example, Reece High School in Devonport cost about $20 million to rebuild; or it could build 10 regional hospitals. The new Queenstown hospital is estimated to cost around $10 million.

So this money is not peanuts. The regime of tax cuts forced on the states and territories by the Howard government and made possible by the GST is worth almost $4 billion across Australia this financial year, plus a further $1.7 billion by 2010. That is in addition to the more than $80 billion in Howard
government tax cuts for persons and business since 1999.

The Australian government has forced the states to abolish financial institutions duty, debits duty and a range of stamp duties, including mortgage duty—but sadly not all stamp duties as yet—lease duty, cheque duty and marketable securities and non-real conveyances. In the meantime the Tasmanian government has received buckets of GST revenue. Rivers of GST gold are now flowing throughout Tasmania.

In the carve-up of GST finances, Tasmania receives the equivalent of $1.55 for every GST dollar going to the states so that the state can provide services equal to anywhere in Australia. As I have said: every cent of GST revenue goes to the states and territories. A great lie was perpetrated by the Labor states and territories. They forget that they fought tenaciously against the GST in a purely political scare campaign to support their federal Labor mates. But now they are swimming in GST revenue and they have the gall to squeal when the Howard government says, ‘Cut those taxes you promised to cut when you signed up to the GST.’ There is nothing wrong with that assertion.

This is an era far divorced from the Hawke and Keating eras, when Tasmania suffered cumulative cuts of $300 million through successive federal cuts, starting in 1985, and the states and territories had no idea how much money they would be getting from one year to the next. Now they have got buckets of GST and, with it, certainty in being able to plan ahead.

But the other great lie, as I have mentioned, is how the Tasmanian government has not only taken all the GST since 2000 but also claimed credit for the tax cuts it was forced to introduce. In a media statement on Tuesday in response to the federal Treasurer’s statement, the Tasmanian Treasurer, Michael Aird, said the following, and I quote:

The Tasmanian community is already benefiting to the extent of over $150 million in tax cuts each and every year.

More than $1 billion worth of tax cuts will have been provided by the State Government to the Tasmanian community over the period 2001-02 to 2009-10, over half of which results from State Government initiatives.

Mr Aird’s first admission is that only about half of the $1 billion tax cuts he referred to could be classed as initiatives of his government. The second revelation is his gloating about $150 million in tax cuts each and every year. Let us hear the truth. I will now read from explanatory notes in the 2005-06 Tasmanian Budget papers, no doubt written by Treasury officials. The notes say:

Beginning with the 2001-02 Budget, a series of complementary tax relief measures introduced by the Tasmanian Government have combined to deliver $128.0 million per annum in tax relief to Tasmanian businesses and households. In addition to this, the Government’s decision to introduce other taxation relief initiatives, as part of the 2005-06 Budget, including the abolition of mortgage duty and stamp duty on non-real-property business conveyances over the coming years, will bring the total benefit to the community from tax relief provided by the Government to approximately $155.0 million per annum by 1 July 2008.

Mr President, those ‘complementary measures’ are those forced on the states by the Howard government in the intergovernmental agreement signed in 2000.

It is the same story with the First Home Owners Scheme, which was responsible for thousands of Australians and Tasmanians being able to afford their first home and get out of the rental roundabout. This scheme has been worth well over $100 million to Tasmanians. It was created and funded by the Howard government and managed by the states, but the states, including the Tasmanian government, tell their electors that it is
their scheme. Which Labor spin doctor thought up that Labor lie?

So what do the Labor states and territories do with all this GST money? They waste it. In Tasmania we have a government that is hell-bent on the maladministration and mismanagement of the Tasmanian economy. This is now a big issue in our state. The pulp mill approval process where the Premier has allegedly heavied Resource Planning and Development Commission boss and former judge Christopher Wright is a case in point.

If you want an idea of how a Rudd Labor government would manage our finances, apart from raiding the Future Fund and the savings put aside for our kids and grandchildren to pay for Labor’s current election stunts, then just check out what the Labor states have been up to. It was revealed last year how the Lennon government was squandering its GST revenue at the expense of health and education services—that was according to a Productivity Commission report. That report made it clear that Tasmania is well behind with regard to providing those education and health services. It also showed that Tasmania had too few ambulances on the road at any given time and poor response times; in fact the worst in Australia. It is not a good record.

The GST was designed to provide Australians with a proper level of public services wherever they lived. It is a growth tax which grows with the economy. It is designed to ensure all Australians share in the nation’s prosperity through adequate services and lower state taxes. Sadly, the state governments, especially in my home state, have let them down through gross mismanagement, special deals for special mates, deceit and maladministration. (Time expired)

Private Jacob (Jake) Kovco

Senator MARK BISHOP (Western Australia) (11.10 pm)—It is almost a year since the death of Private Jake Kovco in Iraq. That death was covered in controversy of the government’s making. Two themes have since emerged with respect to the handling of the Kovco case.

Firstly, there was the bungled investigation by the military police. Effectively, that denied quality evidence to the board of inquiry. So the outcomes of that inquiry were compromised. At the time of the military police’s investigations, their shortcomings were well known. They are now being addressed. But those reforms now being introduced come too late for the Kovco case. It is fair to say that the circumstances are also regretted by the Chief of the Defence Force. His decision to post a special branch officer to each deployment avoids the delay of fly-away teams. His decision, it must be said, is appropriate. But if reform had come sooner, the bungling of the military police investigations might have been avoided.

