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SITTING DAYS—2007

<table>
<thead>
<tr>
<th>Month</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>February</td>
<td>6, 7, 8, 9, 26, 27, 28</td>
</tr>
<tr>
<td>March</td>
<td>1, 20, 21, 22, 26, 27, 28, 29</td>
</tr>
<tr>
<td>May</td>
<td>8, 9, 10</td>
</tr>
<tr>
<td>June</td>
<td>12, 13, 14, 18, 19, 20, 21</td>
</tr>
<tr>
<td>August</td>
<td>7, 8, 9, 13, 14, 15, 16</td>
</tr>
<tr>
<td>September</td>
<td>10, 11, 12, 13, 17, 18, 19, 20</td>
</tr>
<tr>
<td>October</td>
<td>15, 16, 17, 18, 22, 23, 24, 25</td>
</tr>
<tr>
<td>November</td>
<td>5, 6, 7, 8, 12, 13, 14, 15, 26, 27, 28, 29</td>
</tr>
<tr>
<td>December</td>
<td>3, 4, 5, 6</td>
</tr>
</tbody>
</table>

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- **MELBOURNE** 1026 AM
- **ADELAIDE** 972 AM
- **PERTH** 585 AM
- **HOBART** 747 AM
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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

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<table>
<thead>
<tr>
<th>Senator</th>
<th>State or Territory</th>
<th>Term expires</th>
<th>Party</th>
</tr>
</thead>
<tbody>
<tr>
<td>Abetz, Hon. Eric</td>
<td>TAS</td>
<td>30.6.2011</td>
<td>LP</td>
</tr>
<tr>
<td>Adams, Judith</td>
<td>WA</td>
<td>30.6.2011</td>
<td>LP</td>
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<tr>
<td>Allison, Lynette Fay</td>
<td>VIC</td>
<td>30.6.2008</td>
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<tr>
<td>Barnett, Guy</td>
<td>TAS</td>
<td>30.6.2011</td>
<td>LP</td>
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<tr>
<td>Bartlett, Andrew John Julian</td>
<td>QLD</td>
<td>30.6.2008</td>
<td>AD</td>
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<tr>
<td>Bernardi, Cory (3)</td>
<td>SA</td>
<td>30.6.2008</td>
<td>LP</td>
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<td>Bishop, Thomas Mark</td>
<td>WA</td>
<td>30.6.2008</td>
<td>ALP</td>
</tr>
<tr>
<td>Boswell, Hon. Ronald Leslie Doyle</td>
<td>QLD</td>
<td>30.6.2008</td>
<td>NATS</td>
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<tr>
<td>Brandis, Hon. George Henry, SC</td>
<td>QLD</td>
<td>30.6.2011</td>
<td>LP</td>
</tr>
<tr>
<td>Brown, Carol Louise (3)</td>
<td>TAS</td>
<td>30.6.2008</td>
<td>ALP</td>
</tr>
<tr>
<td>Brown, Robert James</td>
<td>TAS</td>
<td>30.6.2008</td>
<td>AG</td>
</tr>
<tr>
<td>Calvert, Hon. Paul Henry</td>
<td>TAS</td>
<td>30.6.2008</td>
<td>LP</td>
</tr>
<tr>
<td>Campbell, George</td>
<td>NSW</td>
<td>30.6.2008</td>
<td>ALP</td>
</tr>
<tr>
<td>Campbell, Hon. Ian Gordon</td>
<td>WA</td>
<td>30.6.2011</td>
<td>LP</td>
</tr>
<tr>
<td>Carr, Kim John</td>
<td>VIC</td>
<td>30.6.2011</td>
<td>ALP</td>
</tr>
<tr>
<td>Chapman, Hedley Grant Pearson</td>
<td>SA</td>
<td>30.6.2008</td>
<td>LP</td>
</tr>
<tr>
<td>Colbeck, Hon. Richard Mansell</td>
<td>TAS</td>
<td>30.6.2008</td>
<td>LP</td>
</tr>
<tr>
<td>Conroy, Stephen Michael</td>
<td>VIC</td>
<td>30.6.2011</td>
<td>ALP</td>
</tr>
<tr>
<td>Coonan, Hon. Helen Lloyd (3)</td>
<td>NSW</td>
<td>30.6.2008</td>
<td>LP</td>
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<tr>
<td>Crossin, Patricia Margaret (5)</td>
<td>NT</td>
<td></td>
<td>ALP</td>
</tr>
<tr>
<td>Eggleston, Alan</td>
<td>WA</td>
<td>30.6.2008</td>
<td>LP</td>
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<td>Ellison, Hon. Christopher Martin</td>
<td>WA</td>
<td>30.6.2011</td>
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<tr>
<td>Evans, Christopher Vaughan</td>
<td>WA</td>
<td>30.6.2011</td>
<td>ALP</td>
</tr>
<tr>
<td>Faulkner, Hon. John Philip</td>
<td>NSW</td>
<td>30.6.2011</td>
<td>ALP</td>
</tr>
<tr>
<td>Ferguson, Alan Baird</td>
<td>SA</td>
<td>30.6.2011</td>
<td>LP</td>
</tr>
<tr>
<td>Ferris, Jeannie Margaret</td>
<td>SA</td>
<td>30.6.2008</td>
<td>LP</td>
</tr>
<tr>
<td>Fielding, Steve</td>
<td>VIC</td>
<td>30.6.2011</td>
<td>FF</td>
</tr>
<tr>
<td>Fierravanti-Wells, Concetta Anna</td>
<td>NSW</td>
<td>30.6.2011</td>
<td>LP</td>
</tr>
<tr>
<td>Fifield, Mitchell Peter (2)</td>
<td>VIC</td>
<td>30.6.2008</td>
<td>LP</td>
</tr>
<tr>
<td>Forsaw, Michael George</td>
<td>NSW</td>
<td>30.6.2011</td>
<td>ALP</td>
</tr>
<tr>
<td>Hefferman, Hon. William Daniel</td>
<td>NSW</td>
<td>30.6.2011</td>
<td>LP</td>
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<tr>
<td>Hogg, John Joseph</td>
<td>QLD</td>
<td>30.6.2008</td>
<td>ALP</td>
</tr>
<tr>
<td>Humphries, Gary John Joseph (3)</td>
<td>ACT</td>
<td></td>
<td>LP</td>
</tr>
<tr>
<td>Hurley, Annette</td>
<td>SA</td>
<td>30.6.2011</td>
<td>ALP</td>
</tr>
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<td>Hutchins, Stephen Patrick</td>
<td>NSW</td>
<td>30.6.2011</td>
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<td>Johnston, Hon. David Albert Lloyd</td>
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<td>Joyce, Barnaby</td>
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<td>30.6.2011</td>
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<td>Kemp, Hon. Charles Roderick</td>
<td>VIC</td>
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<td>Kirk, Linda Jean</td>
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<td>30.6.2008</td>
<td>ALP</td>
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<td>Lightfoot, Philip Ross</td>
<td>WA</td>
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<td>LP</td>
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<td>Ludwig, Joseph William</td>
<td>QLD</td>
<td>30.6.2011</td>
<td>ALP</td>
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<tr>
<td>Lundy, Kate Alexandra (3)</td>
<td>ACT</td>
<td></td>
<td>ALP</td>
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<td>Macdonald, Hon. Ian Douglas</td>
<td>QLD</td>
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<td>Macdonald, John Alexander Lindsay (Sandy)</td>
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<td>NATS</td>
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<td>McEwen, Anne</td>
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<td>ALP</td>
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<td>Mason, Hon. Brett John</td>
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<td>Milne, Christine</td>
<td>TAS</td>
<td>30.6.2011</td>
<td>AG</td>
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<td>Minchin, Hon. Nicholas Hugh</td>
<td>SA</td>
<td>30.6.2011</td>
<td>LP</td>
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<td>Moore, Claire Mary</td>
<td>QLD</td>
<td>30.6.2008</td>
<td>ALP</td>
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<td>Murray, Andrew James Marshall</td>
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<td>Nash, Fiona Joy</td>
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<td>30.6.2011</td>
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<td>Nettle, Kerry Michelle</td>
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<td>30.6.2008</td>
<td>AG</td>
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<td>O’Brien, Kerry Williams Kelso</td>
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<td>Parry, Stephen</td>
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<td>30.6.2008</td>
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<td>Payne, Marise Ann</td>
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<td>30.6.2008</td>
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<td>Polley, Helen</td>
<td>TAS</td>
<td>30.6.2011</td>
<td>ALP</td>
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<td>Ray, Hon. Robert Francis</td>
<td>VIC</td>
<td>30.6.2008</td>
<td>ALP</td>
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<td>Ronaldson, Hon. Michael</td>
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<td>30.6.2011</td>
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<td>Santoro, Hon. Santo (1)</td>
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<td>30.6.2008</td>
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<td>Scullion, Hon. Nigel Gregory (3)</td>
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<td>Sherry, Hon. Nicholas John</td>
<td>TAS</td>
<td>30.6.2008</td>
<td>ALP</td>
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<td>Sievert, Rachel</td>
<td>WA</td>
<td>30.6.2011</td>
<td>AG</td>
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<td>Stephens, Ursula Mary</td>
<td>NSW</td>
<td>30.6.2008</td>
<td>ALP</td>
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<td>Sterle, Glenn</td>
<td>WA</td>
<td>30.6.2011</td>
<td>ALP</td>
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<tr>
<td>Stott Despoja, Natasha Jessica</td>
<td>SA</td>
<td>30.6.2008</td>
<td>AD</td>
</tr>
<tr>
<td>Troeth, Hon. Judith Mary</td>
<td>VIC</td>
<td>30.6.2011</td>
<td>LP</td>
</tr>
<tr>
<td>Trood, Russell</td>
<td>QLD</td>
<td>30.6.2011</td>
<td>LP</td>
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<tr>
<td>Vanstone, Hon. Amanda Eloise</td>
<td>SA</td>
<td>30.6.2011</td>
<td>LP</td>
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<tr>
<td>Watson, John Odin Wentworth</td>
<td>TAS</td>
<td>30.6.2008</td>
<td>LP</td>
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<td>WA</td>
<td>30.6.2008</td>
<td>ALP</td>
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<td>30.6.2008</td>
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<td>Wortley, Dana</td>
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<td>30.6.2011</td>
<td>ALP</td>
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</tbody>
</table>

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

PARTY ABBREVIATIONS

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

Heads of Parliamentary Departments

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

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

The Hon. John Winston Howard MP
The Hon. Mark Anthony James Vaile MP
The Hon. Peter Howard Costello MP
The Hon. Warren Errol Truss MP
The Hon. Dr Brendan John Nelson MP
The Hon. Alexander John Gosse Downer MP
The Hon. Anthony John Abbott MP
The Hon. Philip Maxwell Ruddock MP
Senator the Hon. Nicholas Hugh Minchin
The Hon. Peter John McGauran MP
The Hon. Kevin James Andrews MP
The Hon. Julie Isabel Bishop MP
The Hon. Malcolm Thomas Brough MP
The Hon. Malcolm Bligh Turnbull MP
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
Robert Francis McMullan MP

Senator Kerry Williams Kelso O’Brien

Tanya Joan Plibersek MP

Nicola Louise Roxon MP

Senator the Hon. Nicholas John Sherry

Stephen Francis Smith MP

Wayne Maxwell Swan MP

Lindsay James Tanner MP

Senator Penelope Ying Yen Wong

Anthony Michael Byrne MP

The Hon. Graham John Edwards MP

Jennie George MP

Catherine Fiona King MP

Kirsten Fiona Livermore MP

John Paul Murphy MP

Brendan Patrick John O’Connor MP

Bernard Fernando Ripoll MP

The Hon. Warren Edward Snowdon MP

Senator Ursula Mary Stephens
CONTENTS

FRIDAY, 23 MARCH

Chamber
Absence of the President....................................................................................................... 1
Notices—
Presentation ....................................................................................................................... 1
Committees—
Membership...................................................................................................................... 2
Private Health Insurance Bill 2006,
Private Health Insurance (Transitional Provisions and Consequential Amendments) Bill 2006,
Private Health Insurance (Prostheses Application and Listing Fees) Bill 2006,
Private Health Insurance (Collapsed Organization Levy) Amendment Bill 2006,
Private Health Insurance Complaints Levy Amendment Bill 2006,
Private Health Insurance (Council Administration Levy) Amendment Bill 2006, and
Private Health Insurance (Reinsurance Trust Fund Levy) Amendment Bill 2006—
In Committee...................................................................................................................... 4
Third Reading................................................................................................................... 43
Native Title Amendment Bill 2006—
Second Reading.................................................................................................................. 44
Schools Assistance (Learning Together—Achievement Through Choice and
Opportunity) Amendment Bill 2007—
Second Reading.................................................................................................................. 58
Third Reading................................................................................................................... 71
Personal Explanations........................................................................................................ 71
Native Title Amendment Bill 2006—
In Committee...................................................................................................................... 72
Adjournment—
Pura Cup....................................................................................................................... 102
Register of Senators’ Interests.......................................................................................... 103
Chaplaincy Services for Veterans...................................................................................... 103
Meander Dam.................................................................................................................. 105
Questions On Notice
Exclusive Brethren—(Question No. 2532) ................................................................. 108
Immigration and Citizenship—(Question No. 2640)....................................................... 108
Galiwinku Community—(Question No. 2767)................................................................. 112
Mr David Hicks—(Question No. 2963)......................................................................... 113
Australian Communications and Media Authority: Complaints—(Question No. 2972).. 115
India: Nuclear issues—(Question No. 3024)................................................................. 115
Friday, 23 March 2007

The Senate met at 9.30 am.

ABSENCE OF THE PRESIDENT

The Clerk—I advise the Senate that the President is absent today. Under standing order 13, the Deputy President will take the chair.

The DEPUTY PRESIDENT (Senator Hogg) thereupon took the chair and read prayers.

NOTICES

Presentation

Senator Allison to move on the next day of sitting:

That the Senate—

(a) notes:

(i) the report by the Pentagon dated March 2007 on the situation in Iraq in the last quarter of 2006, that advises that:

(A) there were record levels of violence and hardening sectarian divisions,

(B) ‘sectarian cleansing’ was forcing 9 000 civilians to leave Iraq every month,

(c) weekly attacks rose to more than 1 000 in the quarter, and

(b) daily casualties increased to more than 140 with approximately 100 civilians killed or wounded a day,

(ii) that these statistics were based on the violence observed by or reported to the United States of America (US) military and that these are likely to be out by a factor of two, and that the cited United Nations estimate, based on hospital reports, is that more than 6 000 Iraqi civilians were killed or wounded in December 2006 alone,

(iii) the quote in the report that ‘Some elements of the situation in Iraq are properly descriptive of a “civil war”, including the hardening of ethno-sectarian identities and mobilization, the changing character of the violence, and population displacements’,

(iv) the failure of the US military to meet its objective of handing over security responsibility to the Iraq provinces by the end of 2006,

(v) that, although nearly 329 000 Iraqi police officers and soldiers had been trained as of February 2007, only a half or two-thirds of that total is on duty and that coalition forces remain hampered by militia infiltration, logistical deficiencies and corruption,

(vi) that detention centres in Iraq have substandard facilities and do a poor job of tracking detainees, and

(vii) that scores of Iraqi jails are overcrowded, with one jail housing three detainees for every bed; and

(b) calls on the Government, in the light of this report, to recognise that:

(i) Australia’s involvement in training Iraqi troops is likely to be ineffectual,

(ii) the military strategy put in place by the US Administration cannot succeed without political reconciliation, and

(iii) Australia should withdraw its troops.

Senator Allison to move on the next day of sitting:

That the Senate—

(a) recognises that 27 March 2007 marks the 10th anniversary of the enactment of the Euthanasia Laws Act 1997, which overturned the Northern Territory’s Rights of the Terminally Ill Act 1995;

(b) notes the results of a 2007 Newspoll, which found that 80 per cent of Australians thought that doctors should be allowed to provide a lethal dose to a patient experiencing unrelievable suffering and with no hope of recovery; and

(c) calls on the Government to engage in a debate on end of life care, which includes the option of terminally ill and severely suffering people having choice about the timing and method of their death.
Senator Milne to move on the next day of sitting:

(1) That the Senate notes that:

(a) the 4th assessment report of the Working Group I of the Intergovernmental Panel on Climate Change (IPCC), published in February 2007, indicates that sea levels will rise by between 0.18 metres to 0.59 metres by the end of the century and that these projections do not include the full effects of changes in ice sheet flow because a basis in published literature is lacking;

(b) the next IPCC report on impacts, adaptation and vulnerability, to be released in April 2007, is expected to conclude that there is a medium confidence, that is a 50 per cent chance, that the Greenland and Antarctic ice sheets would be committed to partial deglaciation for a global average temperature increase greater than 1° to 2°C, causing a sea level rise of 4 to 6 metres over centuries to millennia;

(c) recent scientific research, published too late for inclusion in the IPCC reports, suggest that sea levels are rising more quickly than previously thought and many scientists, including Dr James Hansen, head of Atmospheric Research for the National Aeuronautics and Space Administration, warn that a warming of 2° to 3°C could melt the ice sheets of West Antarctica and parts of Greenland resulting in a sea level rise of 5 metres within a century;

(d) the assessment of the impact of even a moderate sea level rise in Australia remains inadequate for adaptation planning;

(e) assessing the vulnerability of low coastal and estuarine regions requires not only mapping height above sea level but must take into account factors such as coastal morphology, susceptibility to long-shore erosion, near shore bathymetry and storm surge frequency;

(f) delaying analysis of the risk of sea level rise exacerbates the likelihood that such information may affect property values and investment through disclosure of increased hazards and possible reduced or more expensive insurance cover; and

(g) an early response to the threat of a rise in sea level may include avoiding investment in long-lived infrastructure in high risk areas.

(2) That the following matter be referred to the Environment, Communications, Information Technology and the Arts Committee for inquiry and report by 20 September 2007:

An assessment of the risks associated with projected rises in sea levels around Australia, including an appraisal of:

(a) ecological, social and economic impacts;

(b) adaptation and mitigation strategies;

(c) knowledge gaps and research needs; and

(d) options to communicate risks and vulnerabilities to the Australian community.

COMMITTEES

Membership

The DEPUTY PRESIDENT—The President has received a letter from a party leader seeking variations to the membership of committees.

Senator ELLISON (Western Australia—Minister for Human Services) (9.31 am)—by leave—I move:

That senators be discharged from and appointed to committees as follows:

Australian Commission for Law Enforcement Integrity—Joint Statutory Committee—

Appointed—Senators Fierravanti-Wells and Parry

Community Affairs—Standing Committee—

Discharged—Participating member: Senator Mason
Economics—Standing Committee—
Discharged—Participating member: Senator Mason

Employment, Workplace Relations and Education—Standing Committee—
Discharged—Participating members: Senators Brandis, Johnston and Mason
Appointed—Participating member: Senator Parry

Environment, Communications, Information Technology and the Arts—Standing Committee—
Discharged—Participating members: Senators Brandis, Mason and Scullion
Appointed—Participating member: Senator Parry

Finance and Public Administration—Standing Committee—
Discharged—
  Senator Mason
  Participating member: Senator Brandis
Appointed—Senator Ian Macdonald

Foreign Affairs, Defence and Trade—Joint Standing Committee—
Discharged—Senator Johnston
Appointed—Senator Trood

Foreign Affairs, Defence and Trade—Standing Committee—
Discharged—Senator Johnston
Appointed—
  Senator Sandy Macdonald
  Participating member: Senator Parry

Legal and Constitutional Affairs—Standing Committee—
Discharged—
  Senator Sandy Macdonald
  Participating members: Senators Johnston and Mason
Appointed—
  Senator Barnett

Parliamentary Library—Joint Standing Committee—
Appointed—Senator McGauran

Privileges—Standing Committee—
Discharged—Senator Johnston
Appointed—Senator Kemp

Public Accounts and Audit—Joint Statutory Committee—
Discharged—Senator Nash
Appointed—Senator Chapman

Publications—Standing Committee—
Discharged—Senator Johnston
Appointed—Senator Ian Campbell

Regulations and Ordinances—Standing Committee—
Discharged—Senator Mason
Appointed—Senator Patterson

Rural and Regional Affairs and Transport—Standing Committee—
Discharged—Participating members: Senators Brandis and Mason
Appointed—Participating member: Senator Parry

Scrutiny of Bills—Standing Committee—
Discharged—Senators Johnston and Mason
Appointed—Senators Adams and Parry

Treaties—Joint Standing Committee—
Discharged—Senator Mason
Appointed—Senator Ian Macdonald.

Question agreed to.

PRIVATE HEALTH INSURANCE BILL 2006

PRIVATE HEALTH INSURANCE (TRANSITIONAL PROVISIONS AND CONSEQUENTIAL AMENDMENTS) BILL 2006

PRIVATE HEALTH INSURANCE (PROSTHESES APPLICATION AND LISTING FEES) BILL 2006

PRIVATE HEALTH INSURANCE (COLLAPSED ORGANIZATION LEVY) AMENDMENT BILL 2006
PRIVATE HEALTH INSURANCE
COMPLAINTS LEVY AMENDMENT
BILL 2006

PRIVATE HEALTH INSURANCE
(COUNCIL ADMINISTRATION LEVY)
AMENDMENT BILL 2006

PRIVATE HEALTH INSURANCE
(REINSURANCE TRUST FUND LEVY)
AMENDMENT BILL 2006

In Committee

Consideration resumed from 20 March.
PRIVATE HEALTH INSURANCE BILL
2006

Bill—by leave—taken as a whole.

Senator ELLISON (Western Australia—
Minister for Human Services) (9.32 am)
— I table a supplementary explanatory memo-
randum relating to government amendments
and requests for amendments to be moved to
the Private Health Insurance Bill 2006, the
Private Health Insurance (Transitional Provi-
sions and Consequential Amendments) Bill
2006 and the Private Health Insurance (Rein-
surance Trust Fund Levy) Amendment Bill
2006. The memorandum was circulated in
the chamber on 20 March 2007. In relation to
the running sheet, the first set of amend-
ments which are listed are government
amendments (1) to (104). It may be that
votes have to be taken separately along the
way, but I seek leave to move all those
amendments together. Where we need to
have a separate vote we can. I will address
those amendments in the different lots as
they relate to the various parts of the bill. I
do that to assist the committee, as a way of
going forward, rather than doing it in pieces.
It would have to be broken down into some-
thing like 30-odd separate segments. I think
we can save time adopting this course of
action. Other senators may have some com-
ments.

The TEMPORARY CHAIRMAN
(Senator Troeth)—Is leave granted to move
the amendments together, unless taken oth-
wise?

Senator McLUCAS (Queensland) (9.33
am)—That is a sensible course of action. If
there are senators who wish to vote against
certain groups of the government amend-
ments then they will have the opportunity to
do that.

Leave granted.

Senator ELLISON (Western Australia—
Minister for Human Services) (9.34 am)—I
move:

(1) Clause 23-10, page 10 (line 26), omit
“policy to which subsection (1) applied”, substi-
tute “* complying health insurance policy”.

(2) Clause 23-10, page 10 (line 28), omit
“amount payable”, substitute “reduction”.

(3) Clause 26-5, page 17 (line 6), omit
“policy to which subsection (1) applied”, sub-
titute “* complying health insurance policy”.

(4) Heading to clause 50-5, page 31 (lines 18 to
20), omit the heading, substitute:

50-5 Private Health Insurance Rules
relevant to this Chapter

(5) Clause 50-5, page 31 (line 23), after
“Rules,”, insert “the Private Health Insur-
ance (Benefit Requirements) Rules,”.