The second theme to the controversy surrounding the Kovco case was the failed repatriation. Based on the evidence given at the board of inquiry, it seems that the prime cause of this controversy was undue political influence. Obsessive haste drove events, from the moment Private Kovco died to the time his body arrived back in Australia. An obsessive minister drove that haste. The prime example of that was the haste to return Private Kovco’s body to Australia by Anzac Day, for obvious reasons. Also there was the haste when that backfired to try again to save the minister from his self-inflicted humiliation.

When transcripts from the inquiry are considered in full, it is evident that many rules were broken. It is also evident that Defence moved heaven and earth to get Private Kovco back by Anzac Day. In that case the minister would have been happy, except for the incorrect identification in the morgue in
Kuwait. Let us look at that evidence. Firstly, it was stated by Brigadier Cosson in her report that, ‘The preferred method for evacuation of ADF personnel within the area of operations is to use US mortuary affairs capability and US military transport arrangements.’ As we know, this means of repatriation for Private Kovco was not used. Clearly it was thought to be too slow. That is why a commercial flight out of Kuwait was chosen. That is also why Private Kovco was transferred to the contractor’s mortuary in Kuwait. And that is where the process went awfully wrong.

This mortuary was condemned by witnesses to the BOI as bordering on the dysfunctional. Brigadier Cosson’s report shows that the standard time to repatriate a body via the US mortuary affairs process is about seven days. So we know from her report that corners were cut. First, repatriation was by commercial airliner rather than by military transport. The body was transferred from the US morgue in Baghdad to the private contractor’s morgue in Kuwait. This leads us to ask the question: why? To catch the first available commercial flight to Australia.

Second, the normal time frame was ignored. That was to fulfil the demand of repatriation of the body within four days, all because of the obsession with haste at all cost. To this Brigadier Cosson added: ‘The inclination to accelerate the repatriation process and return Private Kovco within four days from his death is too short a time frame within which to properly risk manage a ... highly sensitive situation.’ I remind the Senate that Private Kovco died four days before Anzac Day. The desire and consequent directions were intended to repatriate the body for Anzac Day. Minister Nelson continues to refuse to reveal communications between senior officials on this matter. The board of inquiry pursued the question on many separate occasions. Most witnesses denied such an instruction existed, but some conceded that it was a commonly understood goal to which every effort was directed. That common goal produced a frenzy of activity.

Defence instructions mandate an immediate investigation by the military police of all deaths in the ADF. In this case, the military mobilised the Special Investigation Branch. Fly-away teams left Australia at short notice. But, for reasons that still remain unclear, it took the team four days to arrive. Immediately on hearing about the fatality, the officer in charge of the Special Investigations Branch, Major Pemberton, instructed that the body was not to be removed from Baghdad until investigators had arrived and undertaken their own examination. But that critical instruction was overturned.

By this time, the body was at the US military hospital and plans were afoot to cut the corners to which I have referred. Yet Major Pemberton, the IOC—the officer in charge—had no knowledge of that plan. Senior officers in Canberra ignored Major Pemberton’s authority in Iraq. They imposed their own set of arrangements. For example, the death scene was not preserved. Local officers allowed Private Kovco’s roommates to retrieve their belongings. In that situation, goodness knows how much evidence was compromised. Witnesses were not interviewed properly. Why? Because instructions were given that those same witnesses were to escort the body back to Australia. They never gave their evidence. Again, the BOI was short-changed. Senior command in Canberra then requested the New South Wales Police Service to conduct a separate investigation. That request was not known to the military police, so they allowed the death scene to be cleansed.

Interference from a range of commanding officers was extensive and contrary to Defence instructions. Except in political terms,
it was unwarranted. The breach of instructions is expressed as ‘risk managing’ the repatriation—the risk being that the body would not be returned in time for Anzac Day. The commander in Baghdad conceded in evidence that, indeed, this ‘was a factor’. Further, to quote the evidence of Lt Colonel Pearce: ‘HQJTF had determined that the priority was for the return of the body by Anzac Day and that they would risk manage the investigation.’ Again, we see the obsession with haste. Canberra and senior officials made demands and the local military attempted to comply. The minister was undoubtedly constantly aware of these developments. After all, PR—public relations—is close to his heart. But the minister’s personal planning imploded. And the rest, as they say, is history. The Anzac Day deadline was not realised—public humiliation. Worse still for the minister, he would have to postpone a trip to the United States.

Minimising embarrassment by bringing home the body of Private Kovco posthaste was not easy either. Clearance of the casket by air required Kuwaiti clearances. It was the weekend and Kuwaiti customs officials were not available. Again we see the pattern: haste, haste and more haste. The CDF became involved. He contacted a senior military contact in Kuwait to pull strings for another short cut. Finally, the body of Kovco arrived back in Australia. A state funeral was arranged—a precedent in itself, which helped the minister fill the cracks in his unfortunate developing profile.