(6) Clause 55-5, page 32 (line 26), omit “para-
graph 66-10(2)(a)”, substitute “subsection
66-10(2)”.

(7) Clause 63-1, page 35 (line 5), before “A
private”, insert “(1)”.

(8) Clause 63-1, page 35 (after line 7), at the
end of the clause, add:

(2) However, subsection (1) does not apply
in relation to “health insurance busi-
ness of a kind that the Private Health
Insurance (Complying Product) Rules
specify is excluded from subsec-
tion (1).

(9) Clause 63-5, page 35 (after line 16), after
subclause (2), insert:
(2A) A **product subgroup**, of a *product, is all the insurance policies in the product:

(a) under which the addresses of the people insured, as known to the private health insurer, are located in the same *risk equalisation jurisdiction; and

(b) under which the same kind of insured group (within the meaning of the Private Health Insurance (Complying Product) Rules) is insured.

(2B) The Private Health Insurance (Complying Product) Rules may specify insured groups for the purposes of paragraph (2A)(b). An insured group may be specified by reference to any or all of the number of people in the group, the kind of people in the group, or any other matter. A group may consist of only one person.

(10) Clause 66-5, page 37 (lines 27 to 29), omit paragraph (1)(a), substitute:

(a) is the amount specified for the *product subgroup to which the policy belongs in the most recent approval under section 66-10; or

(11) Clause 66-5, page 38 (line 3), omit subparagraph (1)(c)(ii), substitute:

(ii) because of a discount or discounts allowed under subsection (2), if the total percentage discount (not counting discounts available for the reason in paragraph (3)(f)) does not exceed the percentage specified in the Private Health Insurance (Complying Product) Rules as the maximum percentage discount allowed; or

(12) Clause 66-5, page 38 (lines 5 to 19), omit subclause (2), substitute:

(2) A discount is allowed if:

(a) it is for a reason in subsection (3); and

(b) the discount is also available for that reason under every policy in the *product; and

(c) if there are different percentage discounts available for that reason—the same percentage discount is available on the same basis under every policy in the product; and

(d) any other conditions set out in the Private Health Insurance (Complying Product) Rules are met.

(3) A discount may be for any of these reasons:

(a) because premiums are paid at least 3 months in advance;

(b) because premiums are paid by pay-roll deduction;

(c) because premiums are paid by pre-arranged automatic transfer from an account at a bank or other financial institution;

(d) because the persons insured under the policy have agreed to communicate with the private health insurer, and make claims under the policy, by electronic means;

(e) because a person insured under the policy is, under the *rules of the private health insurer, treated as belonging to a contribution group;

(f) because the insurer is not required to pay a levy in relation to the policy under a law of a State or Territory;

(g) for a reason set out in the Private Health Insurance (Complying Product) Rules.

(13) Clause 66-10, page 38 (line 27) to page 39 (line 9), omit subclause (2), substitute:

(2) The application may propose different changes for policies in the *product, but the proposed changed amount must be the same for each policy in the product that belongs to the same product subgroup.

(14) Clause 66-10, page 39 (lines 20 to 22), omit subclause (5).
(15) Clause 69-1, page 41 (lines 4 to 10), omit subclause (1), substitute:

(1) An insurance policy meets the coverage requirements in this Division if:

(a) the only treatments the policy covers are:

(i) specified treatments that are hospital treatment; or

(ii) specified treatments that are hospital treatment and specified treatments that are general treatment; or

(iii) specified treatments that are general treatment but none that are hospital-substitute treatment; and

(b) if the policy provides a benefit for anything else—the provision of the benefit is authorised by the Private Health Insurance (Complying Product) Rules.

(16) Clause 69-1, page 41 (line 11), omit “subsection (1)”, substitute “paragraph (1)(a)”.

(17) Clause 69-1, page 41 (line 14), omit “subsection (1)”, substitute “paragraph (1)(a)”.

(18) Page 41 (after line 27), at the end of Division 69, add:

**69-10 Meaning of hospital-substitute treatment**

*Hospital-substitute treatment* means general treatment that:

(a) substitutes for an episode of hospital treatment; and

(b) is any of, or any combination of, nursing, medical, surgical, podiatric surgical, diagnostic, therapeutic, prosthetic, pharmacological, pathology or other services or goods intended to manage a disease, injury or condition; and

(c) is not specified in the Private Health Insurance (Complying Product) Rules as a treatment that is excluded from this definition.

(19) Clause 72-1, page 43 (cell at table item 1, 3rd column), omit the cell, substitute:

at least the amount set out, or worked out using the method set out, in the Private Health Insurance (Benefit Requirements) Rules as the minimum benefit, or method for working out the minimum benefit, for that treatment.

(20) Clause 72-1, page 44 (cell at table item 4, 3rd column), omit the cell, substitute:

(a) at least the amount set out, or worked out using the method set out, in the Private Health Insurance (Prostheses) Rules as the minimum benefit, or method for working out the minimum benefit, for the prosthesis; and

(b) if the Private Health Insurance (Prostheses) Rules set out an amount, or a method for working out an amount, as the maximum benefit, or method for working out the maximum benefit, for the prosthesis—no more than that amount or the amount worked out using that method.

(21) Clause 72-1, page 44 (table item 5), omit the table item, substitute:

| 5 any treatment for which the Private Health Insurance (Benefit Requirements) Rules specify there must be a benefit. |
| at least the amount set out, or worked out using the method set out, in the Private Health Insurance (Benefit Requirements) Rules as the minimum benefit, or method for working out the minimum benefit, for that treatment. |

(22) Clause 72-1, page 44 (lines 1 and 2), omit “a policy holder with, or arranges for a policy holder”, substitute “an insured person with, or arranges for an insured person”.

(23) Clause 72-15, page 46 (line 25), omit “14 days”, substitute “28 days”.

(24) Page 46 (after line 30), at the end of Division 72, add:

**72-20 Other matters**

The Private Health Insurance (Prostheses) Rules may, in relation to applica-
tion fees, initial listing fees or ongoing listing fees imposed under the Private Health Insurance (Prostheses Application and Listing Fees) Act 2007, provide for, or for matters relating to, any or all of the following:
(a) methods for payment;
(b) extending the time for payment;
(c) refunding or otherwise applying overpayments.
(25) Clause 75-1, page 47 (lines 23 and 24), omit "a policy holder with, or arranges for a policy holder", substitute "an insured person with, or arranges for an insured person".
(26) Clause 78-1, page 51 (lines 18 and 19), omit "a policy holder with, or arranges for a policy holder", substitute "an insured person with, or arranges for an insured person".
(27) Clause 84-1, page 53 (line 14), after "treatment", insert "or provides a benefit for anything else".
(28) Clause 93-1, page 58 (line 6), after "each", insert "product subgroup of each".
(29) Clause 93-1, page 58 (line 8), after "each", insert "product subgroup of each".
(30) Clause 93-1, page 58 (after line 9), after subclause (1), insert:
(1A) A single * standard information statement may be the standard information statement for more than one * product subgroup of a * complying health insurance product if the premiums payable under policies in the subgroups the statement covers are the same.
(31) Clause 93-1, page 58 (line 10), after "for a", insert "product subgroup of a".
(32) Clause 93-1, page 58 (line 14), after "for a", insert "product subgroup of a".
(33) Clause 93-1, page 58 (line 18), after "for a", insert "product subgroup of a".
(34) Clause 93-5, page 58 (line 25), after "for a", insert "product subgroup of a".
(35) Clause 93-5, page 58 (line 26), after "the product", insert "subgroup".
(36) Clause 93-10, page 59 (line 10), omit "product", substitute "product subgroup that is likely to apply to the person".
(37) Clause 93-10, page 59 (line 13), after "statement", insert "for that subgroup".
(38) Clause 93-15, page 59 (line 19), omit "that the policy is in", substitute "subgroup that the policy belongs to".
(39) Clause 93-20, page 60 (lines 4 and 5), omit "that the policy is in", substitute "subgroup that the policy belongs to".
(40) Clause 93-20, page 60 (line 10), omit "statement", substitute "statements".
(41) Clause 93-20, page 60 (line 16), after "statement", insert "for the product subgroup that the policy belongs to".
(42) Clause 93-20, page 60 (lines 23 to 30), omit subclause (4) (including the note), substitute:
(4) If a private health insurer changes the health benefits fund to which a complying health insurance policy of the insurer is referable, the insurer must ensure that:
(a) before the change takes effect, an adult insured under the policy is given a statement identifying the health benefits fund to which the policy will be referable as a result of the change; or
(b) within 2 weeks after the change takes effect, an adult insured under the policy is given a statement identifying the health benefits fund to which the policy is referable as a result of the change.
Note: The health benefits fund to which a policy is referable may change in accordance with Division 146.
(43) Clause 96-1, page 62 (line 11), omit "statement", substitute "statements".
(44) Clause 96-1, page 62 (lines 12 and 13), omit "an up to date copy of the statement", substitute "up to date copies of the statements".
(45) Clause 96-5, page 62 (lines 16 to 18), omit “a copy of the "standard information statement for a "complying health insurance product of the insurer is", substitute “copies of the "standard information statements for a "complying health insurance product of the insurer are".

(46) Clause 96-10, page 62 (lines 26 and 27), omit "statement for a "complying health insurance product of the insurer is updated, a copy of the updated statement is”, substitute “statements for a "complying health insurance product of the insurer are updated, copies of the updated statements are”.

(47) Clause 99-1, page 65 (after line 24), after subclause (2), insert:

(2A) A private health insurer must not request a certificate except in the circumstances set out in subsection (2).

(48) Clause 121-5, page 75 (line 16), omit "policy holders of", substitute "persons insured under "complying health insurance products that are "referable to".

(49) Clause 121-5, page 75 (after line 16), after paragraph (7)(e), insert:

(ea) if the Minister is deciding whether to revoke such a declaration—any contravention of conditions to which the declaration is subject; and

(50) Page 75 (after line 21), after clause 121-5, insert:

121-7 Conditions on declarations of hospitals

(1) A declaration under paragraph 121-5(6)(a) that a facility is a hospital is subject to:

(a) any conditions specified under subsection (2); and

(b) any conditions that the Minister specifies under subsection (3) in relation to the facility.

Note: Decisions by the Minister to specify conditions in relation to particular facilities are reviewable under Part 6-9.

(2) The Private Health Insurance (Health Insurance Business) Rules may specify conditions to which declarations under paragraph 121-5(6)(a) are subject. Any conditions so specified apply to all such declarations, whether or not the declarations were made before the conditions were so specified.

(3) The Minister may specify:

(a) in a declaration under paragraph 121-5(6)(a) relating to a facility; or

(b) in a written notice given to a facility for which such a declaration is already in force; conditions, or additional conditions, to which the declaration is subject.

(4) A contravention of a condition to which a declaration under paragraph 121-5(6)(a) is subject does not cause the declaration to cease to have effect.

Note: Contraventions are taken into consideration in deciding whether to revoke a declaration.

(51) Clause 126-40, page 83 (line 30) to page 84 (line 7), omit subclause (2), substitute:

(2) If:

(a) because of subsection (1) or otherwise, a private health insurer is not "registered as a for profit insurer; and

(b) the Council approves under section 126-42 an application by the insurer for the insurer to convert to being registered as a for profit insurer;

the insurer is taken, from the day specified in the Council’s approval, to be registered as a for profit insurer for the purposes of this Act.

(52) Page 84 (after line 34), after clause 126-40, insert:

126-42 Conversion to for profit status

(1) A private health insurer may apply to the Council for approval to convert to being "registered as a for profit insurer.

(2) The application:
(a) must be in the * approved form; and
(b) must include a conversion scheme that is:
(i) in the approved form; and
(ii) accompanied by such further information as is specified in the Private Health Insurance (Registration) Rules; and
(c) must be given to the Council at least 90 days before the day specified in the application as the day on which the insurer proposes that it become * registered as a for profit insurer.

(3) The Council must approve the application if the Council is satisfied, within 30 days after the application was made, that the conversion scheme would not in substance involve the demutualisation of the insurer.

(4) If subsection (3) does not apply:
(a) the Council must, at least 45 days before the day specified in the application, cause a notice of the application to be published in a national newspaper, or in a newspaper circulating in each jurisdiction where the insurer has its registered office or carries on business; and
(b) the Council may, within 90 days after the application is made, give the insurer written notice requiring the insurer to give the Council such further information relating to the application as is specified in the notice.

(5) If subsection (3) does not apply, the Council must approve the application if:
(a) the insurer has complied with subsection (2) in relation to the application, and given to the Council such further information as the Council has required under paragraph (4)(b); and
(b) the Council is satisfied that the conversion scheme would not result in a financial benefit to any person who is not a * policy holder of, or another person insured through, a * health benefits fund conducted by the insurer; and
(c) the Council is satisfied that the conversion scheme would not result in financial benefits from the scheme being distributed inequitably between such policy holders and insured persons.

(6) The Private Health Insurance (Registration) Rules may provide for criteria for deciding, for the purposes of subsection (3), whether a conversion scheme would not in substance involve the demutualisation of the insurer.

(7) The Council must cause the insurer to be notified in writing of the Council’s decision on the application.

Note: Refusals of applications are reviewable under Part 6-9.

(53) Clause 137-1, page 90 (after line 21), after subclause (4), insert:

(4A) The * assets of a health benefits fund:
(a) include assets that, in accordance with a restructure or arrangement approved under Division 146, are to be assets of the fund; but
(b) do not include assets that, in accordance with such a restructure or arrangement, are no longer to be assets of the fund.

(54) Clause 137-10, page 92 (lines 7 to 9), omit subparagraph (2)(a)(i), substitute:

(i) meeting * policy liabilities and other liabilities, or expenses, incurred for the purposes of the business of the fund (including policy liabilities and other liabilities that are treated, in accordance with a restructure or arrangement approved under Division 146, as policy liabilities and other liabilities incurred for the purposes of the fund); or
(55) Clause 137-10, page 92 (after line 12), at the end of paragraph (2)(a), add:
   (iv) a purpose specified in the Private Health Insurance (Health Benefits Fund Policy) Rules for the purposes of this subparagraph; or
(56) Clause 137-10, page 92 (line 19), omit “other” (second occurring).
(57) Clause 140-20, page 99 (line 16), omit “organisation”, substitute “insurer”.
(58) Clause 140-20, page 99 (line 26), omit “issuing”, substitute “giving”.
(59) Clause 143-20, page 104 (line 18), omit “organisation”, substitute “insurer”.
(60) Clause 143-20, page 104 (line 30), omit “issuing”, substitute “giving”.
(61) Clause 146-1, page 106 (lines 5 to 15), omit subclause (1), substitute:
   (1) A private health insurer may restructure its health benefits funds so that insurance policies that are referable to a health benefits fund (a transferring fund) of the insurer become referable to one or more other health benefits funds (receiving funds) of the insurer (whether existing or proposed) if:
   (a) the insurance policies concerned are all of the policies that, immediately before the restructure, were referable to the transferring fund and belonged to one or more policy groups of that fund; and
   (b) the insurer applies to the Council, in the approved form, for approval of the restructure; and
   (c) the Council approves the restructure in writing; and
   (d) the insurer complies with any requirements that the Private Health Insurance (Health Benefits Fund Administration) Rules impose on the insurer in relation to the restructure.
(62) Clause 146-1, page 106 (line 17), after “if”, insert “, and only if,”.
(63) Clause 146-1, page 106 (lines 18 and 19), omit paragraph (2)(a), substitute:
   (a) the assets and liabilities that would be transferred to the receiving fund or funds represent a reasonable estimate of what would, immediately before the restructure, be the net asset position of the transferring fund; and
   (aa) if there is more than one receiving fund—those assets and liabilities would be fairly distributed between the receiving funds; and
(64) Clause 146-1, page 106 (after line 21), after subclause (2), insert:
   (2A) For the purposes of paragraph (2)(a), in working out the net asset position of the transferring fund, disregard the net asset position of the fund to the extent that it relates to insurance policies that do not belong to a policy group referred to in paragraph (1)(a).
(65) Clause 146-1, page 106 (lines 25 and 26), omit “(a transferring fund)”.
(66) Clause 146-1, page 106 (line 31), omit “(a receiving fund)”.
(67) Clause 146-1, page 107 (after line 5), after paragraph (4)(a), insert:
   (aa) how to work out reasonable estimates of the kind referred to in paragraph (2)(a);
   (ab) criteria for deciding, for the purposes of paragraph (2)(aa), whether assets and liabilities would be fairly distributed;
(68) Clause 146-1, page 107 (lines 12 and 13), omit subparagraph (4)(c)(ii), substitute:
   (ii) policy liabilities and other liabilities incurred for the purposes of a transferring fund becoming treated as policy liabilities and other liabilities incurred for the purposes of a receiving fund or funds;
(69) Clause 146-5, page 108 (line 1) to page 109 (line 21), omit the clause, substitute:
146-5 Merger and acquisition of health benefits funds

(1) A private health insurer (the "transferee insurer") may enter into an arrangement with one or more other private health insurers ("transferor insurers") under which:

(a) insurance policies that are * referable to a * health benefits fund or funds ("transferring funds") of the transferor insurer or transferor insurers become referable to a health benefits fund or funds ("receiving funds") of the transferee insurer; and

(b) in relation to each of the transferring funds, the insurance policies concerned are:

(i) all of the insurance policies that are referable to the transferring fund; or

(ii) all of the insurance policies that are referable to the transferring fund and that belong to one or more * policy groups of the fund.

(2) However, the arrangement must not take effect unless:

(a) the insurers referred to in subsection (1) apply jointly to the Council, in the * approved form, for approval of the arrangement; and

(b) the Council approves the arrangement in writing; and

(c) the insurers comply with any requirements that the Private Health Insurance (Health Benefits Fund Administration) Rules impose on the insurers in relation to the arrangement.

(3) The Council must approve the arrangement if, and only if, it is satisfied that:

(a) the * assets and liabilities that would be transferred, under the arrangement, to the receiving fund or funds represent a reasonable estimate of what would, immediately before the restructure, be:

(i) if there is only one transferring fund—the * net asset position of the fund; or

(ii) if there is more than one transferring fund—the sum of the net asset positions of each of the funds; and

(b) if, under the arrangement, there would be more than one receiving fund—those assets and liabilities would be fairly distributed between the receiving funds; and

(c) if subparagraph (1)(b)(i) applies to any transferring fund—those assets and liabilities would be fairly distributed between the receiving funds; and

(d) the arrangement will not result in any breach of the * solvency standard or the * capital adequacy standard if it takes effect.

Note: Refusals to approve transfers are reviewable under Part 6-9.

(4) For the purposes of paragraph (3)(a), in working out the * net asset position of a transferring fund to which subparagraph (1)(b)(ii) applies, disregard the net asset position of the fund to the extent that it relates to insurance policies that do not belong to a * policy group referred to in that subparagraph.

(5) The Private Health Insurance (Health Benefits Fund Administration) Rules may provide for the following:

(a) criteria for approving or refusing to approve applications under this section;

(b) how to work out reasonable estimates of the kind referred to in paragraph (3)(a);

(c) criteria for deciding, for the purposes of paragraph (3)(b), whether assets and liabilities would be fairly distributed;
(d) requirements to notify interested persons of the outcomes of such applications;
(e) matters connected with how arrangements take effect, including the following:
(i) insurance policies becoming *referable to a *health benefits fund or funds of the transferee insurer,
(ii) *policy liabilities and other liabilities incurred for the purposes of a health benefits fund or funds of a transferor insurer becoming treated as policy liabilities and other liabilities incurred for the purposes of a health benefits fund or funds of the transferee insurer,
(iii) *assets of a health benefits fund or funds of a transferor insurer becoming assets of a health benefits fund or funds of the transferee insurer,
(iv) the timing of arrangements;
(f) requirements for private health insurers to give the Council information following arrangements taking effect.
(6) The transferee insurer must, within 28 days after the arrangement takes effect, notify the Council of the arrangement. The notice must comply with any requirements specified in the Private Health Insurance (Health Benefits Fund Administration) Rules.
(7) For the purposes of this Act, an insurance policy that becomes *referable to a *health benefits fund of the transferee insurer as a result of the arrangement is treated, after the arrangement takes effect, as if it were an insurance policy issued by the transferee insurer.

146-10 Consent of policy holders not required

The consent of the *policy holders of a *health benefits fund is not required for any:
(a) restructuring health benefits funds as provided for in section 146-1; or
(b) entering into arrangements of a kind referred to in section 146-5, or implementing such arrangements; unless the constitution of the private health insurer conducting the fund provides otherwise.

(71) Page 109 (after line 21), at the end of Division 146, add:
146-15 Other laws not overridden

This Division does not affect the operation of any other law of the Commonwealth, a State or a Territory in relation to:
(a) restructuring *health benefits funds as provided for in section 146-1; or
(b) entering into arrangements of a kind referred to in section 146-5, or implementing such arrangements.

(72) Clause 149-45, page 114 (line 26), omit “amount”, substitute “value”.
(73) Clause 149-55, page 115 (lines 13 to 21), omit the clause, substitute:
149-55 Report of terminating manager

(1) The *terminating manager may, at any time, make a written report to the Council on the termination of the *health benefits funds of a private health insurer, and must make such a report as soon as practicable after the termination of the funds.
(2) The report may include a recommendation that an application be made under section 149-60 for the winding up of the insurer.

(74) Clause 149-60, page 115 (lines 23 to 32), omit subclause (1), substitute:
(1) If the *terminating manager’s report under section 149-55 includes a rec-
ommendation that an application be made under this section for the winding up of a private health insurer, the Council, or the terminating manager, may apply to the Federal Court for an order that the insurer be wound up.

(75) Clause 149-60, page 116 (after line 2), after subclause (2), insert:

(2A) On an application under subsection (1), the Federal Court may make an order that the insurer be wound up if the Court is satisfied that it is in the financial interests of the "policy holders of the "health benefits funds conducted by the insurer that such an order be made.

(76) Clause 163-10, page 127 (line 23), omit ""policy holder of", substitute "person insured under a "complying health insurance product that is "referable to"".

(77) Clause 169-5, page 133 (line 19), omit "The report", substitute "Any such accounts or statements".

(78) Clause 169-15, page 134 (line 24), omit "before", substitute "not more than 28 days after".

(79) Clause 172-5, page 136 (after line 12), at the end of the clause, add:

Note: Medical practitioners may, in dealings with private health insurers, be able to take advantage of the collective bargaining provisions of Subdivision B of Division 2 of Part VII of the Trade Practices Act 1974.

(80) Clause 172-10, page 136 (line 15), omit ""policy holders of", substitute "persons insured under "complying health insurance products that are "referable to"".

(81) Clause 200-1, page 151 (line 10), omit "the insurer", substitute "a private health insurer".

(82) Clause 217-10, page 172 (line 23), omit "the "policy holder", substitute "a "policy holder".

(83) Clause 217-35, page 175 (line 14), omit ""administrator", substitute ""external manager".

(84) Clause 217-35, page 175 (line 16), omit ""administrator", substitute ""external manager".

(85) Page 181 (after line 25), at the end of Division 217, add:

217-80 Application of provisions of Corporations Act

Regulations etc. under the Corporations Act

(1) A reference in an "application provision to an "applied Corporations Act provision includes (unless the contrary intention appears) a reference to any regulations or other instruments in force for the purposes of that provision, or any of those provisions, of the Corporations Act 2001.

Note: So, for example, a provision of this Act that applies a particular provision of the Corporations Act 2001 also applies any regulations that have effect for the purposes of that provision (unless a contrary intention appears).

(2) An application provision is a provision of this Division that:

(a) provides for the application of a provision, or a group of provisions (including a Chapter, Part, Division or Subdivision), of the Corporations Act 2001; or

(b) refers to a provision, or group of provisions, of the Corporations Act 2001 as so applied.

(3) An applied Corporations Act provision is a provision, or a provision in a group of provisions, of the Corporations Act 2001 that is applied as mentioned in paragraph (2)(a).
Modifications under the Private Health Insurance (Health Benefits Fund Enforcement) Rules

(4) If an "application provision contains a power for the Private Health Insurance (Health Benefits Fund Enforcement) Rules to modify an "applied Corporations Act provision:

(a) the power extends to modifying any regulations or other instruments, in force for the purposes of that provision of the Corporations Act 2001, that are applied as a result of subsection (1); and

(b) the modifications (whether of the applied Corporations Act provision or of regulations or instruments referred to in paragraph (a)) that may be made include omissions, additions and substitutions.

(5) The fact that provision is made in this Act for a specific modification of one or more "applied Corporations Act provisions does not imply that further modifications of that provision, or any of those provisions, consistent with that specific modification, should not be made by the Private Health Insurance (Health Benefits Fund Enforcement) Rules.

Corporations Act definitions and interpretation principles

(6) The definitions and interpretation principles that have effect in or under the Corporations Act 2001 have the same effect in relation to:

(a) an "applied Corporations Act provision; or

(b) a provision of regulations or another instrument that is applied as a result of subsection (1);

as that provision applies for the purposes of a provision of this Division, unless a contrary intention appears in an "application provision or in a modification made by the Private Health Insurance (Health Benefits Fund Enforcement) Rules.

Things that may be done under regulations under the Corporations Act

(7) If an "applied Corporations Act provision allows something to be done in or by regulations, then:

(a) the Private Health Insurance (Health Benefits Fund Enforcement) Rules may do that thing for the purposes of the applied Corporations Act provision; and

(b) if they do, any regulations or instruments that are applied as a result of subsection (1) are ineffective, for the purposes of this Division, to the extent that they are inconsistent with the provisions of the Private Health Insurance (Health Benefits Fund Enforcement) Rules that do that thing.

(86) Clause 250-1, page 208 (line 15), after “subsection (1)”, insert “or (2)”.

(87) Clause 261-5, page 218 (lines 11 and 12), omit “"External management and "terminating management of "health benefits funds”, substitute “The Private Health Insurance Administration Council”.

(88) Clause 290-10, page 252 (line 22), after “fund”, insert “power”.

(89) Page 268 (after line 31), at the end of Division 307, add:

307-30 Other matters

The Private Health Insurance (Levy Administration) Rules may, in relation to "private health insurance levy or "late payment penalty, provide for, or for matters relating to, any or all of the following:

(a) methods for payment;

(b) extending the time for payment;

(c) refunding or otherwise applying overpayments.

(90) Clause 328-5, page 284 (after table item 4), insert:
4A To specify a condition, in relation to a particular facility, to which a declaration that a facility is a hospital is subject paragraph 121-7(1)(b)

(91) Clause 328-5, page 284 (after table item 6), insert:
6A To refuse an application for approval for a private health insurer to convert to being "registered as a for profit insurer subsection 126-42(5)

(92) Clause 333-20, page 291 (line 8), before "The", insert "(1)"

(93) Clause 333-20, page 291 (table item 3), omit "section 188-1 and definition of hospital-substitute treatment in the Dictionary in Schedule 1", substitute "section 188-1".

(94) Clause 333-20, page 291 (after table item 3), insert:
3A Private Health Insurance (Benefit Requirements) Rules Part 3-3

(95) Clause 333-20, page 292 (after line 1), at the end of the clause, add:
(2) If, under this Act, Private Health Insurance Rules made by the Minister may modify a provision of this Act or another Act (including by modifying the effect, or the requirements, of such a provision), the Rules may do so by adding, omitting or substituting provisions (including effects or requirements of provisions).

(96) Clause 333-25, page 293 (after line 6), at the end of the clause, add:
(3) If, under this Act, Private Health Insurance Rules made by the Council may modify a provision of this Act or another Act (including by modifying the effect, or the requirements, of such a provision), the Rules may do so by adding, omitting or substituting provisions (including effects or requirements of provisions).

(97) Schedule 1, page 294 (after line 12), after the definition of applicable benefits arrangement, insert:
application provision is defined in subsection 217-80(2).

(98) Schedule 1, page 294 (after line 12), after the definition of applicable benefits arrangement, insert:
applied Corporations Act provision is defined in subsection 217-80(3).

(99) Schedule 1, page 294 (lines 17 and 18), omit "subsections 137-1(3) and (4)", substitute "subsections 137-1(3) to (4A)".

(100) Schedule 1, page 297 (lines 6 to 14), omit the definition of hospital-substitute treatment, substitute:
hospital-substitute treatment is defined in section 69-10.

(101) Schedule 1, page 298 (after line 17), after the definition of member, insert:
net asset position, of a * health benefits fund, means the difference between:
(a) the * assets of the fund; and
(b) the * policy liabilities and other liabilities of the fund that the private health insurer conducting the fund has incurred for the purposes of the fund.

(102) Schedule 1, page 301 (line 22), after "treatment", insert "or provides a benefit for anything else".

(103) Schedule 1, page 301 (after line 24), after the definition of product, insert:
product subgroup is defined in subsection 63-5(2A).

(104) Schedule 1, page 302 (line 27), omit the definition of relevant amount.

The Private Health Insurance Bill 2006 and related bills were introduced into the parliament on 7 December 2006. The proposed legislation will support innovation and greater choice in private health care and es-
tablish a clearer and simpler regulatory framework. It reflects the considered and constructive input from the private health sector and an extensive consultation process. Following comments on the legislation over the summer recess, the government proposes a range of amendments that improve the clarity and the operation of the legislation, correct some technical areas and add elements to the consequential amendments that could not be included at the time of introduction as they required further consideration within government or consultation with the Ministerial Council on Corporations Law.

There are a number of technical amendments. I turn firstly to government amendments (4), (5), (19) to (21) and (94), which relate to setting minimum benefits for hospital treatment. These amendments replace the existing wording of how minimum benefits for different kinds of hospital treatment are set. The amendments provide that the amount of minimum benefit may either be set in the rules or calculated according to the rules, and provide for benefits to be set in the benefit requirement rules rather than the complying product rules. I advise the committee that the rules are disallowable instruments.

The next batch of amendments relates to product subgroups, and that involves government amendments (6), (9), (10), (13), (14), (28) to (41), (43) to (46), (103) and (104). These amendments establish and then apply the concept of a product subgroup. A product subgroup is all the policies in a product which cover the same combination of people, for example, single people, couples or families with children living in the same state. Insurers generally charge different premiums for each subgroup, and a different standard information statement will be required for each subgroup. There are different actuarial considerations which come into play in relation to this, and they are even affected by geographical factors such as in which state the person is living.

The next subgroup of government amendments, (7) and (8), relates to rules which may exclude health insurance business from complying with product requirements. These amendments provide that insurers may carry out health insurance business other than in the form of a complying health insurance product in circumstances set out in the rules. This is intended to allow insurers to offer products such as overseas visitor health cover which do not need to comply with all the requirements of chapter 3. You can only sell a domestic health insurance product if it complies with the rules. This is a domestic requirement. The government believes that insurers should also be able to cover visitors from overseas, as an example, and this allows that freedom, as I mentioned.

The next government amendments relate to allowable discounts on premiums, and I refer to government amendments (11) and (12). These amendments to the premium discounting provision make it clear that premiums may be discounted for several reasons as long as the maximum discount is not exceeded. For example, a discount may be offered because a person pays three months in advance and because the person agrees to claim electronically, and different discounts may be offered for the same generic reason—a person paying a year in advance may be offered a larger discount than a person paying three months in advance. They add to the reasons for discounts for policyholders agreeing to communicate and claim electronically and exclude from the maximum discount the reduction in premiums offered to policyholders who are not required to pay a state ambulance levy. This is relative to the community rating issue and it deals with that principle of not unduly favouring healthy people as against those people who may have
an illness or disadvantage, and that is of relevance.

The next government amendments deal with expanding coverage of complying health insurance products, and I refer to government amendments (15) to (17), (27), (55) and (102). These amendments provide that insurance policies may offer and pay benefits for funeral expenses and similar non-health expenses if such benefits are authorised in the rules, and that is a fairly straightforward amendment.

The next group of amendments relates to relocation of the definition of hospital substitute treatment. Government amendments (18), (93) and (100) deal with this issue and they relocate the definition of hospital substitute treatment from the dictionary to division 69 to assist in clarifying drafting—and the dictionary is contained in schedule 1, which has all the defined terms.

The next group of amendments relates to insured persons, and I refer to government amendments (22), (25), (26), (48), (76) and (80). These amendments are essentially technical corrections to replace references to 'policyholders' with references to the wider concept of 'insured persons'.

The next group of government amendments, (23) and (24), relates to a deadline for an administration of prostheses applications and listing fees. These amendments extend the time period for paying ongoing prostheses listing fees and provide for rules to be made to deal with payment methods, timing and replacements. This has some relevance to recommendation 6, I understand, of the Senate committee which looked into this bill.

The next subject matter relates to notifying changes of health benefits funds, and I refer to government amendment (42). This amendment extends the time for policyholders to be notified of a change in the health benefits fund to which their policy is attached up to two weeks after the change takes effect rather than before the change takes effect. This is intended to allow for rapid transfer of policies from one fund to another if this is required for fiduciary reasons. The next amendment relates to transfer certificates—government amendment (47). This amendment provides for restrictions on when private health insurers can request a transfer certificate so that requests cannot be arbitrarily made to obtain information on prospective members from competitors, the principle being that you have to transfer first before a transfer certificate can be required. I understand that this is something that was sought by the private health industry.

The next three government amendments, (49), (50) and (90), relate to conditions of declarations of hospitals. These amendments provide for declarations of premises as hospitals to be subject to explicit conditions either set out in the rules or determined by the minister on a case-by-case basis. The provisions in the bill allow for implicit conditions by requiring hospitals to adhere to undertakings regarding provision of data. These amendments make those conditions explicit.

Government amendments (51), (52) and (91) relate to conversion to for-profit status. These amendments provide an approval process for not-for-profit mutual health insurers wishing to convert to for-profit status—a demutualising process, if you like. Essentially, such conversions are subject to scrutiny by the private health insurance council and must be approved as long as nobody other than the policyholders or insured persons receives a financial benefit from the conversion scheme and as long as any benefits that are available are distributed equitably. These amendments are intended to ensure that the limited number of company members of non-participating mutuals cannot obtain windfall gains from the effect of demutualisation of the insurer. Most mutual
health insurers do not have shareholders; all of their members are shareholders in that sense. This is an issue which, I understand, attracted some attention, and the government believes that these are appropriate amendments. This of course is a prudential measure.

The next amendments deal with the restructure, merger and acquisition of health benefits funds. I refer to government amendments (53), (54), (61) to (71), (99) and (101). These amendments clarify the operation of the division dealing with the restructure and merger of health benefits funds. Comments on the bill as introduced made it clear that the original drafting contained a number of ambiguities and could be interpreted as operating in several different ways. The redrafted provisions are intended to be clear and consistent. Briefly, under clause 146-1, an insurer can restructure its health benefits fund or funds subject to PHIAC approval. PHIAC must approve unless it considers that assets and liabilities would not be fairly distributed between funds as a result of the restructure. Under 146-5, several insurers can agree to merge health benefits funds, again subject to PHIAC approval. Again PHIAC must approve unless it considers that assets and liabilities would not be fairly distributed between funds as a result of the arrangement. Of course, PHIAC is the Private Health Insurance Administration Council, which is the prudential body, if you like, governing this.

The next amendments relate to winding up health benefits funds. I refer to government amendments (73) to (75). These amendments change the winding-up provisions to allow PHIAC to apply for an order winding up an insurer once the termination of the health benefits funds conducted by the insurer has begun. Under the bill as introduced, PHIAC could only make such an application once the health benefits funds termination process had ended. The amendments, therefore, give PHIAC greater flexibility.

Government amendment (78) deals with the deadline for notifying a change of CEO. It provides that insurers must notify a change in chief executive officer within 28 days of it taking effect, rather than prospectively.

Government amendment (79) deals with collective bargaining and notes that medical practitioners may be able to access the collective bargaining provisions in the Trade Practices Act in dealing with insurers.

Government amendments (85), (97) and (98) deal with the application of provisions of the Corporations Act. These amendments add a new clause explaining how references in the bill to Corporations Act provisions are to be interpreted. The external management and terminating management provisions in the bill are based on equivalent provisions in the National Health Act, which drew on the Corporations Act by reference. Section 7 in the National Health Act explained how these references were to be treated, but an equivalent clause was not included in the bill as it was introduced.

Government amendment (89) deals with the administration of levies and provides for rules to be made to deal with payment methods, timing and repayment of private health insurance levies under part 6-6.

Government amendments (92), (95) and (96) deal with modifications by private health insurance rules. These amendments clarify that references in the bill to rules modifying the provisions of the bill mean that the rules may add, omit or substitute provisions in the bill. The rules will, of course, as I said earlier, be subject to parliamentary scrutiny. There was a request by the Scrutiny of Bills Committee for clarification of this. This was provided. I understand that, although this amendment may not be neces-
sary, it certainly deals with an issue and clarifies it.

Government amendments (1) to (3), (56) to (60), (72), (77), (81) to (84) and (86) to (88) are all technical drafting corrections. That covers the government amendments.

Senator ALLISON (Victoria—Leader of the Australian Democrats) (9.49 am)—I may have missed it in the minister’s remarks before I came in, but it would be useful to know how it is we are faced with 104 amendments to a relatively small bill in such a short time frame. Why were these mistakes made? Was it a typical case of bills being rushed into the parliament without proper consideration and consultation?

Senator ELLISON (Western Australia—Minister for Human Services) (9.49 am)—They were not mistakes. I made remarks earlier in the opening of the committee stage which outlined that over the summer recess the government had received various comments on the legislation. It proposed a number of amendments which I think went to clarifying the operation of the legislation. There are numerous amendments which are technical in nature. There are also other amendments which have been introduced after further consideration and consultation with the Ministerial Council for Corporations.

It is not abnormal, over a period of time, between the introduction of a bill and the time it gets here, for government amendments to be brought forward. In fact, when we do not, we get criticised for not being responsive; when we do, it is a mistake. Technical aspects have been identified. There is nothing wrong with that. We have to get it right. I have identified those technical aspects. Where they have been more substantial in nature I have outlined the policy consideration behind that. In the supplementary explanatory memorandum, on page 1, there is a description of the groups of amendments. I would draw Senator Allison’s attention to that. That may assist her in sorting out which amendments she may wish to address during the committee stage.

As I said earlier, we are not putting forward government amendments (1) to (104) in a lump sum fashion to the extent that you cannot pick out those you want to debate. I indicated that senators may well want votes to be taken separately on various amendments and we have the committee stage to go through that. It is an orderly process that has ensued since we introduced these bills, and this is a reflection of that process.

Senator ALLISON (Victoria—Leader of the Australian Democrats) (9.52 am)—In the short time that has been available for us to look through the amendments, we cannot see any major issues with any of them, so we will be supporting them. They do seem to be technical. I am more than happy that they have been moved together, unless others object to that approach. I was not indicating that we would be opposing any or that we even wish to debate any. They seem to us to be straightforward technical mistakes that are being corrected. It is difficult, nonetheless—there are 104 amendments and we only had about 24 hours to look at them.

The TEMPORARY CHAIRMAN (Senator Troeth)—The minister has indicated that the amendments will be taken together unless individual senators choose to debate particular amendments.

Senator McLUCAS (Queensland) (9.52 am)—I would like to concurred with Senator Allison’s comment about the enormity of this package of amendments to what are the largest changes to private health insurance administration in Australia. I acknowledge and accept that there will be times when amendments are required between the introduction of legislation and its final carriage, but we
have received 104 amendments that are highly technical in nature, with limited time to pursue them closely and with limited time to be able to consult with the community about their impact. With bills of this nature, because they are so significant, it is important that there is consultation with the community at each step, in this case with the private health insurance industry, the hospital sector, doctors themselves and, hopefully, those health consumers that may be impacted.

The minister has said that this is an orderly process. The minister may not know that on the day of the hearing into this huge change to the way in which we administer private health, we received a very large document which in fact was the delegated legislation. It was ludicrous to think that we might be looking at that legislation whilst we were conducting the inquiry and comprehending what it included, and that was difficult for all members of the committee.

I can indicate that Labor will support all amendments. We do not intend to break them into sections. I concur with what Senator Allison said about moving them en bloc. Hopefully the amendments are going to do what has been indicated. It is unfortunate though that we are hoping that something will happen whilst we are passing amendments to a very large piece of legislation.

Question agreed to.

Senator ALLISON (Victoria—Leader of the Australian Democrats) (9.55 am)—I move Democrats amendment (1) on sheet 5212:

(1) Page 4 (after line 10), after clause 3-30, insert:

3-35 Review of operation of Act

(1) The Minister must cause an independent review of the operation of this Act to be completed by 1 April 2009.

(2) In conducting the review, consideration must be given to:

(a) an examination of the extent to which broader health cover has eroded universalism in healthcare and contributed to inequity in access to services between those with private health insurance and those without; and

(b) an audit of health insurance products to identify any that provide financial or other incentives that are contrary to the principle of community rating; and

(c) an assessment of the adequacy of the standard information statements arrangements in assisting consumers to compare private health insurance products.

(3) The person undertaking the review must give the Minister a written report of the review.

(4) The Minister must cause a copy of the report of the review to be tabled in both Houses of the Parliament within 15 sitting days of receiving the report.

This amendment would put in place an independent review of the operation of the act, to be completed by 2009—two years time. Again, because of the very significant change that this bill represents, we think that a review is going to be important and that a two-year time frame is appropriate. It is an amendment we have put many times in this place and we would urge the government to accept it.

Senator McLUCAS (Queensland) (9.56 am)—I need to indicate to Senator Allison that Labor is of a view to support the principle of a review. However, we are concerned that subclause (2) of the Democrats proposed amendment, which essentially sets out part of the terms of reference, does not accommodate the potential that there might be for value to be achieved especially through broader health cover. It is our view that the
terms of reference that you have proposed are somewhat charged and indicate a view prior to there being an open analysis of the implementation of this legislation. So, if the Democrats were of a mind to delete the second section, Labor would be able to support the amendment. Reviewing legislation is something we all have to do, but I think to construct the review within a fairly negative construct pre-empts an outcome that may not in fact be there. I just put that on the table for Senator Allison.

Senator ALLISON (Victoria—Leader of the Australian Democrats) (9.57 am)—In answer to that suggestion, I think this goes to the central point of this legislation: is it going to damage universalism of the public health insurance system? It seems to me important to put that into terms of reference. If that aspect is not there, we will have a review which may be from the perspective of the private health insurance industry, and it may be that they will say: ‘This is fantastic. It’s the government’s objective to increase the scope of private health insurance in this country. We’re achieving that, and everything is wonderful,’ and not look at this central question: does this do damage to a public health insurance system which I think this country can be very proud of? It is there because, for us, this is central to the whole debate. This is what we worry about with this bill.

The risks associated with this bill have got to be written into the terms of reference. Yes, that may sound negative, but I feel quite negative about this bill. I am deeply worried, as are the rest of the Democrats. That part of the amendment was put there rather deliberately because we would not want to see that aspect of it overlooked. We could tweak the terms of reference; I am sure we could expand on them. If the minister is at all inclined to conduct a review, I am sure we could sit down and negotiate what those words ought to be, although it is getting rather late in the debate. If there were agreement to do that, I would be happy to remove the specifics so that we could reach agreement in some other way at some later stage. But if the minister is ready to indicate whether a review is on the government’s horizon or whether they are at all inclined to support this amendment then that might be useful.

Senator ELLISON (Western Australia—Minister for Human Services) (9.59 am)—This is a fairly standard proposal by the Democrats, although it does have that aspect of the terms of the review which vary from those of the usual review that is proposed when we have a bill before the Senate. The government believes that it has consulted extensively with stakeholders in the area. It continues to do so. This is an area which enjoys a great deal of public scrutiny. This will continue to be an area where the government consults with insurers, healthcare service providers and consumers. To not do so would be at the government’s own peril. So really it is an ongoing work in progress, if you like, in dealing with the health sector.

The numerous amendments which have been commented on have come about as a result of further consultation in that interim period between when the bill was introduced into the House of Representatives and its arrival in the Senate. The government is of the view that this review is not necessary. There is an ongoing review which is in progress by virtue of the scrutiny applied to what is a very important area for all Australians and another review is not required. The government does not agree with the Democrat amendment.

Senator ALLISON (Victoria—Leader of the Australian Democrats) (10.01 am)—The government says there is ongoing scrutiny and review being carried out, but the point is
that it is the parliament that is making this decision today. I think the government needs to be reminded of that. It is not just the government that deals with the Australian public or this sector or anything else; it is the parliament making this decision. We need to be sure that the objectives that the government has set are tested against those objectives but also against the broader objectives of a better health system in this country. I do not think I am overstating this issue. What would be required of this review, of course, would be that it be undertaken independently, that it report to the minister and then, most importantly, that it table the report in both houses of parliament within 15 days of receiving the report.

We have raised a whole lot of questions. We do not know whether premiums are going to rise, for instance. We do not know the scope of this change. This is a major change to our health system. We have no idea whether the government’s claims are accurate. We have no idea whether, as I said, this will damage our public health insurance system or not and, if so, to what extent. We do not know the answers to these questions. It is not an unreasonable request to say, ‘Let’s have a proper, independent, public review that is brought to this place so that we can know if the decision that is made here is the right one.’

I will not deliver this lecture again, but I think, Minister, that it is not acceptable for you to say, ‘Our review is the review that we want to conduct; it will be with lots of people; it will be with the sector; we will talk to doctors and the private health insurance sector.’ That is not a review. That might be a review in your terms, but it is not a proper, independent review and it is not a review that we can trust. It is not a review that we will even see necessarily. A review is necessary on this very major change to our health system and I urge you to reconsider.

As I said, I would be quite happy to drop the terms of reference so that we can find some words that are acceptable to everybody. But to not have a review of such a major change seems to me to be irresponsible. The government deserves to be heavily criticised for not proceeding down this path if it maintains this position.

Question negatived.

Senator ALLISON (Victoria—Leader of the Australian Democrats) (10.03 am)—I oppose divisions 34 to 40 in the following terms:

Division 34, page 21 (line 2) to Division 40, page 30 (line 9), TO BE OPPOSED.

This is also an amendment that I have moved in the past on private health insurance. It is our view that Lifetime Health Cover and the age loadings have coerced people into being members of private health insurance who would otherwise not be. If we removed that Lifetime Health Cover provision then we would be likely to see changes in those people who are in private health insurance and a major saving on the rebate.