A death in such circumstances is always tragic. The great pity is that the death of Kovco was used for public purpose and personal gain. We should unreservedly condemn the minister for his actions in these circumstances. He cannot deny them. Again I challenge him to contradict the BOI transcript. In such circumstances, he should make a full confession and a public apology as to his own duplicitous conduct in this matter.

The PRESIDENT—Senator, I believe that you may have cast aspersions on a person in the other place. I will review the Hansard, but I would remind you that it is not proper in the parliament to advance improper motives on a person in the other place. I do not think you did.

Senator Mark Bishop—So you are not asking me to do anything at the moment?

The PRESIDENT—Not at the moment, but I will review the Hansard.

Senator Mark Bishop—I will await your advice, Mr President.

Macquarie Island

Senator WATSON (Tasmania) (11.20 pm)—Tasmania’s mismanagement of Macquarie Island has become an international embarrassment in the scientific community, in ecotourism circles and across networks of people who care about the environment. This reflects badly on Australia, which has a high reputation for its role in Antarctica.

The UNESCO World Heritage Centre in Paris has expressed a deep interest in the situation on Macquarie Island and the extent to which World Heritage values are being compromised there by the current plague of rabbits and rodents. The Director of the Centre, Mr Francesco Bandarin, and the head of the Asia-Pacific Unit at the centre, Mr Giovanni Boccardi, met with NGOs as well as government representatives to discuss this issue during a visit to Tasmania on 13 and 14 February this year. The issue of the eradication plan and the urgent need to implement it will be brought to the attention of the World Heritage Committee at a meeting to be held in New Zealand in June-July this year.

International ecotourists have signed petitions in protest, and Tasmania’s conservation values are being questioned. As you know,
Mr President, this is a disgrace. The eradication plan is time-critical and must be implemented immediately. If it is not implemented in the next month, and it needs to be begun in winter, it will be another year before the work can begin. The only impediment to implementation is the Tasmanian Labor government. Their inertia—no, their shameless neglect of their responsibilities—in an attempt to force the Commonwealth to step in is deplorable. It is as if the Commonwealth government now exists to provide a safety net for a greedy, lazy and incompetent state Labor government in Tasmania.

I applaud the attempts of the Commonwealth Minister for the Environment and Water Resources, Mr Malcolm Turnbull, to progress a funding resolution for the eradication campaign; and I would welcome anything that might expedite the situation which many Tasmanians see as a clumsy attempt at political brinkmanship by the Lennon Labor government. The plan for the eradication of rabbits and rodents on subantarctic Macquarie Island has been prepared and has been sitting on the Tasmanian environment minister’s desk since November 2005—not 2006 but 2005—and it was paid for by the Commonwealth. It originally required around $16.5 million in funding, but now the total funding which needs to be committed before the plan can be implemented is $24.6 million. The federal government has graciously come in and offered to meet half of that cost.

As far as I am concerned, the foremost and overriding issue is that funding must be resolved and the eradication plan must start as soon as possible. The problem is not going to go away. It will continue to get worse, and the more it is delayed, the more expensive it will become. The plan is a large and complex operation requiring a lead time of something like two years; hence the urgency for a funding commitment and action from the Tasmanian government.

I would like to examine the offensive nature of the Tasmanian government’s action—or rather inaction. Firstly, the Tasmanian government knows that Australia has international obligations to protect and conserve World Heritage properties under the World Heritage Convention. So the Tasmanian government has been prepared to quietly allow Macquarie Island to reach a point of crisis. It has been prepared to be deaf to the concerns of its own steering committees, public servants and other experts. They have been prepared to mislead the public with their deliberate and highly political strategy to use the federal election year as leverage, and it has been prepared to disgrace the good people of Tasmania and damage Tasmania’s reputation both nationally and internationally.

Why has the Tasmanian government not put forward a proposal to the Commonwealth that Macquarie Island join the Heard and McDonald Islands group as an Australian territory—with day-to-day management becoming the responsibility of the Australian Antarctic Division? It is because Macquarie Island earns them a dollar, and it will earn them many more dollars in the future because of Tasmania’s ecotourism industry. In fact, the island is advertised on the Tasmanian government’s tourism website as ‘the gateway to Antarctica’. The island is seen as the last true wilderness, one of the most popular of the Southern Ocean’s remote islands, and cruise ship operators are facing a growing demand for Antarctic voyages by travellers seeking a unique frontier adventure. The island is home to a staggering array of wildlife and is considered an outstanding example of the major stages of earth’s evolutionary history.

The island, along with Heard and McDonald Islands, was listed as a World Heritage Area in 1997 in recognition of its outstanding qualities and unique geological features. It is the only place on earth where
rocks from the earth’s mantle, six kilometres
below the ocean floor, are being actively
exposed above sea level. So it is a cradle of
information for geologists studying the
earth’s formation. Macquarie Island is also
home to nearly four million seabirds. Of
course, many of their young are being eaten
by the rodents. The island provides a critical
breeding habitat for two threatened albatross
species—the wandering albatross and the
grey-headed albatross. It is a breeding
ground for about 850,000 pairs of royal pen-
guins and 100,000 seals.