I would have moved a second reading amendment, had I not already done one, that would have seen funding from the private health insurance rebate transferred into a much more sensible arrangement of public dental health programs, as I said in my speech in the second reading debate. The Commonwealth subsidises dental services for the wealthy through the rebate but it pulled back, as we all know, in 1996 from providing any funding for the public dental health services. That has had huge health implications. Waiting lists now are increasing again. You can sit back and say, ‘It’s up to the states,’ but it is primary health care and I would argue that there is a Commonwealth role in making sure that we provide affordable dental health services. However, I was unable to put that second reading amend-
ment. That is the point behind this. It would free up some of that very expensive rebate to be spent on a more equitable approach. It would balance the huge amount which is currently going through that rebate to people who are largely wealthier and can afford private health insurance. I know they are not all wealthy. I understand that some people struggle on quite low incomes to be able to afford private health insurance. I have never understood why myself. It seems to me to be very expensive. I much prefer the public health insurance system.

So that is what this amendment is about. As I said, I have moved an amendment of this sort many times before and I will keep moving them. I also recognise that the government is not interested in this amendment and maybe even Labor is not interested. Nonetheless, I think the reforms that ought to be made to the system are to do with removing that coercive aspect of private health insurance.

Senator McLUCAS (Queensland) (10.06 am)—Labor cannot support the proposal from the Democrats. We think it is essential for the operation of private health sector in Australia to maintain the incentives that are in place. As a result, we cannot support the amendment.

Senator ELLISON (Western Australia—Minister for Human Services) (10.07 am)—Likewise, the government opposes this amendment very strongly, because Lifetime Health Cover not only has been a policy of the government’s since July 2000 but also is a plank of private health in this country. You have to provide for protection against people who are hit-and-run in the way they approach private health cover—who, in their younger years, may not be a member of a private health fund but, when they are approaching their older years and might need it, suddenly join. If everybody did that, the premiums for private health cover would just rocket. So we are trying to get younger people to join private health at an earlier stage and that is the principle behind Lifetime Health Cover.

We need people to think in terms of looking after themselves where they are able to. You have the public health system there to look after those very people. But the government’s attitude is: ‘If you can look after yourself more than adequately, why should you be a burden on the taxpayer if you can provide for that self-sufficiency? We encourage you to do it earlier and plan your life accordingly.’ I would even say to young people who think that they don’t need it, ‘You never know what is around the corner.’ Private health cover is something that I would recommend to any young person who is embarking on their working career. This plank of Lifetime Health Cover is essential, and the government is opposed to this amendment.

The TEMPORARY CHAIRMAN (Senator Moore)—The question is that divisions 34 to 40 stand as printed.

Question agreed to.

Senator HUMPHRIES (Australian Capital Territory) (10.09 am)—I oppose clauses 152-1 and 152-20 in the following terms:

(1) Clause 152-1, page 117 (line 3) to page 118 (line 5), TO BE OPPOSED.

(2) Clause 152-20, page 119 (lines 21 to 24), TO BE OPPOSED.

I am asking the Senate to omit clauses 152-1 and 152-20 of the bill, and I value the opportunity to explain why. The question of the obligations imposed on directors of health insurance companies was a matter which was touched on in submissions made to the Senate Standing Committee on Community Affairs inquiry into these bills but not a matter that was greatly dwelt on by the committee and, with hindsight, perhaps it should have been.
The legislation imposes on directors of health insurance companies a set of obligations to the policyholders of those companies. And it is, of course, possible that a health insurer may have both policyholders—that is, those people who insure with the company—and shareholders, to whom an entirely different set of obligations are owed under the corporations law. The point was made by members of the industry during the inquiry that some of the compliance elements of the legislation appear to exceed the standards of conduct expected of company directors under the Corporations Law. And the point was made that the government had undertaken to ensure that compliance and corporate governance standards in the new legislation did not exceed those expected in any other sphere of business, and that it may have been the case that the legislation had strayed into new ground. In other words, these obligations with respect to policyholders contained in 152-1 are not a feature of the current law and therefore this puts a new complexion on the legal position of directors of those organisations. The industry made the point, I think quite fairly, that that extra statutory duty imposed on those directors could create confusion and could result in there being, indeed, a conflict between the obligations that a director owed to shareholders and the duty that the director owed to policyholders. This conflict was not resolved—or, indeed, even averted to, particularly—in the legislation.

There are two key points there. One is the question of what decision a director needs to make in the circumstance of a conflict. The other is that, with a great deal of uncertainty in this field, it would be logical that some people of standing, some people with qualifications who were eminently suited to this particular role in the industry, might forgo that obligation because they were unsure as to their personal liability. Indeed, the legislation makes it clear that, for breaches of that obligation in 152-1, the directors of an insurer are personally and severally liable to pay the insurer an amount equal to any loss which results from a breach of those provisions. So the obligations imposed are very severe, and the relationship between those obligations and those under the Corporations Act is not made clear.

I have discussed this matter with the industry in the time since the committee had the chance to look at this issue. I think it would be wise of us not to proceed at this stage with those changes. And I think that there is an opportunity to go back and have further discussions on this area to identify possible ways of identifying appropriately what obligations towards policyholders should attach to directors and perhaps to look at revisiting that issue when there is a suitable examination of the effect of the legislation.

As the minister has made very clear, this is a bold new world with respect to health insurance. There are many things about this which dramatically change the parameters for health insurers and for their directors, and we need to be able to flexibly consider the way in which this legislation impacts on the sector. I think there is an opportunity for us to come back to this issue in the future.

The amendments I am proposing would simply remove the provisions that might contradict the Corporations Law, and will not replace in any way the obligations already on directors under the Corporations Law. If the Senate agrees with that, the directors will not have this dual responsibility to have to try and juggle.

I congratulate the government for having picked up a number of other amendments that were suggested by the Standing Committee on Community Affairs. I am particularly pleased that the statutory rules will be
amended to ensure that recommendations on a care plan charter are picked up—that is a very important part of the legislation as far as the committee is concerned—and that there will be better transitional arrangements while these new arrangements are being put in place; in particular, that professional standards and accreditation regimes will continue to apply to providers in this field while new accreditation arrangements are being put in place for a possible commencement date of 1 July 2008. I hope that that date will come forward and that we will not have to wait until 1 July but, whatever period of transition there might be, we have clear arrangements under the amendments the government has picked up to cover that situation. I think that will greatly relieve the minds of many people who work in this sector. I commend the amendments I have suggested to the committee.

Senator McLUCAS (Queensland) (10.15 am)—When you arrive at work, have a look on the fax machine and find another amendment to a piece of legislation and are seeking advice from others on how you might consider this, it means the consultation process is not just truncated but nonexistent. I know that Senator Humphries’s amendments are extremely well intentioned, but it is impossible for any senator in this place to try and get a view from anyone if they find an amendment on their fax at 25 past nine for a bill that is to be dealt with at half past nine.

I agree that this issue was raised, albeit fleetingly, in submissions to the Standing Committee on Community Affairs and that there does seem to be a potential conflict between the Corporations Law and what is proposed in the legislation. However, I think we do have to consider the obligation of directors to policyholders. Obviously directors have responsibility to shareholders under the Corporations Law, but there needs to be some recognition of the responsibility of directors of private health insurance companies to the people who are insuring with them. I will be interested to see what the government intends to do with Senator Humphries’s amendments. Labor is of a mind to support them, but I may reserve that right until I have heard from the Minister for Human Services.

Senator ALLISON (Victoria—Leader of the Australian Democrats) (10.17 am)—I too will be interested to hear what the Minister for Human Services has to say on this. I have not been able to seek any advice on the implications of this change, so I am looking forward to the minister’s response.

Senator ELLISON (Western Australia—Minister for Human Services) (10.17 am)—The government agrees to the two amendments moved by Senator Humphries. I think that these are important amendments which ensure that we get it right. Even though we are at the committee stage now, if there is a sensible amendment then it would be foolhardy to ignore it. Senator Humphries has outlined the background to it, and I want to thank him and the Standing Committee on Community Affairs for the work they did. A number of aspects have been taken up from the committee report. This was touched on during the Senate inquiry.

On the issue of the responsibilities of directors of health funds, the government views the responsibility to the corporation as being indirectly to policyholders—the members of the funds. If the corporation is run well then the fund itself will have flow-on benefits to the members of the fund. Quite appropriately, the Corporations Law sets out very clearly the responsibilities of directors, and we believe that the flow-on from that is that where a director dispels their duty accordingly—if it is done properly—the members of the fund will enjoy that. The government agrees with these amendments. It is important that we get them into the bill for...
the reasons Senator Humphries outlined, and I am grateful to him for bringing these forward.

**Senator McLucas** (Queensland) (10.19 am)—I do not know that a decision to increase premiums, for example, which might be good in a corporate sense would be necessarily seen as good for policyholders; however, I suppose that is why Senator Humphries has moved the amendment. Was this issue raised with the government during the consultation process and what was the response to the private health insurance sector as a result of those consultations? Essentially what I am asking is why the government did not bring this amendment forward.

**Senator Ellison** (Western Australia—Minister for Human Services) (10.20 am)—There was some discussion about this. The government was of a different view, as I understand it, and now has changed that view. There is nothing untoward about that; it demonstrates an ability to assess the situation and keep it under assessment. I understand that it was raised during the consultation period and thought not necessary, but on review we believe it is and it is agreed.

**Senator Allison** (Victoria—Leader of the Australian Democrats) (10.21 am)—To be honest, I still do not have a view. It is clear that the government is supporting it and therefore it has the numbers, so I may not even vote on this amendment.

The **Temporary Chairman**—The question is that clauses 152-1 and 152-20 stand as printed.

Question negatived.

**Senator McLucas** (Queensland) (10.22 am)—I move opposition amendment (1) on sheet 5219:

(1) Clause 172-5, page 136 (lines 7 to 12), omit the clause, substitute:

172-5 Agreements with medical practitioners

Medical purchaser-provider agreements

(1) If a private health insurer enters into an agreement with a medical practitioner for the provision of treatment to persons insured by the insurer, the agreement must not limit the medical practitioner’s professional freedom, within the scope of accepted clinical practice, to identify and provide appropriate treatments.

Practitioner agreements

(2) If a hospital or day hospital facility enters into an agreement with a medical practitioner, under which treatment is provided to persons insured by the insurer, the agreement must not limit the medical practitioner’s professional freedom, within the scope of accepted clinical practice, to identify and provide appropriate treatments.

Other purchaser-provider agreements

(3) If a private health insurer enters into any agreement for the provision of services or goods intended to manage a disease, injury or condition, the agreement must not limit the freedom of medical practitioners and/or other health professionals involved in the provision of the service or good, within the scope of accepted clinical practice, to identify and provide appropriate treatments.

This amendment is to do with doctors’ clinical autonomy. The bill as it stands indicates that there need to be protections for doctors’ clinical autonomy between the private health insurer and the medical profession. Labor are of the view that that does not go far enough and that we also need to protect medical practitioners’ clinical autonomy when agreements are made between the private health insurance sector and hospitals and with other purchasers that may appear. As we
know, this legislation encourages innovation and encourages the private health sector to work with the health community broadly to develop packages that hopefully—that is a very strong ‘hopefully’—will deliver better health outcomes for those who are privately insured.

This amendment from the Labor Party simply ensures that doctors’ clinical autonomy will always be paramount in any agreement that is made into the future. It is a sensible amendment that is supported by the medical profession. Doctors’ clinical autonomy is paramount in any relationship between a patient and their doctor. The doctor needs to be making the decision that is best for the patient all the time and to not have to consider the interests of, or advices from, the private health insurance sector. I commend this amendment to the chamber. I think it is quite sensible, and it is certainly supported in the community.

Senator ALLISON (Victoria—Leader of the Australian Democrats) (10.25 am)—I think this is a very difficult area. I too want to defend the professional freedom of doctors but I also understand that, in order to keep premiums down, private health insurers want to be in a position to be able to negotiate the best price for services. So that is a difficulty. However, having said that, I would not want to see a doctor if I knew that he or she was not able to take action—whatever it is—because some agreement with a private health insurer prevented that. From a consumer’s perspective, I think this is an amendment that should be supported. But the problem with the private health insurance system is that there are effectively very few constraints that can be put on costs. There is always going to be this tension when you have such a system. So I come down on the side of consumers but I also recognise that, if you are a private health insurer, there are reasons why you would want to be able to negotiate away some of those freedoms.

Senator ELLISON (Western Australia—Minister for Human Services) (10.26 am)—The government’s position is that it supports part of the amendment, if I can put it that way. The opposition amendment is in three parts—the first deals with medical purchaser-provider agreements, the second with hospital purchaser-provider agreements and the third with other purchaser-provider agreements. The government does not agree with the third part of the opposition’s amendment. I therefore ask that the question be put in two parts. The first question should be in relation to subclauses (1) and (2) of the opposition amendment, and the question in relation to subclause (3) should be put separately—that is the one the government has an issue with.

I will outline the reasons for that. Certainly, we believe the wording of subclause (1) can be found in the act already, and it purports to prevent insurers from entering into agreements with hospitals that limit doctors’ clinical freedom. We have no objection to that, though we totally support the proposition that insurers should not restrain the clinical freedom of doctors—and we do not want to support anything that would do that.

Subclause (3) is a little different. We believe subclause (3) is potentially disadvantageous because it could prevent insurers from offering policies that limit the number of dental, physiotherapy or other paraprofessional services to be provided in a year. I think Senator Allison said that, where you have these limitations, it can keep these premiums down—and that is the public policy question we are weighing up in subclause (3). As I say, we are happy to limit insurers from restraining the clinical freedom of doctors, but this is different from limiting their ability to affect such things as ancillaries.
where part of the policy is that you can get up to six visits a year to a dentist or physiotherapist. We think that, if you open that up so that the insurer cannot limit that, you will see pressure on premiums. Because the risk posed to the insurer would thereby rise, premiums would accordingly rise.

We will be monitoring the situation very closely. The Privacy Health Insurance Administration Council will be doing just that. The Private Health Insurance Ombudsman is another entity that will be monitoring this and the government will be paying close attention to it. On the opposition amendment, we think that the wording in subclause (1) is already in the act but we agree with subclause (2). It prevents insurers from entering agreements with hospitals that limit the clinical freedom of doctors. That is a good principle.

Unfortunately, we do not believe that subclause (3) is in the same vein as the previous two. We would also point out that we have the care plan charter which was raised during the Senate inquiry. That will have principles which will be applied in relation to this. On the opposition amendment, we think that the wording in subclause (1) is already in the act but we agree with subclause (2). It prevents insurers from entering agreements with hospitals that limit the clinical freedom of doctors. That is a good principle.

Senator McLUCAS (Queensland) (10.31 am)—I am happy to do that. I thank the government for their support at least of subclause (2). I still think that, with this brave new world of private health that we are entering and the fact that the legislation is designed to innovate, we have to have protections into the future over arrangements that will be made with those other than hospitals. But I do take the minister’s comment about the ability for insurers to limit access to ancillary types of services. I am pleased to hear that the minister will be watching, because there will be change in the way products are developed and we do need to be watching closely as to how that will play out in the future.

The TEMPORARY CHAIRMAN—The question is that subclauses (1) and (2) of the amendment be agreed to.

Question agreed to.

The TEMPORARY CHAIRMAN—The question is that subclause (3) of this amendment be agreed to.

Question negatived.

Senator ALLISON (Victoria—Leader of the Australian Democrats) (10.33 am)—by leave—I move Democrat amendments (3), (4), (6) and (7) on sheet 5212 together:

(3) Clause 253-1, page 211 (line 7), at the end of subclause (1), add “and section 253-2”.

(4) Page 211 (after line 12), after clause 253-1, insert:

253-2 Procedures for merit selection of appointments under this Act

(1) The Minister must by writing determine a code of practice for selecting and appointing a person to a position under section 253-1, 267-5 or 273-1 of this Act 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 anniversary 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.

(6) Clause 267-5, page 224 (line 11), at the end of subclause (1), add “in accordance with a code of practice determined under section 253-2".

(7) Clause 273-1, page 231 (line 5), at the end of subclause (1), add “in accordance with a code of practice determined under section 253-2".

These are our standing clauses on appointment on merit. In this case they relate to the Private Health Insurance Ombudsman, who is currently appointed by the minister. We would like to see these amendments in the hope that one day these amendments will be supported.

Senator McLUCAS (Queensland) (10.33 am)—The Labor Party will be supporting these amendments. If the person is not appointed on merit, one would wonder on what basis they are being appointed. I would be interested to hear how the minister will respond to what I think are quite benign amendments.

Senator ELLISON (Western Australia—Minister for Human Services) (10.35 am)—These are standard Democrat amendments. I have come across them before. I appreciate the intent behind them and I am not dismissing them, but I can say quite clearly and strongly to this committee that the government will be making this appointment on merit. We see that the current processes are working. They are appropriate and we do not see a need to change them. Merit will, of course, be the criterion upon which the appointment will be made.

Senator ALLISON (Victoria—Leader of the Australian Democrats) (10.34 am)—I think that is acceptable. I would like this minister to explain what it is about these amendments which are so objectionable to the government. If the appointment of people such as the Private Health Insurance Ombudsman is conducted on merit, then why not have it in the act? Can the minister indicate what it is that is wrong with appointment being on the basis of principles of merit, independent scrutiny of appointments, probity, openness and transparency? I would have thought that this point in time would be a good one for the minister to support this. This would demonstrate that the government actually was interested in openness, probity, independent scrutiny and so on. Is it the review of the code of practice, is it that it is inviting public comment, or is it the fact that it would be a disallowable instrument? What exactly is it about these amendments, just for my information, which the government does not think it can live with?

Senator ELLISON (Western Australia—Minister for Human Services) (10.35 am)—The Ombudsman is a cabinet appointment and there are many appointments by governments of different persuasions in Australia that have been made that way and they are subject to public scrutiny. I would put to the committee that merit, probity and openness and transparency of appointment are in the process already. It is something that governments in Australia have been doing for over 100 years through cabinet. You elect a government with ministers and a cabinet to make decisions. The government believes that you do not need a code of practice for everything you do because otherwise you would be more concerned with drafting a code of practice than with the issue at hand,
which is to govern, get on with the business of the day, appoint people who can assist you in doing that and carry out good public policy and decisions which will benefit the community.

It is a fundamental difference of the Democrats. They always want a review of a piece of legislation, they always want a code of practice for everything and they always want everything to be written down and regulated. If we did that across the board in Australia, we would be hide-bound with process and nothing would get done. Australia has functioned as one of the world’s best democracies and best governed countries without exception. It has done that on the basis of principles and conventions which have stood the test of time. The appointments process through cabinet is one of those. I can say that all governments, and I am referring to the opposition when it was in government, have done it that way. You did not see the previous government going through codes of practice for appointments. It is rather interesting to see that there is a bit of a change now. I think the overprescriptive nature of the way the Democrats approach these things, although the intentions behind it are very good, is such that if you had a code for everything and if you had a review of everything you would spend your life drafting codes, reviewing everything and getting nowhere. I think this system has worked very well, and we have addressed this issue with previous legislation which has had statutory appointments contained within it. That is the government’s position.

Senator ALLISON (Victoria—Leader of the Australian Democrats) (10.38 am)—Using that argument, you would get rid of the Senators’ Interests Committee and the obligation on senators to disclose their interest in this place. I think it is an extraordinary claim to make that all appointments are based on merit. I am sure that when you were in opposition, Senator Ellison, you joined with your party in criticising the Labor Party for its jobs for the boys, its appointment of mates. Likewise, we and Labor have criticised you, and I will not name names but this is a common accusation thrown at governments. I would have thought it was in the interests of the Liberal coalition to support this, because then you would have a defence. You would say: ‘No, it’s not just because this person was a great fundraiser for the Liberal Party. He was appointed’—usually it is a he—to the Private Health Insurance Ombudsman role because he fulfilled the requirements of the code which we’d established about selection.’

I am suggesting something which would be good not only for the parliament but also for the people of Australia: to know that people appointed to positions of great responsibility on large salaries are there on merit. You can assure us all you like about cabinet, how serious the deliberation was and how all the appointments were merit based, but we are not going to be convinced unless we can see the evidence of that. That is what this particular amendment is about.

It is terrific that Labor are agreeing to having a code for the appointment of senior positions like this. If they do not move the amendment when and if they are in office after the next election, then it will certainly be one of the first that we will put up to make sure that it is in the statutes. You will then be seen as having been left behind, Senator Ellison, because you resisted this. I understand that you even resisted the senators’ interests code, if we can call it that, whereby senators disclose pecuniary interests, so I think you are being left behind again. This is your chance to gazump the Labor Party; you could even claim that this was your initiative. This is a really good opportunity to demonstrate to the Australian people that you are serious about account-
ability, because, frankly, the record of the last few weeks has suggested otherwise.

Senator ELLISON (Western Australia—Minister for Human Services) (10.41 am)—I place on record that the government supports the declaration of senators’ interests—I want to make that absolutely clear—that we participate in the committee and that the Prime Minister has a demand that ministers report to him personally in relation to that. We have just seen how that works, and it has worked effectively. So to say that the government does not support it is quite wrong. It is a question of whether you want to codify something or rely on practice which has been established over a period of time. The government’s view is that practice and precedent have been established, and I will not go over the ground that I have previously outlined, while the Democrats say that you should codify it. We do not agree.

Senator ALLISON (Victoria—Leader of the Australian Democrats) (10.42 am)—I cannot let that first comment pass. I do not think you can say at all that the system worked effectively. In fact, it is my understanding that it was a fellow Liberal colleague who ratted on a certain senator and brought this to the attention of the media and therefore the Prime Minister had to act, so to say that the senator was answerable to the Prime Minister is a nonsense. The Prime Minister, as he has said, cannot possibly monitor, remind, cajole and chastise senators who pay absolutely no regard to what is a really crucial aspect of what we do. As he cannot do it, I think it is up to the parliament to set up codes of practice for both ministers and senators in this place. The senators’ interests system goes some way towards doing that. I think it could be tightened and strengthened. It is a mechanism which works, but, while you may defend it now, there was a time, I understand, when you did not. I think appointment on merit is in the same category: you will be seen to be just behind the eight ball. It would have been a good chance for you to have won some brownie points with people who are deeply worried about the level of accountability in this place, but again you have chosen not to go down that path.

Question negatived.

Senator McLUCAS (Queensland) (10.44 am)—I move opposition amendment (2) on sheet 5219:

(2) Clause 264-5, page 220 (line 3), after paragraph (b), insert:

(ba) minimising the level of health insurance premiums;

This amendment goes to one of the principles that the Private Health Insurance Administration Council operates under. During my speech in the second reading debate I raised the issue of premium levels and what Broader Health Cover might in fact do to premium levels in both the short and the long term. You cannot answer that question—we actually do not know—but it seems logical that, at least in the short term, with an increase in the range of services that private health insurance providers will deliver, there could be an increase in premiums. The sector is keen and is of the view that, with some of the proposals contained in Broader Health Cover, there might be a reduction in the long term. How we measure that is a bit beyond me, but that is the discussion about premium levels.

However, in the current National Health Act, section 82BA(2)(c) sets out the objectives of PHIAC. One of those objectives as the act currently stands is to minimise the level of health insurance premiums. Unfortunately, this provision has not been included in the Private Health Insurance Bill 2007, which reduces the number of PHIAC’s objectives from four to three. Some of the media reportage of this issue is that the specific
clause about minimising private health insurance premiums has been replaced by a more general clause about protecting the interests of consumers. In fact, this is not true. The general clause about protecting the interests of consumers is in the National Health Act in addition to the specific clause about minimising premiums.

Labor’s amendment would reinsert that specific clause into the relevant section of the act so that PHIAC would have the objective of keeping downward pressure on premiums. The government has said that it is not appropriate because PHIAC does not set premiums and therefore should not be required to minimise them. If this is the case and the government does not have a problem with the substance of the amendment, we again challenge the government to include a clause about the ministerial responsibility for minimising premiums elsewhere in the bill. If the government will not follow that path and will not support our amendment, the Australian public is entitled to conclude that the government is not serious about keeping private health premiums down. Further, we argue that PHIAC does have a role to play in keeping premiums down by virtue of its role in regulating the private health insurance sector. All our amendment does is reflect this role in the legislation.

Senator ALLISON (Victoria—Leader of the Australian Democrats) (10.47 am)—This amendment is identical to the Democrat amendment except that our amendment places the clause a line further down, so we certainly support this and cannot see any reason why the provision should have been removed from the objectives by this bill. Again, I speak from the perspective of consumers on this issue. I am surprised the government would not want to also emphasise the importance of keeping premiums down. The affordability of premiums is what keeps people in private health insurance, as the government well knows—that is why it provides the rebate. It is a small matter, but I would have thought it was an important one. The government should support it.

Senator ELLISON (Western Australia—Minister for Human Services) (10.48 am)—By way of history, the object in the act that has been referred to was, I think, inserted in 1989 and related to premiums. I would put it to the committee that the Private Health Insurance Administration Council is a body which is a prudential regulator, not a price control agency. What the Labor amendment is purporting to do by inserting the words ‘minimising the level of health insurance premiums’ is control pricing. It is not the job of the Private Health Insurance Administration Council to control premiums. It has never had any control over premiums; that has been the responsibility of the minister.

The current position is that health funds have to apply directly to the minister to increase their premiums and the minister makes the decision. That is not PHIAC’s role, nor has it been in the past. So we believe this amendment proposes something which is beyond the role of PHIAC. The clause really is an anachronism, if you like, that was inserted in 1989. It has been in the objects and PHIAC has not had any power to deal with premiums. That has not been its role; it is a prudential regulator. For that reason the government opposes the amendment put by the opposition and the similar amendment moved by the Democrats.

Senator ALLISON (Victoria—Leader of the Australian Democrats) (10.50 am)—On the government’s argument you would also remove the clause that gives PHIAC responsibility for ‘protecting the interests of consumers’. We are not talking here about giving control to the council to set premiums. That is not what this amendment is about at all. If the minister reads the bill, he will see
we are talking here about the objectives of the council, not controls or powers, so you would think that everything the council does ought to be considered in the light of the question of minimising premiums. This amendment seems to accord with the government’s approach to private health insurance across the board. It is quite consistent with what is being put forward and does not indicate in any way that the council has control of premiums.

Senator McLUCAS (Queensland) (10.51 am)—I concur with Senator Allison. We are not suggesting that PHIAC should have the ability to set premiums. It does not have that role at all; it is the regulator. But, if one of PHIAC’s objectives is to minimise premiums, then decisions that it makes as a regulator will have to be made within that prism. We are mindful of the fact that one of its objectives is to keep the level of premiums down. By removing that objective, the regulator can make decisions without being mindful of keeping premiums down. It is an appropriate objective for a regulator to have. Yes, it has been in the act since 1989, which would indicate that the Labor Party was interested in keeping premiums down. I think the message to the community, if the government does not support this amendment, is that the government is big on rhetoric and small on effort to keep premiums at a minimum. It is disappointing that the government is not, from what I have heard, going to accept this fairly straightforward amendment.

Question negatived.

The TEMPORARY CHAIRMAN (Senator Moore)—Senator Allison, are you proceeding with your amendment?

Senator ALLISON (Victoria—Leader of the Australian Democrats) (10.53 am)—No. I withdraw amendment (5) on sheet 5212.

Bill, as amended, agreed to.
Act 1953 is continued in existence; and

(b) staff employed or made available under section 82ZUG of the National Health Act 1953 immediately before the commencement time continue to be employed or made available under that section on the same terms as had effect immediately before the commencement time; and

(c) the following provisions of the National Health Act 1953 continue to apply in relation to that Ombudsman and those staff:

(i) section 82ZR;
(ii) section 82ZRAA;
(iii) section 82ZRA;
(iv) section 82ZRB;
(v) Division 5 of Part VIC;
(vi) section 82ZVD;
(vii) section 82ZVE (with the reference to section 135A being taken to be a reference to Division 323 of the new Act).

(3) During the period starting at the commencement time and ending immediately before the Ombudsman conversion time:

(a) a reference in the new Act to the Private Health Insurance Ombudsman (other than a reference in a provision mentioned in subsection (1)) is taken to be a reference to the Private Health Insurance Ombudsman established by section 82ZR of the National Health Act 1953; and

(b) a reference in the new Act to an APS employee in, or a person holding or performing the duties of an office in, the Statutory Agency of the Private Health Insurance Ombudsman is taken to be a reference to a member of the staff employed or made available under section 82ZUG of the National Health Act 1953 as continued in force by paragraph (2)(c).

(7) Clause 28, page 22 (line 24), omit “commencement time”; substitute “Ombudsman conversion time”.

(8) Clause 28, page 22 (line 25), omit “commencement time”; substitute “Ombudsman conversion time”.

(9) Clause 29, page 23 (line 3), omit “commencement time”; substitute “Ombudsman conversion time”.

(10) Clause 29, page 23 (line 4), omit “commencement time”; substitute “Ombudsman conversion time”.

(11) Clause 32, page 24 (line 14), omit “commencement time”; substitute “Ombudsman conversion time”.

(12) Clause 32, page 24 (line 15), omit “commencement time”; substitute “Ombudsman conversion time”.

(13) Clause 33, page 24 (line 19), omit “commencement time”; substitute “Ombudsman conversion time”.

(14) Clause 33, page 24 (line 23), omit “commencement time”; substitute “Ombudsman conversion time”.

(15) Clause 33, page 24 (line 24), omit “commencement time”; substitute “Ombudsman conversion time”.

(16) Clause 34, page 25 (line 8), omit “commencement time”; substitute “Ombudsman conversion time”.

(17) Clause 34, page 25 (line 10), omit “commencement time”; substitute “Ombudsman conversion time”.

(18) Clause 34, page 25 (line 15), omit “commencement time”; substitute “Ombudsman conversion time”.

(19) Clause 34, page 25 (line 25), omit “commencement time”; substitute “Ombudsman conversion time”.

(20) Clause 34, page 25 (line 28), omit “commencement time”; substitute “Ombudsman conversion time”.

(21) Clause 34, page 26 (line 21), omit “commencement time”; substitute “Ombudsman conversion time”.

CHAMBER
(22) Clause 35, page 27 (line 4), omit “commencement time”, substitute “Ombudsman conversion time”.

(23) Clause 35, page 27 (lines 9 to 18), omit sub-clauses (2) and (3), substitute:

(2) A thing done before the commencement time under a provision of Part VIC of the National Health Act 1953 has effect from the commencement time as if it had been done under the corresponding provision of the new Act:

(a) during the period starting at the commencement time and ending immediately before the Ombudsman conversion time—by the old Ombudsman; and

(b) at or after the Ombudsman conversion time—by the Private Health Insurance Ombudsman.

However, this is not taken to change the time at which the thing was actually done.

(3) A complaint that the old Ombudsman had begun to handle before the commencement time may be handled:

(a) during the period starting at the commencement time and ending immediately before the Ombudsman conversion time—by the old Ombudsman; and

(b) at or after the Ombudsman conversion time—by the Private Health Insurance Ombudsman;

under the new Act as if the complaint had been made under the new Act, even if the ground for making the complaint does not exist under the new Act.

(24) Clause 36, page 28 (line 12), omit “commencement time”, substitute “Ombudsman conversion time”.

(25) Clause 36, page 28 (line 15), omit “commencement time”, substitute “Ombudsman conversion time”.

(26) Clause 36, page 28 (line 18), omit “commencement time”, substitute “Ombudsman conversion time”.

(27) Clause 36, page 28 (lines 30 and 31), omit “commencement time”, substitute “Ombudsman conversion time”.

(28) Clause 36, page 29 (line 5), omit “commencement time”, substitute “Ombudsman conversion time”.

(29) Clause 36, page 29 (line 6), omit “commencement time”, substitute “Ombudsman conversion time”.

(30) Clause 37, page 29 (line 12), before “The person”, insert “(1)”.

(31) Clause 37, page 29 (line 14), omit “commencement time”, substitute “Ombudsman conversion time”.

(32) Clause 37, page 29 (line 18), omit “commencement time”, substitute “Ombudsman conversion time”.

(33) Clause 37, page 29 (line 20), omit “commencement time”, substitute “Ombudsman conversion time”.

(34) Clause 37, page 29 (after line 20), at the end of the clause, add:

(2) If there is no person holding office as the Private Health Insurance Ombudsman under section 82ZR of the National Health Act 1953 immediately before the Ombudsman conversion time, then the person who is, immediately before that time, acting as the Private Health Insurance Ombudsman under section 82ZUA of the National Health Act 1953 is taken, from the Ombudsman conversion time, to have been appointed to act as the Private Health Insurance Ombudsman under section 253-10 of the new Act:

(a) during the vacancy or during the period or periods for which the person was appointed to act under the National Health Act 1953; and

(b) on the same terms and conditions as applied to the person immediately before the Ombudsman conversion time.

(35) Clause 38, page 30 (line 14), omit “commencement time”, substitute “Ombudsman conversion time”.  

CHAMBER
(36) Clause 38, page 30 (line 17), omit “commencement time”, substitute “Ombudsman conversion time”.

(37) Clause 38, page 30 (line 21), omit “commencement time”, substitute “Ombudsman conversion time”.

(38) Clause 38, page 30 (line 24), omit “commencement time”, substitute “Ombudsman conversion time”.

(39) Clause 39, page 31 (line 4), omit “commencement time”, substitute “Ombudsman conversion time”.

(40) Clause 39, page 31 (lines 8 and 9), omit “may be paid out of the Consolidated Revenue Fund, which is appropriated accordingly, for the purposes of the”, substitute “is appropriated out of the Consolidated Revenue Fund for the purpose of the performance of the functions of the”.

(41) Schedule 1, page 43 (after line 17), after item 52, insert:

52A  Section 7
Repeal the section.

(42) Schedule 2, page 46 (after line 9), before item 3, insert:

2A  Section 195-1 (at the end of the definition of hospital treatment)
Add “(as in force immediately before the commencement of the Private Health Insurance Act 2007)”.

(43) Schedule 2, item 4, page 47 (line 7), omit “2004”, substitute “2000”.

(44) Schedule 2, page 47 (after line 30), after item 8, insert:

Australian Securities and Investments Commission Act 2001

8A  Paragraphs 12BAA(7)(d) and (8)(b)
Omit “subsection 67(4) of the National Health Act 1953”, substitute “Division 121 of the Private Health Insurance Act 2007”.

Corporations Act 2001

8B  Paragraph 765A(1)(c)
Omit “subsection 67(4) of the National Health Act 1953”, substitute “Division 121 of the Private Health Insurance Act 2007”.

(45) Schedule 2, item 75, page 58 (line 15), omit “2004”, substitute “2000”.

(46) Schedule 3, item 2, page 63 (lines 13 to 16), omit the item, substitute:

2 Subsection 159J(6) (paragraph (aac) of the definition of separate net income)

(47) Schedule 3, item 3, page 63 (lines 17 to 19), omit the item, substitute:

3 Subsection 170(10AA) (table item 25)
Repeal the table item, substitute:

25 Subdivision 61-G Private health insurance offset complementary to Part 2-2 of the Private Health Insurance Act 2007

(48) Schedule 3, page 64 (after line 25), before item 8, insert:

7A  Section 13-1 (table item headed “private health insurance”)
Omit “61-H”, substitute “61-G”.

(49) Schedule 3, item 8, page 64 (lines 26 to 28), omit the item, substitute:

8 Section 52-125
Omit “Chapter 2 of the Private Health Insurance Incentives Act 1998”, substitute “Division 26 of the Private Health Insurance Act 2007”.

(50) Schedule 3, item 9, page 64 (lines 29 to 31), omit the item, substitute:

9 Subdivision 61-H of Division 61
Repeal the Subdivision, substitute:
Subdivision 61-G—Private health insurance offset complementary to Part 2-2 of the Private Health Insurance Act 2007

Guide to Subdivision 61-G

61-200 What this Subdivision is about

You can choose to claim a tax offset for a premium, or an amount in respect of a premium, paid under a private health insurance policy instead of having the premium reduced under Division 23 of the Private Health Insurance Act 2007 or receiving a payment under Division 26 of that Act.

Table of sections

Operative provisions

61-205 Entitlement to the private health insurance tax offset

61-210 Amount of the private health insurance tax offset

61-215 Tax offset after a person 65 years or over ceases to be covered by policy

61-220 How to work out the incentive amount

Operative provisions

61-205 Entitlement to the private health insurance tax offset

(1) If you are an individual (other than an individual in the capacity of an employer), you are entitled to a *tax offset for the 2007-08 income year or a later income year if:

(a) a premium, or an amount in respect of a premium, was paid by you, or by your employer as a *fringe benefit for you, under a complying private health insurance policy (within the meaning of the Private Health Insurance Act 2007), on or after 1 July 2007; and

(b) the premium, or amount in respect of a premium, was paid during the income year; and

(c) each person insured under the complying health insurance policy during the period covered by the premium or amount is, for the whole of the time that he or she is insured under the policy during that period, an eligible person within the meaning of section 3 of the Health Insurance Act 1973, or treated as such because of section 6, 6A or 7 of that Act.

(2) You are also entitled to the *tax offset if:

(a) you are a trustee who is liable to be assessed under section 98 of the Income Tax Assessment Act 1936 in respect of a share of the net income of a trust estate; and

(b) the beneficiary who is presently entitled to the share of the income of the trust estate would be entitled to the tax offset because of subsection (1).

(3) However, you are not entitled to the *tax offset in respect of the payment of any premium, or any amount in respect of a premium, if:

(a) you have received an amount under Division 26 of the Private Health Insurance Act 2007 in relation to the payment; or

(b) the premium, or the amount in respect of a premium, was less than it would otherwise have been because of the operation of Division 23 of that Act.

Note: In certain circumstances you can get a refund of the tax offset under Division 67.

61-210 Amount of the private health insurance tax offset

(1) The amount of the *tax offset for an income year is the sum of:

(a) 30% of the amount of the premium, or of the amount in respect of a premium, paid by you, or by your employer as a *fringe benefit for you, under the policy in respect of days in the income year on which no person covered by the policy was aged 65 years or over; and
(b) 35% of the amount of the premium, or of the amount in respect of a premium, paid by you, or by your employer as a fringe benefit for you, under the policy in respect of days in the income year on which:

(i) at least one person covered by the policy was aged 65 years or over; and

(ii) no person covered by the policy was aged 70 years or over; and

(c) 40% of the amount of the premium, or of the amount in respect of a premium, paid by you, or by your employer as a fringe benefit for you, under the policy in respect of days in the income year on which at least one person covered by the policy was aged 70 years or over.

(2) However, if, before 1 January 1999, a person was registered, or eligible to be registered, under the Private Health Insurance Incentives Act 1997 in respect of the policy for the income year, the amount of the * tax offset for the income year is the greater of:

(a) the amount worked out under subsection (1); and

(b) the * incentive amount for the policy for the income year.

(3) If, because of the operation of Division 23 of the Private Health Insurance Act 2007, an amount paid by you, or by your employer as a * fringe benefit for you, under a policy was less than the amount that would otherwise have been payable, the * tax offset in respect of the amount paid is reduced by the amount of the difference.

61-215 Tax offset after a person 65 years or over ceases to be covered by policy

(1) If:

(a) at any time, the amount of a * tax offset in respect of premiums payable under an insurance policy (the original policy) was 35% or 40% of the premiums payable under the policy because a person aged 65 years or over (the entitling person) was insured under the original policy; and

(b) at that time, another person (other than a dependent child) was insured under the original policy; and

(c) the entitling person subsequently ceases to be insured under the policy;

subsections 61-210(1) and (2) apply in relation to a complying health insurance policy (whether or not the original policy) under which the other person is insured (other than for the purposes of working out the * incentive amount) as if:

(d) the entitling person were also insured under that policy; and

(e) the entitling person were the same age as the age at which he or she ceased to be insured under the original policy.

(2) Subsection (1) ceases to apply if a person (other than a dependent child) who was not insured under the original policy at the time the entitling person ceased to be insured under it becomes insured under the complying health insurance policy.

(3) Subsection (1) does not apply if its application would result in the amount of the * tax offset under subsection 61-210(1) or (2) being less than it would otherwise have been.

(4) Paragraph (1)(a) applies in relation to an amount of a * tax offset that is 35% or 40% of the premiums payable under an insurance policy whether the tax offset was available under this Subdivision or Subdivision 61-H as in force before 1 July 2007.

(5) In this section:

complying health insurance policy has the same meaning as in the Private Health Insurance Act 2007.
dependent child:  
(a) has the meaning given in the *Private Health Insurance Act 2007*; and  
(b) in paragraph (1)(b), in relation to a time before 1 July 2007, includes a dependent child within the meaning of the *Private Health Insurance Incentives Act 1998*.

61-220 How to work out the incentive amount  
(1) The *incentive amount* for a complying private health insurance policy (within the meaning of the *Private Health Insurance Act 2007*) for an income year is the amount worked out under this table:

<table>
<thead>
<tr>
<th>Item</th>
<th>Number and kinds of people covered by the policy</th>
<th>Policy covers *hospital treatment but not *general treatment</th>
<th>Policy covers *general treatment but not *hospital treatment</th>
<th>Policy covers *hospital treatment and *general treatment</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>3 or more people</td>
<td>$350</td>
<td>$100</td>
<td>$450</td>
</tr>
<tr>
<td>2</td>
<td>One dependent child and one other person</td>
<td>$350</td>
<td>$100</td>
<td>$450</td>
</tr>
<tr>
<td>3</td>
<td>2 people neither of whom is a dependent child</td>
<td>$200</td>
<td>$50</td>
<td>$250</td>
</tr>
<tr>
<td>4</td>
<td>One person</td>
<td>$100</td>
<td>$25</td>
<td>$125</td>
</tr>
</tbody>
</table>

(2) If the amount of the premium, or the amount in respect of a premium, paid by you, or by your employer as a *fringe benefit for you, under the policy is for part only of the income year, the *incentive amount* is worked out using this formula:

\[
\text{Amount worked out under subsection (1)} \times \frac{\text{Number of days in that part of the income year}}{365} = \text{incentive amount}
\]

9A Application of item 9  
The repeal of Subdivision 61-H of the *Income Tax Assessment Act 1997* and the substitution of Subdivision 61-G by this Schedule apply in relation to the 2007-2008 income year and later income years.

9B Subsection 67-25(2)  
Repeal the subsection (including the note), substitute:

Private health insurance  
(2) Private health insurance tax offsets under Subdivision 61-G, except those arising under subsection 61-205(2), are subject to the refundable tax offset rules.

Note: Subsection 61-205(2) deals with tax offsets for trustees who are assessed and liable to pay tax under section 98 of the *Income Tax Assessment Act 1936*.

9C Subsection 995-1(1) (definition of incentive amount)  
Omit “section 61-345”, substitute “section 61-220”.

Private Health Insurance Act 2007  
9D Section 20-1 (note)  
Omit “Subdivision 61-H”, substitute “Subdivision 61-G”.
9E Subsection 26-1(4)
Omit “Subdivision 61-H”, substitute “Subdivision 61-G”.

(51) Schedule 3, page 66 (after line 8), at the end of the Schedule, add:

Taxation Administration Act 1953

17 Section 45-340 of Schedule 1 (method statement, step 1, paragraph (a))
Omit “Subdivision 61-H”, substitute “Subdivision 61-G”.

18 Section 45-375 of Schedule 1 (method statement, step 1, paragraph (a))
Omit “Subdivision 61-H”, substitute “Subdivision 61-G”.

These government amendments are moved on the same basis that we moved the amendments to the last bill. Government amendments (1) to (3) deal with the commencement of the bill. The amendments change commencement provisions consequential on other amendments. Government amendment (4) deals with the transition of existing health insurance arrangements. The bill as introduced provided that products were taken to comply with the new act until 1 July 2008 unless the benefits or premiums changed in the interim. As most products will have a premium increase in the weeks following 1 April, the provision would have required all products to be fully compliant within several weeks of the act coming into force. This amendment provides that products only have to be compliant with the new act if they have a premium change after 15 April 2007.

Government amendments (5) to (39) deal with the postponement of the conversion of the ombudsman from a CAC to an FMA body. These amendments allow the office of the Private Health Insurance Ombudsman to change from a CAC Act body to an FMA Act body from 1 July this year rather than 1 April. The office is facing a large workload in establishing the new website to allow consumers to compare products, as well as converting to FMA status. The impact on the office has been exacerbated by the unfortunate death of the ombudsman following a brief illness earlier this year. For those reasons, the government is seeking these amendments.

Amendment (41) repeals section 7 of the National Health Act following the inclusion of an equivalent provision at proposed section 217-80 in the new act. It is a technical amendment.

Government amendment (42) deals with hospital treatment. This amendment continues the current definition of hospital treatment for the purposes of the GST Act pending consideration by the Australian Taxation Office of the implications of adopting the definition of ‘hospital treatment’ contained in proposed section 121-5 of the new act. This is a fairly straightforward amendment containing the current definition as an interim solution, if you like.

Government amendment (44) deals with health insurance business. This amendment alters the definition of health insurance business in the ASIC Act and the Corporations Act to adopt the definition in proposed section 121-1 of the new act following approval of the amendments by the Ministerial Council on Corporations. I might add that the council has signed off on this.

Government amendments (46) to (51) are amendments to taxation legislation to provide for taxpayers to receive the premium rebate as an income tax offset rather than as a premium reduction or direct payment under part 2-2 of the new act. Currently the 30 per cent benefit, if you like, for privately health insured people can be a rebate or a cash return. These options will be kept. As I under-
stand it, we are also including a tax offset, so there will be three options.

Government amendments (40), (43) and (45) are technical drafting corrections. That deals with government amendments (1) to (51) and I commend them to the committee.

**Senator McLUCAS** (Queensland) (10.59 am)—There are 51 government amendments to this bill and there were 104 to the previous bill. They are of a technical nature, but the opportunity to confirm that they are agreed to more broadly is limited when you have only a couple of days to deal with them. However, our analysis is that they should be supported. Some of the amendments correct errors and some are consequential on changes to the substantive legislation. I indicate that Labor will support them.

Question agreed to.

**Senator McLUCAS** (Queensland) (11.00 am)—I move opposition amendment (1) on sheet 5218:

1. Clause 14, page 10 (lines 23 to 25), omit the clause, substitute:

   14 Quality assurance requirements

   The quality assurance requirements in Division 81 of the new Act commence on 1 April 2007 and apply to any insurance policy already in existence.

This amendment goes to the issue of the quality assurance that new products will require. The bill recognises that there will be, over time, the development of new products that will require a quality assurance regime. Unfortunately, the government has not recognised that we do require quality assurance systems to protect consumers in effect from the day of operation. The Labor Party amendment requires that quality assurance requirements in division 81 of the act commence on 1 April 2007. People will say, ‘Goodness, that’s only a couple of weeks away.’ My answer to that is that the government should have thought of that before we embarked down this road. Consumer protection and quality assurance should be fundamental to our health system.