The recently screened *Stateline Tasmania*
TV program, on 16 February 2007 on ABC
TV, highlighted the fact that tourists are pay-
ing big sums of money to visit Macquarie
Island but are now having their experience
negatively affected by the effects of rabbit
damage. The staircase boardwalk at the
Sandy Bay landing site, which was purpose-
built in 1990 to allow tourists to access an
inland breeding colony of royal penguins—a
species only found on Macquarie Island—
had to be closed from the beginning of last
summer because of the recent damage.

Macquarie Island is an important part of
our culture and history. It has been desig-
nated by the international community as a
jewel. It has been a part of Tasmania since
1825, unlike Heard and McDonald Islands,
which were transferred from the United
Kingdom to Australia in 1947. In 1933 Mac-
quarie Island was proclaimed a wildlife san-
tuary under the Tasmanian Animals and
Birds Protection Act 1928. Today it is the
site and subject of a vast amount of impor-
tant research by mainly Tasmanian resident
scientists and public servants, of whom we
are very proud.

For over 50 years, Australia has operated a
research and Antarctic support station at the
northern end of the island. In addition to the
Australian Antarctic Division, the CSIRO,
the University of Tasmania, Geoscience Aus-
tralia, the Bureau of Meteorology and the
Biodiversity Branch of the Tasmanian DPIW,
the Department of Primary Industries and
Water, all use the island for their important
work. The base station was built in 1948. It
is home to over 40 people over the summer
and around 15 to 20 through winter, where
they take residence for periods of three to 16
months at a time. Through these connections,
the island has become part of the living iden-
tity of Hobart and southern Tasmania.

My own interest stems back to the 1940s,
when a young scientist who had done cosmic
ray research on Macquarie Island joined the
science staff at my school. His work with a
number of colleagues in the science faculty
of the University of Melbourne was really
pioneering stuff at the time and lit up my
imagination. Years later, the late Mr Speedy—who I attended a memorial service
for recently—asked for my help when he
wanted to return to the island as an octoge-
narian.

Until eradication can proceed, rabbits and
rodents will continue to damage the island.
Interim measures may help in the short term,
but they are not a solution and they may
prove to be a costly and time-wasting exer-
cise if implemented over the long term. If no
action is taken, the problem, unfortunately,
will continue to get worse. The majority of
the steep coastal slopes are now affected,
some seriously, with the removal of tussock
and Macquarie Island cabbage and resulting
slope instability and erosion. The steep
slopes in the south of the island are particu-
larly badly damaged, and this is where the
only breeding colony is for the threatened
grey-headed albatross. A number of light-
mantled sooty albatross nests have been re-
corded as simply falling off the side of the
hill on the heavily grazed slopes just north-
east of Hurd Point. (Time expired)
Senate adjourned at 11.31 pm

DOCUMENTS

Indexed List of Files

The following documents were tabled pursuant to the order of the Senate of 30 May 1996, as amended:

Indexed lists of departmental and agency files for the period 1 July to 31 December 2006—Statements of compliance—

Attorney-General’s portfolio agencies.
Department of the Prime Minister and Cabinet.
Department of Foreign Affairs and Trade.
Department of Education, Science and Training.
Department of Defence.
Industry, Tourism and Resources portfolio agencies.

Tabling

The following documents were tabled by the Clerk:

[Legislative instruments are identified by a Federal Register of Legislative Instruments (FRLI) number]

Australian Research Council Act—Variation to Funding Rules for funding commencing in 2008—Linkage International [F2007L00644]*.


Civil Aviation Act—Civil Aviation Safety Regulations—Airworthiness Directives—Part 105—

AD/A320/187 Amdt 1—Nose Landing Gear Steering [F2007L00702]*.

AD/B737/301—Spoiler Actuator Jamming [F2007L00692]*.

AD/B737/301 Amdt 1—Spoiler Actuator Jamming [F2007L00718]*.

Customs Act—Tariff Concession Revocation Instruments—


5/2007 [F2007L00140]*.

Higher Education Support Act—Higher Education Provider Approval (No. 4 of 2007)—Educational Enterprises Australia Pty Ltd [F2007L00715]*.


Therapeutic Goods Act—Therapeutic Goods (Listing) Notice 2007 (No. 1) [F2007L00711]*.

* Explanatory statement tabled with legislative instrument.
QUESTIONS ON NOTICE

The following answers to questions were circulated:

Foreign Affairs and Trade
(Question Nos 2634 and 2636)

Senator O’Brien asked the Minister representing the Minister for Foreign Affairs and the Minister for Trade, upon notice, on 9 November 2006:

1. Has the department instituted an internal costing or cost recovery system; if so: (a) what was the reason for instituting this system; and (b) can details be provided of the costs associated with instituting this system.

2. As at 30 September 2006: (a) how many staff are there at each Australian Public Service (APS) level (including executive and senior executive level staff) by business unit, division or branch; and (b) what is the average salary of staff at each APS level (including executive and senior executive level staff) by business unit, division or branch.

Senator Coonan—The following answer has been provided by the Minister for Foreign Affairs and the Minister for Trade to the honourable senator’s question:

1. No

2. Due to the nature of DFAT’s work, including its overseas operations, the department manages its staff numbers and levels centrally. Staff targets are set for Canberra-based divisions and overseas posts, but are adjusted regularly in response to changing priorities and crisis demands.