We know, and the government have known, that we have to have a quality assurance system in place. However, they are comfortable it would seem, to trundle along, roll out new products, allow new treatment systems to develop and have a quality assurance system on 1 July 2008. That is not consumer protection in our view and that is why we are moving this amendment, which would require quality assurance systems to be in place on 1 April 2007. If the government has a view that that date needs to be put out for, say, a month then I would be interested in hearing it and we would be happy to accommodate that sort of amendment. But to exist in an environment for over 12 months without a quality assurance system is not reasonable.

The Senate committee recommended that to demonstrate a commitment to quality improvement and to guarantee patient safety, existing quality assurance, professional standards and accreditation regimes should continue to apply to broader health cover services until alternative accreditation or equivalent arrangements have been put in place under this legislation. I think the government can read that as code for the committee expressing their concern about what seems to be an extraordinary oversight in the development of this legislation. As I said, we would be happy to accommodate perhaps a slightly later start-up time for a quality assurance regime, but leaving it until 1 July 2008 simply indicates that the government did not think this one through before developing this package of legislation.

**Senator ALLISON** (Victoria—Leader of the Australian Democrats) (11.03 am)—I indicate that the Democrats will support this amendment.
Senator ELLISON (Western Australia—Minister for Human Services) (11.03 am)—
We know that the issue was discussed at length by the Senate committee, which recom-

mended existing accreditation arrange-

ments continue until 1 July 2008. The gov-

ernment will be including such a provision in its rules. But to require that all services be accredited or even certified as the first step in an accreditation process by 1 April or 1 July this year would reduce the availability of services and, we believe, potentially lead to a massive logjam at the doors of accreditation agencies.

The government announced on 26 April last year that it would be requiring all insurer services to be accredited by 1 July 2008. We made that announcement last year. The govern-

ment set this date having regard to the capacity of accreditation agencies and the need for services to organise themselves to apply for and secure accreditation. It is un-

reasonable to shorten the time frame by 15 months at this late stage in the process. We believe that calls for accreditation from 1 April or 1 July this year imply that patients will be put at risk if this does not happen. We do not accept that. We say that such an argument is incorrect and misleading. There has never been a requirement for insurer services to be accredited in the past and the government is unaware of particular problems arising from the absence of such a requirement.

The government believes, however, that it is important that all health services should be seen to be of a high standard judged against objective criteria, and is acting to ensure that this happens in a measured and considered way. This is a transitional arrangement. We do not think that there will be any harm caused by that July 2008 date. It is something that we have announced and stood by, and we think that if you truncate that you could have a logjam at the doors of accredi-

Bills—by leave—taken together and as a whole.

Senator ELLISON (Western Australia—Minister for Human Services) (11.07 am)—

by leave—In respect of the Private Health Insurance (Reinsurance Trust Fund Levy) Amendment Bill 2006, I move:

That the House of Representatives be re-

quested to make the following amendments:

(1) Schedule 1, item 17, page 5 (table item 1), omit “by the Council by legislative instru-

ment”, substitute “in writing by the Coun-

cil”.

(2) Schedule 1, item 17, page 5 (table item 2), omit “by the Minister by legislative instru-

ment”, substitute “in writing by the Minis-

ter”.

(3) Schedule 1, page 5 (after line 26), after item 18, insert:

18A At the end of section 7

Add:
An instrument made under paragraph (a) of item 1 or 2 of the table in subsection (1) is not a legislative instrument.

Statement pursuant to the order of the Senate of 26 June 2000
Amendment (1) and (2)
The effect of these amendments is that a rate of levy that is set using a subordinate instrument will be set by an administrative instrument rather than a legislative instrument. The amendments are covered by section 53 because they amend the Private Health Insurance (Reinsurance Trust Fund Levy) Amendment Bill 2006. The Bill was treated as a proposed law imposing taxation, on the basis that it repeals and substitutes the imposition provision of the principal Act, the Private Health Insurance (Reinsurance Trust Fund Levy) Act 2003.

Consequential amendments
Amendment (3) is consequential on the amendments mentioned above.

Statement by the Clerk of the Senate pursuant to the order of the Senate of 26 June 2000
Amendments (1), (2) and (3)
As this is a bill imposing taxation within the meaning of section 53 of the Constitution, any Senate amendment to the bill must be moved as a request. This is in accordance with the precedents of the Senate.

Senator ELLISON—These three requests remove the requirement for determinations of the rate of risk equalisation levy to be set by legislative instruments and simply require the rates to be determined in writing. This is because the rules made under section 318, clause 30 of the new act, will set out the method of working out the levy. Setting the rate of the levy is thus an administrative decision to give effect to an outcome worked out under the rules and should not be subject to disallowance.

Question agreed to.

Senator ELLISON (Western Australia—Minister for Human Services) (11.09 am)—I move:

That the Private Health Insurance Bill 2006, the Private Health Insurance (Transitional Provisions and Consequential Amendments) Bill 2006, the Private Health Insurance (Prostheses Application and Listing Fees) Bill 2006, the Private Health Insurance (Collapsed Organization Levy) Amendment Bill 2006, the Private Health Insurance Complaints Levy Amendment Bill 2006 and the Private Health Insurance (Council Administration Levy) Amendment Bill 2006 be now read a third time.

Question agreed to.

Bills read a third time.
NATIVE TITLE AMENDMENT BILL 2006

Second Reading

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

That this bill be now read a second time.

Senator SIEWERT (Western Australia) (11.09 am)—I rise to speak to the amendments to the Native Title Act. It is telling that, in addressing what they consider to be the ‘problems’ and failures of the Native Title Act, the submission from the Attorney-General and FaCSIA and the minister’s second reading speech in fact focused on the complexities, the costs and the delays in the system of assessment, recognition, mediation and agreement making but they did not concentrate on the original intention of the introduction of native title and the outcomes it is meant to deliver for native title holders.

This is particularly strange when you consider that the Native Title Claims Resolution Review 2006 report found that, of the total 1,683 claims filed, 1,062 had been resolved one way or another by January 2006, despite native title being a relatively new area of law, only 15 years old. I would say this was a fairly respectable outcome.

However, on the other side of the ledger, you only have to look at the manner in which the standard of living and life opportunities of native title holders and Indigenous communities have been going backwards over this period. The statistics I have recounted many times in this place about health, education, employment, economic development and housing outcomes for Indigenous Australians have not been going forwards; they have been going backwards. There is still a very significant life expectancy gap between non-Aboriginal Australians and Aboriginal Australians. We need to recognise that native title is not delivering on its promises for Indigenous Australians.

The Native Title Act was meant to go some way to undoing the injustices and addressing the disadvantage caused by the dispossession of Australia’s original owners. The preamble to the act recognises that one of the consequences of dispossession has been that Aboriginal and Torres Strait Islander peoples as a group have become the most disadvantaged and marginalised group within our nation. The hope was that through limited recognition and protection of what remained of traditional property rights the act might provide some means for the economic and social advancement of Indigenous communities. It has clearly failed to deliver on this promise and the proposed changes to the act put forward by the government do not address these failings. If anything, they are another push in the wrong direction.

To my mind, two things have gone wrong with the development and implementation of the concept of native title. Firstly, the whole concept of native title rights has been a compromise all the way along, and its evolution through a series of High Court decisions, such as the Miriwung Gajerrong, Yorta Yorta and, more recently, the Perth Nyungar claim, have seen both a continual erosion of these rights and an increase in the number of barriers to Indigenous people actually being able to exercise these rights to improve their social and economic position.

Secondly, the institutions created to represent traditional owners and help them obtain recognition have been inadequately resourced and empowered, and they struggle to either defend these rights or negotiate constructive outcomes and resources of state and territory governments and of industry. At the same time the institution created to oversee the process and be the impartial mediator, the National Native Title Tribunal, has become increasingly bureaucratic and particularly ineffective, especially in its mediation role. Research released in late February by Grif-
fifth University Business School shows very clearly that the National Native Title Tribunal seriously disadvantages Indigenous groups in negotiating arbitrated agreements with mining companies.

Professor O’Faircheallaigh’s research clearly demonstrates how the inequity of the tribunal’s arbitration process creates a situation in which Indigenous groups are under enormous and unequal pressure to make agreements outside of arbitration that deliver few tangible benefits. That is because mining companies know that, if the matter is referred to NNTT arbitration, the tribunal is not permitted to consider awarding Indigenous groups money toward the value of minerals taken from their lands; it is unwilling to impose conditions that may prove onerous for the mining company; it requires more stringent standards of proof of Indigenous groups; and it has granted mining leases in all 17 cases referred for arbitration in the last decade—hardly a fair outcome for Aboriginal groups. Professor O’Faircheallaigh concludes:

In principle, the Act ... creates incentives for grantees to reach agreement because if they fail to do so and enter arbitration the Tribunal may decline to grant the interests they seek or impose onerous conditions on any grant it makes. However, in practice the Tribunal has applied the arbitration provisions of the NTA in a manner that renders them largely innocuous from the perspective of the grantees. The result is a fundamental inequality in bargaining positions. This undermines the purposes of the NTA and leads to agreements that favour the grantees.

If the government were serious about reforming the Native Title Act to ensure that it delivered better outcomes for Indigenous Australians—rather than quicker and cheaper outcomes for industry, and more politically comfortable outcomes for the states—it would be assessing the way the tribunal is currently administering the provisions of the NTA and amending them to create a level playing field between miners and native title groups. Rather than tipping things further the other way, it would allocate the arbitration function to an independent judicial body, not the NNTT, and it would allow arbitrated decisions to include compensation relating to the value of minerals taken from the land, which would create the possibility of some real outcomes for Indigenous landholders and provide a basis for some real economic development initiatives.

The proposed amendments to the Native Title Act undermine native title rep bodies; give greater coercive powers to the National Native Title Tribunal; give much greater executive powers to the minister and provide insufficient mechanisms to review ministerial and bureaucratic decisions; and would allow non-Aboriginal corporations to take on responsibility for representing and consulting with native title holders.

There are some positive elements to the recommendations, which I note are the amendments that arose from that part of the bill that had widespread community consultation—for example, limiting the rights of third parties to issues that are relevant to their interests, giving the court the power to remove a party that does not have a relevant interest and encouraging the court to adopt a practice note setting out the court’s preferred method for managing native title claims.

However, the negatives far outweigh any of the positives. Rep bodies are undermined by making their continued existence more uncertain through periodic recognition; by heaping a much greater administrative load onto their shoulders without addressing the already pressing issue of underfunding; by giving the minister greater executive discretion to deregister rep bodies, to change the areas they represent without consultation and to determine their financial resources; by changing the criteria for assessing their per-
formance so that satisfactory representation and adequate consultation with native title holders are no longer considerations; by allowing a broader range of bodies to be recognised as rep bodies; and by allowing native title service providers to perform all the functions of an NTRB.

While accountability and good governance are always of concern where public moneys are being spent, they are not the major stumbling blocks in delivering an efficient and effective system for reaching native title agreements. The main issues are capacity and resources. The parliamentary joint committee on native title’s inquiry into native title rep bodies looked into the limitations on the functioning of NTRBs and made a number of key recommendations, only some of which have been implemented to date. The evidence given by stakeholders to the PJC and the evidence given to the Senate legal and constitutional committee’s inquiry into this bill all seem to point to inadequate resources as one of the major limitations.

Recommendation 5 from the joint committee’s report states:

The committee recommends that the Commonwealth immediately review the adequacy of the level of funding provided by the OIPC to NTRBs for capacity building activities including management and staff development, and information technology.

The Minerals Council of Australia said in its evidence to the Senate committee:

It is essential that improved governance is matched with increased resources directed towards capacity building of NTRBs and NTSs. Without adequate resourcing of NTRBs and NTSs, both in terms of financial and human capital, we consider that these reforms—

the reforms that we are talking about now—
could destabilise the operations of the native title system, which would be to the detriment of business, Indigenous communities and the achievement of mutually beneficial native title outcomes.

They go on to say:

... NTRBs have been chronically underresourced in fulfilling their legislative functions in representing Indigenous interests, which has delayed the negotiation of mutually beneficial agreements with industry and the resolution of native title claims.

They say that the changes:

... have the potential to divert already limited resources towards bureaucratic processes, unnecessary onerous compliance obligations or the winding up and establishment of new services, and away from the primary functions of representing Indigenous interests and achieving native title outcomes.

That is from the Minerals Council of Australia.

In particular, I am concerned that periodic recognition could result in the suspension of and substantial delay to ongoing negotiations, which could cost other parties, such as governments and industry bodies, substantial amounts of money. It could also mean that it could become necessary for them to renegotiate already agreed matters, to begin building relationships with new NTRB staff and organisations, and to revisit complex and longwinded issues all over again.

The stability of NTRBs, just like their capacity for understanding native title law and negotiating mutually beneficial agreements, is in the interests of all parties to a native title claim. Having the minister able to choose to recognise NTRBs for only 12 or 18 months would be particularly destabilising for all concerned. That is why the Australian Greens will move an amendment, as recommended by the Minerals Council of Australia—it is highly unusual for us to be taking up one of their recommendations—to establish a minimum recognition period of three years. Similarly, giving the minister the discretion to arbitrarily alter the boundaries of an NTRB’s representative area could also
have a seriously destabilising effect on ongo-
ing negotiations and native title claims.

Increased powers of the NNTT are dealt with in schedule 2. The bill proposes that the NNTT have the power to: make reports to the Federal Court, ministers, funding bodies or legal professional bodies of a failure by a party to act in good faith in mediation; issue directions to parties to attend mediation conferences or produce documents; and conduct native title application inquiries and reviews of a claimant group’s connection to the land. The bill precludes the Federal Court conducting mediation on a native title application when NNTT mediation is underway. There is a large degree of concern about NNTT mediation in many states.

Practically all of the stakeholders who gave evidence to the committee, including the Office of the Registrar of Aboriginal Corporations, the Minerals Council of Australia, the National Native Title Council and native title lawyers as well as NTRBs, land councils and HREOC, rejected the idea that expanding the mediation powers of the NNTT would lead to the more efficient and effective resolution of native title claims. All of these stakeholders pointed to the poor success rate of the tribunal with mediation, citing both past statistics and experience, saying things like:

... all of our experience is that they— the NNTT—
do not deliver the goods.
The Northern Land Council said that. Further, it was said:

... the NNTT has simply not shown in the past that it has the expertise to effectively mediate.
The National Native Title Council made that comment. The Minerals Council suggested:

Given the Government’s intention to provide the NNTT with greater powers in the mediation of native title claims, the MCA considers that there is a need to ensure that ... greater emphasis is given to building capacity to ensure competency in undertaking any expanded role.

A 2001 study by Griffith University found that the most fruitful agreements were negotiated outside of the NNTT.

There is a real risk when looking at the good faith reports that a judgement being made by the NNTT that a party has not acted in good faith in mediation is very likely to result in that party feeling obliged to defend their reputation and, in the case of NTRB and other bodies reliant on government resources, their funding in the courts. We are also extremely concerned about the coercive directions being given to the tribunal. The office of the registrar argued that:

... giving the NNTT the ability to issue coercive directions would be likely to lead to state and territory governments pursuing second-order litigation seeking to protect their own prerogatives, that administrative directions by the NNTT would have no credibility unless backed up by an effective enforcement mechanism—that is, by reference to action taken in some court—and that if the power to give directions in mediation is conferred on the NNTT, it becomes an administrative power which would be subject to judicial review ...

... as it is simply not possible under our constitution to set up a system where an administrator can give binding statutory directions which do not attract judicial enforcement and are exempt from judicial review.

In other words, there is a great deal of concern also around that particular amendment.

Another area of great concern is the provision of greater executive powers. The proposed amendments to schedule 1 give greater executive powers to the minister which would allow the minister to de-recognise a representative body or alter the area which it covers in an arbitrary and non-transparent manner without any accountability. There is also no requirement for notification, and no requirement that the minister re-register NTRBs. This lack of certainty could have a destabilising influence on ongoing native
title negotiations, and the increased administrative load associated with re-registration applications could further delay native title processes. This is why we are moving amendments to require the minister to invite re-application in a timely manner where notice of an intention to withdraw recognition has not been given. There is no rationale given for these changes to ministerial executive powers to justify the need for greater executive discretion, and it seems contradictory that on the one hand there is a move to greatly increase the accountability of NTRBs while on the other hand the accountability of the minister is dramatically reduced.

We also have concerns around the recognition of non-Indigenous corporations. The bill proposes to allow a much wider range of corporate bodies to be recognised as rep bodies and to permit native title service providers to perform all the functions of an NTRB. This ‘mainstreaming’ approach, taken together with the provisions which ‘wipe out’ the criteria relating to representation of and consultation with native title owners, undermines the fundamental role of representation of the native title holders of the NTRB.

This bill is a retrogressive piece of legislation that does not seek to progress the issue of native title. It does not address the fundamental constraints to the success of native title law in delivering certainty to industry and governments—and certainly not to native title holders. It is further hindering opportunities for economic development and increased self-reliance in Aboriginal communities; in fact, it makes that much harder. It is an opportunity wasted and yet another example of what I believe is this government’s blinkered ideological approach to Indigenous development in this country.

This piece of legislation could be very important for Aboriginal communities. It has not been operating effectively because it has been hobbled. It has not delivered the promised outcomes. These changes will not deliver a better process. They will not deliver for Aboriginal communities. I think the government’s intention is more to deliver for industry bodies and mining corporations, but I do not think it will even do that. By further destabilising rep bodies, the government is further destabilising the native title process, which will undermine any negotiations between mining companies and native title holders. If the government were genuine about improving this act, it would review the issues that have come out of the research to date which shows that the act has not been delivering for native title holders but that it has been delivering for mining companies, and it would seek to genuinely address those issues. The Greens will be opposing this piece of legislation when it is put to the chamber.

Senator CROSSIN (Northern Territory) (11.29 am)—I rise this morning to provide a contribution regarding the changes to the Native Title Act in the Native Title Amendment Bill 2006 before us today. In September 2005 this government announced a package of six interrelated reforms to the native title system. The primary purpose of this bill is to amend the Native Title Act 1993 to implement aspects of four of those six elements of the reform package announced back then. These four elements are the measures to improve the effectiveness of the representative Aboriginal and Torres Strait Islander bodies, known in the industry as the native title rep bodies; an independent review of native title claims resolution processes to consider how the National Native Title Tribunal, the NNTT, and the Federal Court of Australia may work effectively in managing and resolving native title claims; measures to encourage the effective functioning of prescribed bodies corporate; and reforms to the native title nonclaimants or respondents fi-
nancial assistance program to encourage agreement-making rather than litigation.

I want to place on record very early in the piece that it should be noted that the provisions in schedule 1 of this bill have in fact only been available for comment for two months—that is, two months over the Christmas period. They were released late last year. I am aware that, in the other chamber, representatives of this government have argued that this bill has been out there for quite a while and that they have consulted organisations and individuals on it. If we are talking about the reform package that was announced in 2005 then that may well be correct. But you need to ask the question: which aspects of this bill have actually been out there long enough for those affected to provide some genuinely informed feedback on its implications? The native title rep provisions have received quite substantial concerns and criticisms, as has the expansion of the powers of the National Native Title Tribunal.

Generally, we believe that the significant changes to the Native Title Act contained in this legislation by and large have not been out there long enough for people to have had genuine consultation and discussion about their implications. The changes are fundamentally flawed. The reasons for that were outlined in the minority report of the Senate Standing Committee on Legal and Constitutional Affairs on this bill.

The original native title legislation, when it was debated in this parliament, was historic—there is no doubt about that. It has become an accepted part of business now for the pastoral and mining companies. As indicated, it was accepted that over time, as with most other policies and acts, changes would be needed. It is just a logical extension. When you get an act into place and you start to work with it, you realise that changes need to be made from time to time. But we do not believe that the bill before us today is the answer to the changes that are needed in the native title process. Many aspects of it are not supported by the Australian Labor Party.

Recent research released by Griffith University has shown that native title has not always proved to be effective and that many Indigenous land use agreements or ILUAs, as they are known, have failed the people they were supposed to help—that is, the Indigenous people in areas of most concern. The Griffith research showed that, over the past 10 years, half of the ILUAs entered into were failures and delivered few if any benefits to Indigenous people. Many, indeed, were described as basket cases. The research also reported what any of us who have been closely involved with Indigenous organisations over the years know—that Indigenous people do find our ways of governance in general difficult to understand, follow and comply with, and extremely complex. I might add that it is probably not only Indigenous people who feel that way sometimes.

This bill now before us really does not answer these concerns either. Indigenous organisations do lack the skills and resources to take on negotiations on anything like a level playing field when dealing with large mining companies—or other companies, for that matter. This government has continually, over the period of its time in office, weakened the position of Indigenous people. The bill before us today is just another example of this. This is a government that thrives most zealously on what it calls accountability for all and any Indigenous organisations or communities.

The government imposes layers of red tape on Indigenous organisations. That has been highlighted most significantly, for instance, in the recent reports of the COAG trials. Mainstreaming has imposed more lay-
ers of bureaucracy, with the result that most of the COAG trials have been a disaster, have achieved very little improvement and, in fact, have spent 10 per cent more money in administration than was ever imagined under the operation of ATSIC. It ignores the relationship of trust which must be generated over time with stakeholders when dealing with sensitive cultural issues such as land. This bill ignores cultural factors associated with the way Indigenous people prefer to discuss and negotiate improvements and outcomes for themselves.

We would fully support any legislation that would genuinely improve the performance of native title rep bodies, but we do not believe that this bill will do that. The bill imposes more regulation on and uncertainty for native title claimants and their representative bodies. It further undermines the capacity of native title rep bodies to fully represent Indigenous interests. Limited periods of recognition of native title rep bodies will create uncertainty, inhibit strategic business planning and discourage staff tenure, and the accumulation of corporate knowledge will be lost over time. Broadening the range of native title service providers could lead to the government giving away native title service provision in open tenders—as we are seeing, for example, in the way in which CDEP is being operated—and bringing on non-Indigenous firms that may well in fact be the future representatives of Indigenous people in negotiating outcomes for native title.

The changes proposed in schedule 2 would expand the role and power of the National Native Title Tribunal, which is already seen by many stakeholders as bureaucratic and slow. Mr Philip Vincent, for example, from the National Native Title Council, said in his presentation to the Senate Standing Committee on Legal and Constitutional Affairs hearings into this bill on 30 January this year that, when this bill was first put through some years ago:

The starting point was some 1,683 claims filed, and 1062 have been resolved in one way or another as at January ...

He takes those figures from the Hiley and Levy report. Those two gentlemen were charged with the responsibility of inquiring into what changes might be needed in the native title area. So, in effect, 621 claims are outstanding and we know that, as of June last year, it is down to 604. But, by and large, what we heard from people during this inquiry is that the NNTT is remarkably slow at progressing these claims, and there is a substantial lack of confidence in the way in which this bill will transfer the negotiating responsibilities from the Federal Court to the NNTT.

Submissions to the legal and constitutional affairs committee showed that the native title rep bodies opposed this legislation. The Aboriginal and Torres Strait Islander Social Justice Commissioner, who writes the annual native title report that is tabled in this parliament each year, also opposes this legislation. You have to give credit to the government! It writes legislation and proceeds to put it through this parliament, when its own social justice commissioner is saying that there are problems here and that this legislation should not proceed—the same social justice commissioner who will provide a report to this parliament on native title issues this year. From that, I would think that there are serious flaws in this legislation—flaws which this government is not willing to accept or realise.