Table 1 provides a breakdown of DFAT staff at APS and SES levels as of 30 September 2006. Table 2 indicates the salary for each APS level as specified in the Collective Agreement 2006-09 and the average salary under Australian Workplace Agreements for each SES band. As of 30 September 2006, 217 staff were on AWAs, 188 of whom were SES.

Table 1: DFAT staff by APS Level as at 30 Sept 06

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<tr>
<th>APS Level</th>
<th># of staff</th>
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<td>APS2GN</td>
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<tr>
<td>APS3GN</td>
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Table 2: Salaries by APS level specified in the Collective Agreement and in SES AWAs.

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<tr>
<th>Broadband</th>
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<th>Salary as at 30 Sept 2006</th>
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QUESTIONS ON NOTICE
Finance and Administration
(Question No. 2635)

Senator O’Brien asked the Minister for Finance and Administration, upon notice, on 9 November 2006:

(1) Has the department instituted an internal costing or cost recovery system; if so: (a) what was the reason for instituting this system; and (b) can details be provided of the costs associated with instituting this system.

(2) As at 30 September 2006: (a) how many staff are there at each Australian Public Service (APS) level (including executive and senior executive level staff) by business unit, division or branch; and (b) what is the average salary level of staff at each APS level (including executive and senior executive level staff) by business unit, division or branch.

Senator Minchin—The answer to the honourable senator’s question is as follows:

(1) Yes.

(a) The internal costing model in Finance is used to:

- estimate project/activity costs;
- estimate the cost of new initiatives;
- undertake cost analysis;
- determine internal service charge rates; and
- determine cost recovery rates for services provided to other government agencies.
(b) The model was developed in-house within existing resources; however, it is not possible to provide details of the costs associated with instituting this system. The assumptions underlying the model are reviewed at least annually for accuracy and continued relevance.

(2) Refer to Attachment A. Where information at the business unit, division or branch level would potentially breach individual privacy by revealing personal salaries, average salary levels only have been provided at the aggregate Departmental level.

(a) number of staff at each level by business unit (full time equivalents)
### QUESTIONS ON NOTICE

#### (a) Average salary of staff by business unit

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<th>Business Unit</th>
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<th>APS 3</th>
<th>APS 4</th>
<th>APS 5</th>
<th>APS 6</th>
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<th>EL 2</th>
<th>SES B1</th>
<th>SES B2</th>
<th>SES B3</th>
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<sup>1</sup> excludes casual Comcar drivers.

#### (b) Average salary of staff at each level

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</tr>
</tbody>
</table>

<sup>1</sup> Includes staff on leave without pay and maternity leave.

– Average salary based on annualised salary for each employee.

– Does not include contractors or the Secretary.

– Average salary does not include superannuation, bonuses or allowances.

– Data is based on employee records as recorded in the finance system as at 20 September 2006.
Civil Aviation Safety Authority: Car Park Evaluation  
(Question No. 2689)  

Senator O’Brien asked the Minister representing the Minister for Transport and Regional Services, upon notice, on 10 November 2006:

Can the Minister outline the nature of the car park evaluation for which the Civil Aviation Safety Authority contracted Colliers in the 2005-06 financial year to the value of $10,000.

Senator Johnston—The Minister for Transport and Regional Services has provided the following answer to the honourable senator’s question:

Each year CASA is required to obtain a car park valuation for Fringe Benefits Tax purposes. The scope of this valuation includes car parks at the Canberra office and CASA offices at major airports.

Australian Federal Police: Deployments  
(Question No. 2751)  

Senator Ludwig asked the Minister for Justice and Customs, upon notice, on 13 November 2006:

With reference to Australian Federal Police deployments to Solomon Islands and East Timor under the International Deployment Group:

(1) Can a detailed description be provided of the accommodation arrangements for all staff deployed on these missions including:

(a) the physical location of the accommodation;

(b) the physical condition of the accommodation including:

(i) the nature of the accommodation (for example hotel, motel, barracks etc),

(ii) the age and general condition of the building,

(iii) the average, maximum and minimum size of the rooms,

(iv) the average, maximum and minimum number of people to a room,

(v) whether bedrooms have air conditioning or fans,

(vi) whether bedrooms have their own locks,

(vii) whether staff have access to lockers or safes,

(viii) access to drinking water,

(ix) toilet and bathroom arrangements,

(x) access to telecommunications (for example computer, with Internet access),

(xi) access to recreational areas, and

(xii) a general description of the security provisions of the facility;

(c) the catering arrangements including:

(i) whether meals are prepared on-site or off-site,

(ii) whether there is a food quality standard; if so, the details of that standard, and

(iii) mess area;

(d) cleaning arrangements for the above and the standards that are required to be met;

(e) commercial arrangements covering the accommodation including:

(i) the process by which accommodation was chosen (e.g. open tender, short list),
(ii) a list of parties contracted to provide the accommodation (including both end-providers and intermediaries),

(iii) the value of each contract,

(iv) for each of the financial years since inception, the total spending on accommodation under each deployment, and

(v) the average cost per person per night for accommodation;

(f) the audit arrangements in place and key findings and recommendations of any audits that have been completed; and

(g) any complaint procedure in place and the number and nature of complaints received, if any.