Our dissenting report on the Senate committee inquiry into the bill expresses concern that introducing periodic terms for native title rep bodies will undermine their true independence. It may also interfere with native title applications, which have, not infre-
quently, taken over six years. So, under this legislation, native title rep bodies can only be registered for six years, and we know that there are many claims that will take longer than that. The Minerals Council of Australia even saw that the minimum period of recognition should be three years instead of the one year proposed in this bill. So we do not even have the Minerals Council on board 100 per cent in relation to this legislation.

A number of committee inquiry witnesses thought that periodic recognition would require native title rep bodies to devote too much time and resources to the time-consuming recognition process, thereby diverting resources from their core function. And that is true. We had evidence before us that if native title rep bodies got, let us say, two-year recognition, it would be at least three or four months before their money kicked in and they could operate; they would spend about another year or 15 months operating as a native title rep body, and then a considerable amount of their time would be spent writing grants or re-registering and undertaking the process to simply continue and survive. So the time frame is too restrictive and there is too much unnecessary bureaucracy in the way that the native title rep bodies will have to operate.

Our dissenting report says the requirement for periodic recognition is unnecessary, given that the minister already has the power to withdraw recognition from a poorly performing native title rep body. And that is true: recognition has already been withdrawn from one native title rep body. But we are talking about 13 or 14 rep bodies, if my memory serves me correctly, around this country, and a couple of service providers. This legislation seems to place an unnecessary burden on all of those native title rep bodies, despite the fact that, in the past, we have seen all but one operating efficiently. So the mentality of this government is: ‘Let’s constrain all of them out there in the field at this time—even though there has been only one that has performed poorly, and we have recognised that and it has been dealt with.’

So obviously the system is currently working. Why you would then seek to impose legislation such as this on all the others is something which I do not believe the department or this government were able to convince the Senate committee of during its inquiry. I certainly am not convinced that this legislation should be put in place when I see evidence that the current legislation is working adequately.

The majority committee report recognises the weakness in periodic recognition, but it is itself weak in recommending a minimum period of only two years. The bill makes it easier for the minister to withdraw recognition from native title rep bodies in that it decreases the amount of notice needed from 90 to only 60 days and it removes some of the conditions under which this can be done. Given the potential amount of consulting that a native title rep body may need to undertake with remote stakeholders in the event of such a ministerial decision, 60 days is not seen as sufficient time for that native title rep body to make a case for continuing recognition. Again, the end result may be to undermine the core function of the native title rep body.

The broadening of the range of bodies which can apply and become recognised as native title rep bodies is a serious concern. It leaves wide open the door for this government to do the same with native title service provision as it is doing with, for example, CDEPs, as I mentioned, in many communities. Such mainstreaming of this sensitive native title service would break down any trust between provider and stakeholder client, as well as reduce the true representative relationship between the two parties.
The concerns continue. The government’s response to the Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Account’s Report on the operation of native title representative bodies of March 2006 was presented to the House of Representatives on 15 February this year. One of the recommendations of the committee—and I was a member of that committee—was to review the adequacy of the native title rep body funding. The committee at that time clearly believed that native title rep body funding should be increased in order for there to be native title rep body capacity-building activities like professional development. However, the government’s response was that there is no requirement for a funding review as there is significant capacity within current funding levels.

I might add that many witnesses commented to the committee that there was a need for improved funding—for example, the Native Title Council observed that there has never been realistic funding to NTRBs to enable them to carry out their functions under the act. So the dissenting report recommends that schedules 1 and 2 of this bill not be passed, as they undermine the capacity and independence of the native title rep bodies and potentially make the native title system slower and more bureaucratic.

Schedule 2 of the bill is the most significant element of this legislation. My main concern about it is the shift in emphasis from the Federal Court to the National Native Title Tribunal. I believe the Federal Court has a proven track record in native title case management and it has implemented a range of initiatives and efficiencies, particularly in the Northern Territory. I again go to the evidence before the Senate legislation committee of Mr Philip Vincent of the National Native Title Council. He had this to say about the bill:

… as the Minerals Council of Australia advised in their submission, it also will make it very difficult for third parties to deal with them on the basis of an expectation of certainty.

He went on to say that there are two strategies in this bill:

… strategy 1 is to punish representative bodies.

Strike out is strategy 2.

He suggested that the second strategy is:

… investing powers in the National Native Title Tribunal at the expense of the Federal Court when many people suggest that the National Native Title Tribunal has not at present got the capacity to fulfil its expected functions.

We know that the Native Title Tribunal cannot determine cases under the new act. It can now make findings, but it is not a court. There is some confidence among native title rep bodies and Indigenous people that when things get difficult they can rely on the Federal Court, but this bill substantially invests the negotiating powers in the NNTT. Mr Ron Levy from the Northern Land Council appeared before the Senate committee and said:

… we have found the Federal Court’s case management, including the mediation service, vastly superior to what has been provided by the tribunal.

That the court should have its case management function transferred exclusively to the tribunal was not something that he was advocating or supporting. He went on to say:

The Federal Court has got an extraordinarily bad rap, particularly from Dr Ken Levy.

He acknowledged that Dr Levy is an accomplished person but said he:

… has got it fundamentally wrong. The Federal Court is not fighting a turf war; it is voting with its feet with the aim of settling as much as itpossibly can.

So there is confidence in the way in which the Federal Court is handling cases and I do not believe there is any need for this fundamental shift.
In contrast, the tribunal’s mediation performance has been a lot less effective. One practitioner observed that the track record of the NNTT in mediating claims suggests that many of its members and staff are ill equipped to effectively carry out their mediation functions. I asked Mr Graham Neate about that during the inquiry. I asked about what sort of training in mediation members of the NNTT have. His reply was ‘one week’s training’. In his experience, the course goes for one week. ‘One week?’ I said. He thought that perhaps one week was not substantial enough and said they back it up with more training. Here I had a bit of hope. Here I thought, ‘Maybe they are going to go off for a couple of weeks.’ No, they actually give them another week.

So members of the NNTT have only two weeks training in mediation in a formal sense. Yes, I know they are lawyers and I know they are practitioners, but at the end of the day mediation skills, particularly in dealing with Indigenous people, are specific and exclusive. I believe that at times the NNTT is not well-equipped to handle the mediation process. As we saw in the submissions before the inquiry, there was much more confidence in the Federal Court.

The Northern Land Council raised with us the possibility that the proposed expansion of the power of the tribunal is an unconstitutional arrangement. Such legal uncertainty is not conducive to the goals of improving mediation and no doubt will result in further legislation. We believe that this bill should not be passed in its present form. There are many flaws in this bill, as highlighted in the Senate’s report and in our minority report, but either Labor’s proposal should be adopted or more time should be allowed for consultation on this bill. (Time expired)

Senator EGGLESTON (Western Australia) (11.49 am)—I rise to record my support for the Native Title Amendment Bill 2006. This bill includes a series of significant and balanced reforms to the Native Title Act 1993, which has not been the subject of substantial amendment for more than eight years. As the Attorney-General noted in introducing the bill last year, the key catalyst for the present reforms is the government’s commitment to improving the performance of the native title system. It is important to acknowledge that these reforms were not developed in a vacuum but have instead been informed by an extensive consultation process involving key stakeholders across the native title system.

The Attorney-General originally announced the broad framework for reforms to the native title system in September 2005. This framework comprised a series of six complementary elements aimed at addressing all aspects of the system. At that time, the Attorney-General emphasised the need to achieve better outcomes for all parties involved in native title and undertook to ensure stakeholder concerns would be taken into account. Since then, the government has undertaken consultation on all elements of the reform package and the outcome of such consultation is reflected in the legislation currently before the Senate.

The four schedules in the current bill will respectively implement four of the six elements in the government’s reform package. Those aspects include measures to clarify the key institutional arrangements for the resolution of native title claims through the implementation of a series of key recommendations made by the native title Claims Resolution Review in relation to how the National Native Title Tribunal and the Federal Court may work more effectively on native title matters.

The bill also includes specific measures to improve the effectiveness of native title rep-
resentative bodies, which generally represent claimants in the native title system, and to encourage the effective functioning of prescribed bodies corporate—the bodies established to manage native title once it has been recognised. Finally, the bill will broaden the existing provision for assistance to non-claimant parties so that government assistance can be provided in a wider range of circumstances to respondents participating in the ‘right to negotiate’ process.

Collectively, these measures reflect a balanced and considered approach to improving native title processes without disrupting the overall system and without undermining the existing balance of rights under the Native Title Act. It is critical that we recognise these reforms as part of a broader package which is intended to address all key elements of the system in a rational and coherent way. I understand that a second bill to implement outstanding measures will be introduced to the parliament later in this sitting period and that it will include minor and technical amendments which have also been the subject of detailed consultation.

The government has sought to work with the states and territories to secure agreement on improvements to the native title system. In December last year the Attorney-General convened a meeting of native title ministers from the states and territories. Ministers noted the proposed package of reforms and, significantly, agreed that all parties, including governments, should continue to build on this package. It is important that we in the Senate acknowledge that, while native title is inherently complex, it can assist and has assisted in securing meaningful outcomes for Indigenous Australians. To date, there have been over 90 determinations of native title, the majority of which have been reached with the consent of all parties concerned. Nearly nine per cent of Australia’s landmass has been the subject of native title determinations, an area comprising in total more than three times the area of Victoria.

I note that engagement between parties on native title processes can assist in building meaningful and productive relationships which may endure beyond the resolution of specific claims. The current bill offers a means to build on this with a view to achieving more efficient and effective outcomes, which is in the interests of all Australians.

**Senator Johnston (Western Australia—Minister for Justice and Customs)** (11.55 am)—In summing up this second reading debate on the Native Title Amendment Bill 2006, I would firstly like to thank all senators for their contributions on this important area and thank members of the Senate Standing Committee on Legal and Constitutional Affairs for the work they did in reviewing this bill. Listening to the opposition’s commentary on the bill, I noted that the majority of the opposition are unhappy with the direction in which these amendments are going. Yet there is a dearth of detailed resolution to the problem. It is all very well for senators opposite to say the system is not working, but the point needs to be made that it is their system. This system was inaugurated by the government of the day in 1992. To call it a dog’s breakfast would be to understimate the situation.

The Howard government has grappled with these provisions for 10 years and, at every turn of every corner, the opposition has ‘stood on the hose’. What has been the result? Aboriginal people have barely advanced at all over that period. This is the opposition’s system. This is the dog’s breakfast of native title. The Attorney-General and I, and other members of the government, have been determined to make it better, and this bill is one step towards that end. What do we get in response? We get complaints and accusations that this is not the way to go.
But, of course, as is the usual circumstance of those complaints, there is no constructive engagement; indeed, there is no policy. The hallmark of the opposition in this chamber has been the black hole of policy emanating from it. The government, as always, welcomes constructive engagement. To that end, the opposition has proposed some minor amendments that we will be accepting.

At the last federal election the opposition’s general policy on native title reform comprised the magnanimous and deeply thought out contribution of three sentences:

A federal Labor government will review the Native Title Act to ensure its workability.

That has not happened.

Labor will not amend the act without comprehensive consultation with Indigenous Australians, miners, pastoralists and other governments.

Obviously, that consultation has not taken place over the course of the last 2½ years.

Labor’s review of the Native Title Act will consider prescribed body corporates’ operational funding needs.

I am glad they are going to consider that. We are yet to see the result of such considerations. So the bottom line is that the opposition have not put forward any proposals for reform since the last substantial amendments to the act were passed in 1998. Indeed, the amendments before us today have one common underlying, recurring theme, and that is to reject the measures without any real proposals to amend and enhance the act to make it work better from the opposition’s perspective. Why? The answer is simply that the work that is required has not been done.

Opposition senators interjecting—

Senator JOHNSTON—Senators on the other side say, ‘You’re the government; you should be doing it.’ At every point and at every turn, the opposition have had to be dragged kicking and screaming to address this act—but they will not. When they are given an opportunity to make a contribution, all we get is carping negativity. The government stands on its record against that of the opposition in this place when it comes to securing practical and considered measures for native title reform for all Australians.

The opposition claims that there is widespread opposition from stakeholders to schedules 1 and 2. Of course, with almost every piece of legislation inaugurated by the Howard government in this place, the opposition takes the perspective of shaking its head and saying, ‘No, no, no.’ Senator Ludwig claims that the Aboriginal and Torres Strait Islander Social Justice Commissioner ‘rejects most of these amendments’. The social justice commissioner noted in his submission to the Senate committee:

I welcome and support many of the reforms in Schedule 2 of the Bill ...

That is some distance, I respectfully say to Senator Ludwig, from his annotated commentary on what the social justice commissioner actually said. Likewise, Senator Ludwig points to concerns raised about the bill by the Western Australian Office of Native Title. While the WA Office of Native Title does note some concerns, it states in its submission:

Overall, the Office of Native Title considers the amendments proposed in the Bill have the potential to improve practical operation of the … system.

That is an objective assessment that I think is worthwhile. Of course, the opposition’s response is still to say, ‘No, they are opposed.’ The Minerals Council of Australia said in its submission:

The MCA supports … the proposed reforms to the NTA—

the Native Title Act—

relating to representative Aboriginal and Torres Strait Islander bodies, including … a simplified
The government’s reform package has been the subject of extensive consultation over the period since the reforms were announced in September 2005. Those consulted have been strongly in favour of the approach that the government is taking with these reforms to seek to improve the performance of the system to facilitate quicker and more effective processes for claim resolution and to not introduce substantial change to a system that is reasonably understood by the parties—notwithstanding that it is highly complex. The parties are increasingly demonstrating the capacity to be able to work within this framework. Ultimately, the government can improve the processes of native title and the speed with which the system is able to deliver outcomes. This will depend on the behaviour of the parties and the manner in which they approach their future dealings with the Federal Court and the Native Title Tribunal.

As I have said, I want to thank the Senate Standing Committee on Legal and Constitutional Affairs for its detailed consideration of this bill. The government has carefully considered the recommendations made by the Senate committee and accepts the large majority of them. Only two of the recommendations proposed changes to the bill, although a third recommended consideration of a further amendment in a subsequent bill. I will deal with each of the recommendations in turn to record the government’s response to the Senate committee’s report.

With respect to recommendation 1, the committee proposed increasing the minimum period of recognition for a native title representative body from one to two years. The government will implement a modified form of this recommendation through government amendments to the bill. The minimum period of recognition will, in most circumstances, be increased to two years. However, the minister will be able to specify minimum recognition periods of between one and two years where a funding controller is appointed to the representative body, the representative body is under external administration or a term of that period would promote the efficient performance of the functions of the representative body and representative bodies generally. The government considers that these amendments are an acceptable modification of the recommendations made by the legal and constitutional committee as they will generally provide representative bodies with certainty of a two-year recognition period while ensuring that in appropriate circumstances the minister retains the flexibility to reorganise and recognise a representative body for between one and two years.

The committee’s recommendation 2 is that the government finalise and implement funding arrangements for prescribed bodies corporate as a matter of priority. The government supports this recommendation. However, the government’s expectation is that support for prescribed bodies corporate will, in most cases, be delivered through native title representative bodies rather than directly to prescribed bodies corporate. There may be limited circumstances in which prescribed bodies corporate may be more appropriately provided with director support by the Australian government—for example, where the prescribed body corporate does not have a functioning relationship with the native title representative body. These matters are currently being progressed as a high priority.

Recommendation 3 was that a code of conduct for tribunal mediation be developed without delay. The Attorney-General’s Department is developing a code of conduct at present. I understand the department will be consulting key stakeholders on the drafting of that proposal in coming months.
With respect to recommendation 4, the committee suggested that the bill be amended to enable parties to object to directions made by the National Native Title Tribunal on the grounds of confidentiality, privilege or prejudice. The tribunal’s new compulsory powers are an important part of the package of additional tools the government has given to the tribunal to enable it to secure more negotiated outcomes. This is a very crucial and fundamental direction within these changes. The amendments in recommendation 4 would significantly reduce the effectiveness of the powers given to the tribunal to compel production of certain documents. Further, as drafted, the provisions do not expressly enable the tribunal to compel production of privileged material. It is also clear that the intent of the legislation is that material subject to legal professional privilege cannot be compelled to be produced. On this basis, under the general rules of statutory construction, material subject to legal professional privilege would of course be excluded from such power. The final decision about the production of documents is for the court to make. The bill contains efficient safeguards to ensure that, where parties have legitimate objections to the production of material and objections based on prejudice, privilege or confidentiality, the objections will be taken into account before any enforcement action is taken.

Recommendation 5 of the committee proposed that guidelines in relation to the exercise of the tribunal’s new compulsory powers be developed as a matter of priority. The government accepts this recommendation and considers guidelines would be a valuable tool to assist the tribunal and parties to native title proceedings. Implementation will be a matter for the tribunal. In recommendation 6 the committee suggested the development of a protocol between the Federal Court and the tribunal, which would allow noncompliance with directions issued by the tribunal to be dealt with as a matter of priority by the court. The government accepts recommendation 6. Such a protocol would complement the other measures in the government’s package of reforms encouraging better communication and coordination between the court and the tribunal. Developing a protocol will be a matter for the court and the tribunal.

I turn to recommendation 7. The committee recommended that the tribunal develop an ongoing training program for its members. The government accepts this recommendation. I understand the tribunal is developing a revised program for the induction of new members and the ongoing professional development of all members, including in relation to the mediation of native title matters. In recommendation 8 the committee recommended that the government commit to reviewing the connection review function in two years time. The government accepts this recommendation. Monitoring and review of the connection review function would be a useful initiative in ensuring the provisions operate as the government has intended.

In recommendation 9, the committee recommended that the government consider proposals made by Telstra to the committee in relation to proposed section 87A with a view to including amendments in the second native title amendment bill. The government accepts recommendation 9 and will give consideration to the suggestions put forward by Telstra. Any amendments to section 87A would be made in the second native title amendment bill, scheduled for introduction later this sitting. Finally, the committee recommended that, subject to the other recommendations made, the bill be passed—and I say again that the committee recommended that the bill be passed—as an important step in the right direction towards expediting this complicated process. Of course, the government accept this recommendation, which is
subject to recommendation 1, which we implemented in a modified form, and recommendation 4, which will not be implemented for the reasons I have outlined.

In my final remarks I note that the changes in the Native Title Amendment Bill 2006 are an important part of the government’s native title reform package. Together with other elements of the reforms, they will enhance transparency and accountability in this complicated system. The changes before us today are designed to help shorten the time it takes to resolve claims. A more effective and efficient resolution of native title claims is in the interests of all stakeholders, all people involved, in the native title system. A number of government amendments are to be moved. It is best that their content be addressed at the committee stage. I commend this bill to the Senate.

Question agreed to.

Bill read a second time.

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

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

Second Reading

Debate resumed from 22 March, on motion by Senator Johnston:

That this bill be now read a second time.

upon which Senator Carr moved by way of amendment:

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”.

Senator CROSSIN (Northern Territory) (12.10 pm)—I think I have only three minutes in which to finish my contribution on the Schools Assistance (Learning Together—Achievement Through Choice and Opportunity) Amendment Bill 2007, having spoken on it late last night. Before I stopped at 11 o’clock, I was talking about this government’s proposal to put flagpoles in schools. I want to make two points about that.

One was about truly supporting Indigenous education. Most of my speech last night was about this government’s lack of recognition, under the Investing in Our Schools Program, of Indigenous schools. I recognise the fact that $100,000 worth of capital equipment will not go as far in a remote school as it would in a school in a suburban centre in a capital city on the eastern seaboard. Therefore I was a bit perplexed as to why government schools, which might have a majority of Indigenous students, were not entitled to much more than $100,000, but so be it. This government continually wants to crow about the fact that Indigenous students are not doing so well. That is predominantly, supposedly, never ever its fault, but when it gets an opportunity to provide more money to those school students it does not do it.

Going back to the issue of flagpoles, I have had many requests from Indigenous communities and schools wanting to know if they could get two flagpoles so that they could fly the Indigenous flag as well as the Australian flag. But under this scheme it is one flagpole and one flag, and the flag has got to be the Australian flag, not a flag that Indigenous people might want to hoist up a pole and have just as much respect for. The
crux of the matter for this government is that, while it goes on at length about flagpoles, about citizenship and values in schools and about trying to pay teachers for their improved performance in the classroom, it never really looks at the real substantive issue here: providing schools, particularly Indigenous schools, with the fundamental resources that they need. It never dips into its pockets and it never says: ‘As we’re talking about literacy and numeracy outcomes for Indigenous kids, how can they possibly meet a year 3, 5 or 7 benchmark in literacy when there is no nationally funded oral program? Basic How to Teach Reading 101 says if you can’t speak the language, you can’t read it.’ We never hear the minister talking about having a comprehensive oral English program out there so that the Indigenous children of this country might be able to speak the language that they have to read, which they are then measured against. The logical extension is that now teachers will be measured against it. (Time expired)

Senator IAN MACDONALD (Queensland) (12.14 pm)—I would encourage the previous speaker, Senator Crossin, to actually have a look at the Schools Assistance (Learning Together—Achievement Through Choice and Opportunity) Amendment Bill 2007 and the second reading speech. Part of the bill provides for $9.445 million for literacy, numeracy and special learning needs programs, but I did not hear the previous speaker give the Howard government any credit for that whatsoever. Obviously, she has not read the bill, and she has certainly not taken any notice of the second reading speech, in which all of this was explained.

It is probably appropriate at the beginning of my speech to do a reality check of education. I ask the Senate: why do we have states? We have states to look after things like policing, health, housing and education. Education is a state issue. To help with that, the Howard government has provided all of the states and territories with a huge windfall tax gain called the goods and services tax—the GST. Senators will well remember, though I am amazed that many Australians still do not know, that every single cent of the GST goes to the state and territory governments. They have enormous amounts of money. They are rolling in money from the GST. And yet what have the states done with that? Across all states we have the worst health system that we have seen for many years. The health system is going backwards at a time when the states are getting more and more money from the Commonwealth through the GST and more and more money from the Commonwealth through direct grants for health.

So what do you have states for? They cannot look after health and they are pretty ordinary at looking after housing—let us look at schooling. What have the states done for schooling? This is a state issue. Everything that Senator Crossin spoke about is probably true, but why don’t the states, which have the responsibility for schooling and education, actually do something about it? It is okay for Senator Crossin to come in here and blame the federal government, but it is the state governments that have responsibility for education. The state governments should be doing all the sorts of things that Senator Crossin spoke about, but they do not, and so yet again the Howard government has come riding to the rescue of the states by providing some $1.81 billion for schooling. Why have we done that? Because the states are not meeting their responsibilities to the young people of Australia. The states are not providing the funds that are needed to give our children a good education. For decades—centuries even—the states have been in charge of education, and they have given us a system which is very second-rate. So the
Howard government has come along and provided this money to help out.

The money the Commonwealth government is providing goes to all children. We do not have this class warfare distinction that the Labor Party seem to have every now and again. I am not sure whether today they are on the class warfare bit or whether they turned it over a couple of days ago. I notice that the front page of today’s Australian indicates that the present ALP platform is that Labor governments must give priority to public schools—the old class warfare stuff. Private schools or Catholic schools are for the rich and the poor people all go to state schools. I should declare an interest here: I went to a state school—I never went to a private school—and I share that distinction with the Prime Minister. We are both very well served by our state school education. But now parents are voting with their feet. Nowadays the state schools system is so poor that parents want to look to Catholic and other private schools to give their children a decent education. As I say, parents are voting with their feet. Many parents are taking second jobs so they can get their kids into a private school or a Catholic school. It costs them a bit more, but the state governments have run state schools so poorly that parents do not want to send their kids to them anymore. At great personal cost to themselves, parents are sending their children to private schools because they know they will get a better education there.