(2) Can copies be provided of the contracts referred to above.

Senator Ellison—The answer to the honourable senator’s question is as follows:

(1) Solomon Islands

(a) Location of accommodation:

(i) Guadalcanal Beach Resort (GBR) on Guadalcanal approximately 10 km out of Honiara Central Business District holds the majority of Participating Police Force (PPF) deployed to Regional Assistance Mission to the Solomon Islands (RAMSI).

(ii) The PPF currently house approximately 15 personnel on long term deployments (accompanied and un-accompanied) in private rented houses within the Honiara region.

(iii) Short term hotel accommodation is utilised for visiting personnel unable to be accommodated at GBR. Condition and style varies depending on the hotel availability.

(iv) 15 Outpost accommodation throughout Solomon Island provinces includes rented guesthouse rooms, Australian Defence Force (ADF) installed long huts and Insulated Tropical Service Accommodation – ITSA (similar to accommodation at GBR). This accommodation has been utilised since the establishment of Outposts in 2003. Typical Outpost accommodation includes 1-2 bedrooms, passive recreation areas and a kitchen facility.

(b) Condition of accommodation:

(i) Private houses vary in design and specification due to commercial availability within the Honiara region. Outpost accommodation varies based on the age and design of the buildings. Hotel and motel accommodation varies in condition, style and age.

(ii) GBR is four years old, age of other accommodation varies and is not known.

(iii) Average GBR room size is 4.0m x 3.52m plus nine executive huts approx 8.0 x 5.0 meter in size with their own ablution facilities. Outposts vary depending on the accommodation type. Room sizes are comparative to that provided within GBR. No definitive measurements are maintained for outposts.

(iv) Within GBR. The maximum number of people per room is two; minimum number of people is one. Outposts are designed to meet the accommodation requirements for the number of personnel deployed and as such vary by location- but does not exceed 2 per room.

(v) All GBR bedrooms have air conditioning and fans. All Outposts have fans but not all have air-conditioning. Outposts are reliant upon generators for consistent power and this impacts on services that are available.

(vi) All GBR bedrooms have locks. Outposts are lockable and are within a perimeter fence for added security. Private houses are lockable and generally have security guards (responsibility of the resident).
(vii) Personnel have access to gun lockers and lockable foot boxes are provided.
(viii) Yes, bottled water is available as well as potable water on GBR. Outposts are provided bottled water which is replenished weekly to fortnightly.
(ix) GBR has four shower and ablution blocks provided. In addition another two toilet blocks are available. All Outposts are equipped with ablution facilities.
(x) Pay phones, internet and wireless internet options are available. Outposts have access to either internet, telephone or satellite phones. This is based on availability of services in the specific location.
(xi) Yes, active and passive recreational areas are available at GBR. Outposts have passive recreational areas.
(xii) The GBR perimeter fence is under 24 hour electronic and physical surveillance. All entry points are guarded 24 hours. Each outpost is secured with perimeter fencing.

c) Catering:
(i) GBR meals are prepared on site. Outposts ‘self cater’ and all perishable and non perishable foodstuffs are provided with replenishment undertaken on a weekly or fortnightly schedule.
(ii) Food quality standard is in accordance with a contracted requirements for Quality Undertakings, the Food Act 1984 (Vic), Australian Defence Force Ration Scale and Food Specification and, AUSMEAT standards and guidelines.
(iii) Yes, a mess area is provided at GBR.

d) Cleaning:
(i) A seven day cleaning service is provided at GBR in accordance with the contracted Statement of Work and contractual requirements for Quality Undertakings. Cleaning in outposts is self managed with all appropriate equipment provided. Cleaning for private residents is the responsibility of the personnel located within the residence.

e) Accommodation – commercial arrangements:
(i) Provision of accommodation at GBR was undertaken by ADF prior to facilities being handed over to the Australian Federal Police (AFP) in 2004.
(ii) As (i) above.
(iii) As (i) above.
(iv) As (i) above.
(v) In Honiara average of SBD $608.00 per night (approximately AUD$120) for motel accommodation. Costs associated with accommodation of personnel at GBR are in-bedded in the garrison support costs for the entire facility.

(f) Audits are undertaken by the Australian National Audit Office (ANAO).

(g) Yes, there is a complaint procedure. Complaints are generally in relation to domestic support services at GBR.

(2) Copies of any contracts in relation to 1(e) above are held by the ADF.

(1) East Timor

(a) Location of accommodation:
(i) Timor Lodge is located on Lekefr Road, Comero, East Timor.

(b) Condition of accommodation:
(i) Motel style with varying standards and size of accommodation options.

(ii) Accommodation is of a reasonable standard. Standard rooms are eight years old and the villas were rebuilt 10 years ago.

(iii) Villas – Bedrooms 3.0m x 4.0m plus Lounge room. En-suite and standard rooms – 3.0m x 4.0m.

(iv) All AFP officers have their own bedroom space with most sharing facilities such as ablutions and common areas. Accommodation is a mix of the following:
   (a) Three villas with four people per villa.
   (b) 35 villas with two people per villa.
   (c) 12 en-suite rooms with one person per room.
   (d) 60 standard rooms (no en-suite) with one person per room.

(v) All units are air-conditioned.

(vi) All rooms have their own locks.

(vii) Each AFP Officer has a lockable cabinet.

(viii) Yes, bottled water is available as well as potable water.

(ix) Officers occupying en-suite rooms have sole access to the bathroom and toilet facilities within that room. Officers who share a villa or occupy a standard room share bathroom and toilet facilities with other officers.

(x) Wireless connection is available in the mess and all administration offices have suitable IT and telecommunications infrastructure. Telephone facilities are available for all Officers to call next of kin/home.

(xi) Yes, active and passive recreational areas are available.

(xii) 24 hour physical presence. There is a double 4.0m wire mesh fence around the perimeter of the facility providing a clear buffer zone for the perimeter.

(c) Catering
   (i) A fully self-contained, commercial grade kitchen is on-site with meals prepared on-site.

   (ii) Food quality standards are maintained to Australian standards. Food is prepared to a menu based system.

   (iii) Yes, a mess area is provided.

(d) Cleaning
   (i) All rooms are serviced daily for cleaning with a linen change every second day. Restaurant staff maintains safe hygiene levels. Statement of Work and contractual requirements for Quality Undertakings.

(e) Accommodation – commercial arrangements
   (i) Emergency response by the AFP into Timor Leste determined accommodation was sourced by the prime contractor from 19 May 2006.

   (ii) Patrick Defence Logistics (PDL).

   (iii) Total estimated Accommodation Services component is $3,000,000.00.

   (iv) 2005/2006 - $458,082.79 and current year invoices to - $1,043,845.09.

   (v) Average of AUD$76.80 per night accommodation. Costs associated with accommodation of personnel are part of total support costs for the facility.

(f) Audits are undertaken by the ANAO.

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(g) There are complaint procedures in place. A log-book is located at the mess allowing AFP Officers to write remarks. AFP has a form available with administration for other issues. Once registered, all issues are addressed.

(2) Copies of contracts are available upon request.

Civil Aviation Safety Authority: Chief Executive Officer

(Question No. 2753)

Senator O’Brien asked the Minister representing the Minister for Transport and Regional Services, upon notice, on 13 November 2006:

With reference to the claim by Mr Bruce Byron, Chief Executive Officer of the Civil Aviation Safety Authority, to the International Federation of Airline Pilots Association on 26 March 2004 that ‘[my] direct roots in the industry have meant I have had to formally isolate myself from decisions relating to companies with which I have worked for a period of time’:

(1) Was this decision suggested, approved and/or endorsed by the Minister upon Mr Byron’s appointment.

(2) By year, which decisions, relating to which companies, has Mr Byron isolated himself from.

(3) Does Mr Byron continue to observe this policy; if not: (a) why not; (b) on what date was it abandoned; and (c) did Mr Byron inform the Minister.

Senator Johnston—The Minister for Transport and Regional Services has provided the following answer to the honourable senator’s question:

(1) No.

(2) 2003/2004. Mr Byron isolated himself from all decisions relating to Virgin Blue for a three month period after joining CASA.

(3) The policy is still in place to the extent that Mr Byron would isolate himself from a decision if he had a conflict of interest in the matter, in conformity with proper governance practice and the provisions of the Commonwealth Authorities and Companies Act 1997.

Civil Aviation Safety Authority: Metroliner Aircraft

(Question No. 2757)

Senator O’Brien asked the Minister representing the Minister for Transport and Regional Services, upon notice, on 13 November 2006:

With reference to Civil Aviation Safety Authority (CASA) Airworthiness Bulletin 02-017 concerning ‘the increasing trend of leaking fluid lines (oil, fuel, hydraulic, anti-ice, bleed or exhaust) on Metroliner SA226/SA227 aircraft’:

(1) When did CASA conduct the review that established that reports of leaking fluid lines on Metroliner SA226/SA227 aircraft were on the rise.

(2) Is it the case that CASA considers the leakage of fuel, oil or other fluids a major defect.

(3) For each month since July 2001, what is the number of service difficulty reports to CASA that identify leaking fluid lines on Metroliner SA226/SA227 aircraft.

Senator Johnston—The Minister for Transport and Regional Services has provided the following answer to the honourable senator’s question:

(1) CASA conducted a review in April 2005. CASA then issued an All Operator Letter to Metroliner operators dated 5 May 2005. Subsequent to that, the referenced Airworthiness Bulletin 02-017 was issued in September 2006.

(2) Yes.
The following Service Difficulty Reports on the leakage of fuel, oil or other fluids in Metroliner aircraft have been received for the period 1 July 2001 to 22 November 2006:

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Civil Aviation Safety Authority: Compliance Policy

(Question No. 2759)

**Senator O’Brien** asked the Minister representing the Minister for Transport and Regional Services, upon notice, on 13 November 2006:

Has the Civil Aviation Safety Authority established a group to develop a new compliance policy; if so, can details of the group and its work be provided, including: (a) a date of establishment; (b) membership; and (c) role/terms of reference.

**Senator Johnston**—The Minister for Transport and Regional Services has provided the following answer to the honourable senator’s question:

No.

Civil Aviation Safety Authority: Strikemaster and Jet Provost Aircraft

(Question No. 2761)

**Senator Parry** asked the Minister representing the Minister for Transport and Regional Services, upon notice, on 13 November 2006:

With reference to Civil Aviation Safety Authority (CASA) Airworthiness Bulletin (AWB) 02-018 of 20 October 2006, applicable to all BAC 167 Strikemaster and Jet Provost aircraft and relating to airworthiness information arising from a fatal crash of a Strikemaster aircraft near Bathurst on 5 October 2006: By state/territory, how many: (a) BAC Strikemaster aircraft are registered in Australia; and (b) BAC Jet Provost aircraft are registered to operate in Australia.

**Senator Johnston**—The Minister for Transport and Regional Services has provided the following answer to the honourable senator’s question:

(a) There are seven BAC 167 Strikemaster aircraft registered in Australia; five in NSW, one in Victoria and one in Western Australia.

(b) There are five BAC Jet Provosts registered in Australia; one each in NSW, Victoria, Queensland, Western Australia and Tasmania.
Civil Aviation Safety Authority: Chief Executive Officer
(Question No. 2833)

Senator O’Brien asked the Minister representing the Minister for Transport and Regional Services, upon notice, on 24 November 2006:

Can copies be provided of all Civil Aviation Safety Authority Chief Executive Officer (CEO) directives relating to surveillance of Transair and the Lockhart river tragedy, including CEO Directives 001/2006 and 002/2006.

Senator Johnston—The Minister for Transport and Regional Services has provided the following answer to the honourable senator’s question:

CEO directives are internal CASA documents and are not publicly available. It is not appropriate at this time to provide copies of these documents as they deal with issues related to the Lockhart River accident, including details about the operator of the aircraft involved in the accident (Lessbrook Pty Ltd trading as Transair), as well as CASA’s regulatory oversight of this particular operator.

The Lockhart River accident is currently the subject of an ongoing investigation by the Australian Transport Safety Bureau (ATSB) in accordance with the provisions of the Transport Safety Investigation Act 2003. The ATSB’s final report on the accident is expected to be released by end of March 2007. It is understood that a coronial inquest into the accident is likely to be held in 2007.

People Trafficking
(Question No. 3019)

Senator Allison asked the Minister representing the Minister for Immigration and Citizenship, upon notice, on 22 February 2007:

With reference to human sexual trafficking, will the Government consider:

(1) Allowing trafficked persons to regularise their status in Australia temporarily or permanently, as appropriate, with:
   (a) an automatic refection period or period of grace of approximately 45 days during which trafficked persons would not have to fear deportation while they are initially separated from the trafficking environment and receive medical attention, counselling and legal advice on their options;
   (b) Temporary Protection Visas renewable at approximately 2 years for those who would feel endangered on return to their country; and
   (c) the possibility of permanent residence status and family reunion.

(2) Establishing government-funded programs unique to trafficked persons such as the provision of funding to non-government organisations for trafficking specific residential programs/shelters, a 24 hour hotline and awareness campaigns for this issue.

(3) Enhancing funding for law enforcement/immigration training on trafficking as well as protection services for trafficked persons.

Senator Ellison—The Minister for Immigration and Citizenship has provided the following answer to the honourable senator’s question:

(1) (a) Under the People Trafficking Visa Regime introduced on 1 January 2004, the Bridging Visa F may be granted for 30 days to a person who is assisting police with a people trafficking matter. This period also allows the suspected victim to reflect on whether they wish to assist law enforcement authorities with investigations and prosecutions of alleged traffickers. Suspected victims of trafficking may also be eligible to apply for and be granted other short-term temporary visas while they consider their options.
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(b) A three-year temporary Witness Protection (Trafficking) Visa may be offered to a person who holds a Criminal Justice Stay Visa and where the Attorney-General has certified that the person has either:

(i) made a major contribution to and cooperated closely with the prosecution of a person who has trafficked or forced others into exploitative conditions; or

(ii) made a significant contribution to, and cooperated closely with, an investigation in relation to which the Director of Public Prosecutions has decided not to prosecute a person who was alleged to have trafficked a person or who was alleged to have forced a person into exploitative conditions.

and where the person is not the subject of any related prosecutions and the Minister for Immigration and Citizenship is satisfied that the person would be in significant personal danger were they to return to their home country.

(c) A permanent Witness Protection (Trafficking) Visa is offered to a person who has held a temporary Witness Protection (Trafficking) Visa for two years or more and the Minister for Immigration and Citizenship remains satisfied that they would still be in significant personal danger if they were to return to their home country. Immediate family members in Australia can be nominated as secondary visa holders on both the temporary and permanent Witness Protection (Trafficking) Visas.

(2) This issue falls within the portfolio responsibilities for the Minister for Justice and Customs and the Minister for Families, Community Services and Indigenous Affairs and should be referred to the relevant Ministers for response.

(3) Within the curriculum of the College of Immigration which was established in response to recommendations in the Palmer Report, specific training on people trafficking issues is provided to immigration compliance officers. The issue of enhanced law enforcement training falls within the portfolio responsibilities of the Minister for Justice and Customs and should be referred to the relevant Minister for response.