Our government wants to support choice for parents. We support the public schools. Indeed, a very substantial part of the funding that has been made available through this bill will go to state schools. Of the additional $181 million allocated—a figure I will come back to shortly—$127 million, a bit more than two-thirds of it, will be going to state owned government schools and $54 million will be going to non-government schools. So the Howard government is fair and even in providing funding for all families so that all children can get an education. On the other hand, the Labor Party, until an announcement a couple of days ago, only wanted to help children going to state schools. All those working-class people—all those ordinary Australians, if I can use that terminology—who want their kids to go to private schools instead of state schools are prepared to work harder, and the Labor Party did not want to help those parents out.

In the last couple of days, I heard Mr Rudd saying that he is going to adopt the Howard government’s approach to schooling and axe Mr Beazley’s hit list of private schools. Mr Rudd has announced it unilaterally, in contravention of the Labor Party platform, it appears to me—that does not seem to worry the Labor Party too much; they have never been very good at following the rules—and told everyone that Labor will not abide by that part of the platform and will adopt the Howard government’s approach to schooling. According to the Australian, some of those on the left of the Labor Party are not too happy about this. I understand that there is a pretty good rearguard action going on now to do Mr Rudd over at the national convention when it occurs in a couple of months. So it will be interesting to see whether the Left of the Labor Party will have their way on schools or whether, with an election coming up, Mr Rudd will be able to paper over these things, smile prettily and confuse people about Labor’s real policy on schools. The good thing is that there is no confusion about the Liberal position on this. We have been clear and up-front. We want to help all children with their schooling. We want to give parents choice in the way they can educate their children. The bill before us today is a tangible recognition of the Howard government’s approach.
A total of $1.181 billion is going into schools, most of it to government schools but a fair share to private schools. In the amending bill before us today we are adding another $181 million to the Investing in Our Schools Program, bringing the total amount committed by the Howard government for schooling to $1.181 billion. It is a great news story. One would think that Labor senators would be in here congratulating the government on this additional input into schools.

Senator Crossin mentioned flagpoles in a derogatory way. I happen to think the proposal is a pretty good one. I remember going to Croydon to open a little school up in the Gulf of Carpentaria. It was a long way for me to go but I was able to do a few other things while I was in the area. It was great to go to that small school in the gulf, Croydon State School, and to see how proud those kids were—if my memory serves me correctly, there were about 30 kids in the whole school—to be able to fly the Australian flag. The majority of the children were of Aboriginal descent. They were all very proud Australians. They had an Aboriginal flag there, as well as a Torres Strait Islander flag—and good luck to them. They were acknowledging themselves as proud Australians. It was a great day when we were able to launch that flagpole.

Going around North Queensland and looking at the work that has been done by state and private schools under the Investing in Our Schools Program is practically a full-time job for me. I have been to St Anthony’s up in the northern beaches of Townsville, the Catholic school in Mareeba, the state and Catholic schools in Biloela and the Mount Archer State School in Rockhampton looking at the work that has been done with this money. Many of the schools have received up to $150,000. A new element of the program is that this additional $181 million will go to those schools which so far have not applied for and have not received money. Up to $100,000 will be made available under the next stage of the Investing in Our Schools Program. Not every school will get $100,000. It is a semi-competitive program and the schools have to justify what they need.

I have to tell you, Mr Acting Deputy President, that this program is one of the most welcomed and most gratefully received programs that the federal government has ever introduced. In the past, state governments starved their schools of funding. While schools require shade areas, new playgrounds and new classrooms, the state governments are too busy spending their money on spin doctors, bureaucrats—public servants—getting the message out and playing politics. They are not too interested in spending money on schools. Children desperately need these additions. What is the alternative? The parents and citizens groups have to go and sell raffle tickets to raise the money to put in air conditioners, shade areas or new playgrounds for the children. These are essential items in the education system. At night-time or after work the mums and dads have to go and sell raffle tickets to try and raise money to put into the state schools, which is what the state governments should be doing.

This program not only provides money for children and their education but also relieves parents from some of the more arduous asks of having to raise money to put the essentials into state schools. In many private and Catholic schools the P&Cs do a lot of work. I know many parents take on an extra job so they can afford to send their kids to a private school, because they believe they get a better education there. This program also helps those mums and dads because it relieves them a little of the obligation to raise additional funding for the education of their children. These funds assist with buildings,
maintenance and the updating of schools throughout Australia. As I have indicated, there has been a very enthusiastic response from schools for funding under the Investing in Our Schools Program.

I might say in passing that the Minister for Education, Science and Training, Ms Bishop, and the parliamentary secretary, Mr Pat Farmer, do a fabulous job. I think Ms Bishop, as education minister, has been quite outstanding in the work she has done in recent times helping our schools. I also congratulate Pat Farmer. He has been as enthusiastic in his involvement with this program and in helping schools as he was in his athletic events in years gone by. I think some of his athleticism, energy and enthusiasm have carried over into the way he has helped to develop this program.

So far the minister has approved over 15,000 projects from government schools and over 2,000 from non-government schools. I seem to have opened many of those, because my weekly work seems to involve going from one end of Queensland to another opening these schools. I know that my Liberal Senate colleagues in Queensland, Senator Mason, Senator Brandis and Senator Trood, have been doing the same sort of thing. I know that our local members, Mr Entsch in Cairns, Mr Lindsay in Townsville and Mr Macfarlane in Groom, and all our members on the Gold Coast and Sunshine Coast and around Brisbane spend a lot of their days going and seeing the great work that is being done—being lobbied, I have to say, by parents and citizens, presidents and treasurers for a little extra funding, and principals wanting to talk to their local representatives about new initiatives the Investing in Our Schools Program could help with. So it has been a great program and a very well received program.

That brings me back to almost where I started. When you see the effort the Australian government has put into education you wonder why we bother to have states. You really do. They cannot run hospitals, they cannot run schools, they cannot run housing and they cannot run the road system. In spite of the enormous amount of money that we give them through the GST and through special grants, they cannot do any of these things and they have to come to the Commonwealth government, which has an understanding of the needs of these things, to bail them out of problems all the time.

This bill will provide funding, for schools that have received little or no funding to date, of up to $100,000 for government schools and up to $75,000 for non-government schools. The bill also appropriates some money for the Literacy, Numeracy and Special Learning Needs Program. What Senator Crossin said is right: there is a concern with the education of Indigenous young people because the states are simply not focusing on the issue. This bill will give some money towards the Literacy, Numeracy and Special Learning Needs Program. There are other funding programs that the Commonwealth has provided to try to give Indigenous kids, particularly in remote parts of Australia, the opportunity they need to have a successful and fulfilling future.

It is a good news bill. Congratulations to the minister for bringing the program forward and for convincing cabinet of the need to add to it—I am sure that not a lot of convincing was needed. I am very proud to be part of a government that has put this enormous amount of money into the education and future of young Australians. I certainly commend the bill to the Senate.

Senator STERLE (Western Australia) (12.32 pm)—I rise to speak to the Schools Assistance (Learning Together—
Achievement Through Choice and Opportunity) Amendment Bill 2007. While any increase in funding for our schools is, of course, to be welcomed, I would like to share with the Senate the concerns my colleagues and I have about some parts of this bill and this Minister for Education, Science and Training, the member for Curtin. I should also like to mention that Labor acknowledges the infrastructure shortfall our schools face and supports the injection of additional funds into the Investing in Our Schools Program.

But as my Western Australian colleague the member for Perth, Stephen Smith, noted in the other place, the Howard government and Minister Julie Bishop have been quite cynical in the way they changed the guidelines for the Investing in Our Schools Program midstream, reducing the amount of funding government schools can apply for from $150,000 to $100,000. Besides altering guidelines for government schools, which means the ability of all schools to get funding has been cut, the Howard government has not committed to continuing this program beyond the current funding round. This is quite a blow for public schools, and I could not help noting the remarks by a writer in the *Age* on Tuesday, 13 March this year. In the article with the headline ‘Julie Bishop gets an F for fairness’, the reporter, a Ms Julie Szego—and I apologise to the reporter if I have mispronounced her name—suggested:

That’s the problem with the Howard Government—you can’t always take the portfolios at face value ... Maybe it ought ... to drop the pretence with Bishop’s portfolio and prefacing ‘education’ with ‘private’, to avoid any further confusion.

The reporter makes the point, and it is a good point, that Minister Bishop bashes public schools and then does not give them the funding to improve performance.

But it has not been a good couple of weeks for the minister. A couple of weeks ago the minister pulled a stunt in the other place. In a bizarre display she tried to scold the Leader of the Opposition for allegedly stealing her policy. As if we need to! Given the fine work being done by the member for Perth, and the very positive reception given to Labor’s recent policy announcements on funding for schools, we have no need to steal anyone else’s policies, let alone a Howard government one.

Labor is adopting an innovative approach, while the Minister for Education, Science and Training continues to bash public schools and indulge in scare campaigns. It is little wonder that public opinion is turning against the tired, worn-out Howard government. The minister described the Leader of the Opposition as a ‘naughty boy’; it is the minister herself who has been sent to the naughty corner by none other than the federal Treasurer. After extolling the alleged virtues of performance pay for teachers for so long, it was the minister who copped a scolding, or should I say caning, from the Treasurer over the issue.

In a news item in the *Australian* on 21 March this year, under the headline ‘Costello junks Bishop pay plan’, reporter Samantha Maiden said,

Peter Costello has ruled out a large-scale federally funded program to deliver performance pay for the nation’s teachers, despite Education Minister Julie Bishop’s championing the issue.

So, who has been a naughty girl then? Who has been caught speaking out of turn? One would love to have been a fly on the wall in the cabinet room when the Treasurer gave the education, science and training minister a thorough dressing-down over the issue. I can imagine the Treasurer saying, ‘You naughty girl, you.’ Who has been sent to the naughty corner in the cabinet room for a bit of time-
out? Can you imagine the tantrum put on by the minister when the Treasurer took one of her favourite rag dolls—her championing of performance pay—away from her? It would not have been a pretty sight!

What Minister Bishop needs to do, like so many naughty children and ministers, is get a taste of reality. The minister should get out to schools like the Forrestfield Senior High School in Perth, a sports college of which I have the privilege to be the patron, and meet the great students. The teachers do not need performance pay to make them some of the finest people I have had the pleasure of meeting. They are doing a fantastic job in a great public school system in Western Australia. The minister should get out and talk to those teachers and hear them say, as they have said to me, that it is all right for the minister from Canberra to bag them because they are an easy target. I say it is not all right. She should hear these teachers say, as they say to me, that by bashing the public school system and promoting ideas like performance based pay she is insinuating that they are lazy or useless.

It is obvious to them, as it is to me and my colleagues, that Minister Bishop is attacking the very people we should put on a pedestal—the pedestal they once were on. These teachers should be held in the highest esteem as some of the most important members of our community. They are charged with one of the community’s most important tasks: the education and care of our children.

So the minister gets a caning from the Treasurer. She is told to pull her head in on the issue of performance pay. So what does she do? She denies ever supporting the concept of federal funding for performance pay in the first place. She says that she and the Treasurer have always seen eye to eye on the issue. I tell the Senate this: the minister must have copped quite a time-out in the naughty corner to have changed her tune so quickly and so thoroughly. The minister has been thoroughly humiliated by the man she has supported for so long—all tip and no iceberg indeed!

In a report yesterday by Samantha Maiden in the Australian newspaper, the Treasurer is quoted as saying:

We can’t change the terms and conditions of teachers’ pay because we don’t pay any of them …

He went on to say in the same report:

I have said I will continue to put pressure on them—that is, the states—to change those conditions … to incorporate an element of performance pay … How they do that is up to discussion.

“(But) the commonwealth has the ability … to make it a condition of funding.

I will return to the questions raised by those remarks in a moment, but those opposite, especially ministers from Western Australia, might like to reflect on the concept of performance pay and think about how Minister Julie Bishop might be earning hers.

Senator Johnston interjecting—

Senator STERLE—I hope you are listening, Minister Johnston. Heaven forbid that ministers from either side of politics be paid based on performance! Some on the other side would be handing money back to the department of finance if performance pay were introduced into their ranks. Imagine for a moment that ministers were paid for performance: how would Minister Bishop be earning hers, if she was earning any at all? Why might the Treasurer sign off on her bonus after such a scathing dressing-down? It is a bit like a mid-year performance review that went badly wrong for the employee in question. How might the minister salvage her bonus, which is very much in danger of go-
ing down the gurgler—by maligning public school teachers? Maybe blaming someone else might save her bonus. It might help. After all, blaming others is one of the few skills, if you can call it that, which she brings to the job. But maybe the best way for Minister Bishop to save her bonus is to do exactly as she did. As soon as Treasurer Costello pulled her nose she fell back into line so quickly she certainly went a long way towards restoring her prospects.

Speaking of performance and dedication—something Minister Julie Bishop is obviously lacking in—I want to return to Forrestfield Senior High School and make particular mention of the principal, Mr Peter Noack, who is ably assisted by Mr Greg Maynard, head of the physical education department. At Forrestfield high school they have successfully combined academic and sporting excellence with a series of sports colleges incorporated into the school structure so that gifted young sports women and men can integrate their school studies while they develop their sporting skills. This way of doing things is paying off in a big way. Not only are the students successful academically; they are also very successful in their various sports at state and national level.

Senator Johnston—It is probably funded by the federal government.

Senator STERLE—It is innovative, combining learning and sport, and these teachers do it without performance pay. They do not ask for it and they do not need it. And, just to take that interjection from Senator Johnston, they do it all themselves without any extra funding—all by themselves—with the goodwill and commitment of the students, the parents and, most importantly, the teachers. I hope that has cleared that up for you, Senator Johnston. These are the very same people Minister Bishop likes to malign.

That is about real performance by teachers and students—unlike what we see from this lazy, tired government. I shall talk more about the virtues of Forrestfield Senior High School at another time, but it is important to talk about the great work of people like Peter Noack and Greg Maynard and the staff and students in the context of federal funding for schools.

But back to the Treasurer and his comments that so effectively suppressed the minister for education. What can we take the Treasurer to mean by these comments? One way to interpret these comments is that further power will be taken away from the states: you will do as we say or you won’t get your funding—more bullying, as usual, from the Treasurer. Sadly, this is the kind of behaviour we have come to expect from this minister.

There is a more sinister interpretation. We have witnessed in this very place, in late 2005, this arrogant government using its numbers in the Senate to guillotine debate and ram through the so-called Work Choices legislation. Then the states lost their High Court challenge. So could we see a repeat performance over education? Will we see the federal government using the corporations power to take away control of education from the states? This would be a monumental disaster for the great public schools system, for teachers, and, more importantly, for students. No wonder the minister for education has been sent to the naughty corner for letting the cat out of the bag over this government’s arrogant approach to public education.

Labor has a fresh approach to education and education funding. It is no wonder public opinion is condemning the Howard government for its treatment of public schools, and it is little wonder public and expert opinion is so receptive to the good work being
done by the Leader of the Opposition, Mr Kevin Rudd, and the shadow minister for education, Stephen Smith. There is Labor’s Local Schools Working Together program to provide funding for capital across government and non-government schools where it is needed. I wish to repeat that for those on the other side who may be confused: across government and non-government schools where it is needed. These are areas where population growth means that parents and schools are demanding more and better facilities. The idea of sharing infrastructure is a very good one, and I commend once again the responsible shadow minister for promoting this policy. This is all part of Labor’s education revolution.

Another part of Labor’s plan is 260 childcare centres on school sites. Once again, this is another excellent idea, saving the double drop-off for parents, but—guess what?—ignored by this government. In addition there have been a number of other very good policy proposals put forward by Labor already this year: early childhood education guaranteed, efforts to get more students studying science and mathematics, and a national curriculum for the key areas of history, science and maths, working with the cooperation of the states and territories.

Let me end by making it perfectly clear that talk of ‘hit lists’ is over. To respond to Senator Ian Macdonald’s contribution—which I always find completely different, to say the least—I will say it one more time. It can be picked up if he has his TV on in his room. It is over. There are no hit lists. Schools and students, government and non-government, will be better off under a federal Labor government. Funding will not be cut. It will also be fair and will be on the basis of need. We will see public opinion liking what they hear from Labor on education. The voters will get their opportunity later this year. They will vote on who should get their performance pay—our version of it at least—and I suspect it will not be people on the other side either in this chamber or in the other place.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (12.48 pm)—I begin by foreshadowing a second reading amendment on behalf of Senator Nettle and the Australian Greens which is to add at the end of the second reading motion the words:

“but the Senate condemns the Government for not funding schools on the basis of genuine need which necessarily requires funding to be diverted from being provided to the wealthiest private schools and instead being redirected to the most needy public schools”.

Senator Joyce—Greedy.

Senator BOB BROWN—Well—

The ACTING DEPUTY PRESIDENT (Senator Hutchins)—Senator Brown, address your remarks through the chair. Just ignore Senator Joyce.

Senator BOB BROWN—Yes, I will. I am going to be very brief because Senator Nettle gave a sterling speech on behalf of the Greens on this matter last night. What she pointed out was that you cannot have a needs based policy, as the government says it has and as Labor claims it has, while the limited education funding and increases in the limited education funding keep going to the wealthiest schools at the top of the pile at the expense, therefore, of the most needy schools in Australia. You cannot say that you have a needs based program when the money going out of the public purse to already very well-off schools might be providing for a rifle range whereas public schools are looking to maintain or to refurbish toilets and basic needs for the kids that go there.

The prior role and responsibility of government is to ensure that all Australians have not just basic buildings in which to be able to be educated but that the quality of their edu-
cation is going to ensure them an equal opportunity at the end of their education process for fulfilment in life. We simply do not have that in Australia. The gap between rich and poor is growing, as the gap between rich and poor schools is growing. The very richest schools are in the private sector and the poorest schools, not least Indigenous schools in this country, are in the public sector.

The case is for us putting extra expenditure into the public schools sector where it is badly needed—in place of putting it into the fifth swimming pool, putting it into the classroom where kids need to get a basic education. The argument that Senator Nettle put forward is that neither of the big parties anymore are offering needs based education policy. The Labor Party cannot claim to be doing that when its own funding program is right across the spectrum. It has withdrawn from the ideal that money should be going to the poorest schools in Australia. What money is available—and it becomes increasingly from the federal arena—should be going into refurbishing and upgrading the poorest schools in Australia to bring some equality back into the education system.

The Greens will be pursuing this issue in the run-up to the election. We are unashamed defenders of the public school education system in this country. We believe that more should be spent overall on education, not less. We want to take Australia from its languishing position in the OECD spending stakes into the top 10. The Labor Party has recently moved to put Australia back into the forefront of the delivery of broadband services. Is it not as important or more important to put Australia back into the forefront of the delivery of public school educational services?

Let me remind the Senate that the countries at the forefront of the OECD include Scandinavian countries and countries like Austria which, almost universally, have a system which is not divided between private and public education, unlike the system we have. We do have a private education system in this country and it is very diverse, and we accept that. But the Greens are saying that the limited education dollar should not be going to the very wealthiest school to build a fifth swimming pool when there are many schools in Australia which have a dire need for money just to enable them to present a quality education commensurate with that of countries of equal population and standards.

Again, I thank Senator Nettle for her speech to the Senate last night. I recommend that members read that speech. As a consequence, Senator Nettle will be moving a second reading amendment to get back to the time-honoured Australian philosophy of a fair go. We should be ensuring that when there is new money available for education it goes to the neediest public schools in this country.

Senator BRANDIS (Queensland—Minister for the Arts and Sport) (12.54 pm)—I thank honourable senators for their contributions. The Schools Assistance (Learning Together—Achievement Through Choice and Opportunity) Amendment Bill 2007 contains measures that will provide increased Australian government funding to meet the immediate needs of school communities throughout the nation. Under this government all Australian schools have been funded at record levels. The Australian government will provide a record estimated $33 billion in funding for Australian schools over the four years 2005-08. Funding to Australian schools has increased by close to 160 per cent, from $3.6 billion in 1996 to $9.3 billion in 2006-07. Through increased financial assistance to schools, particularly schools serving the neediest communities, the government seeks to improve the out-
comes from schools for all Australian students.

State governments have primary responsibility for education. State governments own, operate and are the major source of funds for public schools, while the federal government supplements that funding as a percentage of the state investment. State governments accredit and regulate non-government schools, while the federal government provides the majority of public funding, so there is a shared responsibility between the state and federal governments.

It has been claimed that there is decreasing funding to state government schools. In fact, the opposite is true. The government has provided record levels of funding to public schools in every year since 1996, in total an increase of 118 per cent, while enrolments have increased over that time by only 1.2 per cent. It is also claimed that non-government schools are supported at the expense of government schools, but that is not the case. The government believes that it is every parent's right to choose the best educational outcome for their child, and this government’s funding policies have provided parents with greater choice than ever before.

The fact is that funding follows enrolments. There has been a 21.5 per cent increase in enrolments in non-government schools since 1996. Even so, 67 per cent of students are still enrolled in public schools and they receive 75 per cent of total public funding, while 33 per cent are enrolled in non-government schools and they receive 25 per cent of total public funding.

Through this bill the highly successful Investing in Our Schools Program is being bolstered by an additional $181 million. Of this funding, an additional $127 million will be made available for state government schools and $54 million will be provided for non-government schools. The Investing in Our Schools Program has fulfilled a $1 billion election commitment to deliver projects that have been identified as a priority by school communities and to provide much-needed educational outcomes for students. Almost 90 per cent of state government schools throughout Australia have received funding through this program.

While the majority of students across the country are already benefiting from projects funded by the program, there remain many schools that have not yet applied or have only applied for smaller amounts of funding. The Australian government is targeting the additional funds to these schools to assist all Australian state government schools to benefit from the Investing in Our Schools Program. To give all state government schools the opportunity to access the new funding, state government schools which have received no funding or smaller amounts of funding will be able to apply for projects which will take their total approved grants from all rounds of the Investing in Our Schools Program up to $100,000. For non-government schools the additional funds are for grants of up to $75,000, targeted at schools that have received little or no funding under the program to date.

This government also makes a significant investment in school buildings and infrastructure under the capital grants program. This program is providing an estimated $1.7 billion over 2005-08 to assist with the building, maintenance and updating of schools throughout Australia. This includes an estimated $1.2 billion in capital grant funding for state and territory government schools and an estimated $480 million for Catholic and independent schools, not including the funding in this bill.

The bill will provide $11.7 million for capital funding for non-government schools for 2008. This funding is to maintain the ex-
isting level of funding. 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 Program for 2008. This is to provide continued funding to the end of the quadrennium. These national projects underpin this government’s efforts to ensure that education policy, school practice and classroom teaching are effective in raising the literacy and numeracy of educationally disadvantaged students.

Parents are concerned about literacy and numeracy standards in our schools. An estimated $1.8 billion is already being provided over the 2005-08 quadrennium to the government and non-government education sectors through the schools grants element of the Literacy, Numeracy and Special Learning Needs Program. This is a significant investment to support the literacy and numeracy and other learning outcomes of educationally disadvantaged students.

We should be aiming to raise the bar for every student so that we receive the highest possible standards. That is why the Australian government has taken the lead in ensuring that states and territories lift standards through a truly national literacy and numeracy assessment for years 3, 5, 7 and 9 from 2008. The test will look at the literacy and numeracy achievements of children against national measures. A student’s state of residence should not dictate education standards and experience, but there is little or no consistency between states and territories on critical issues such as starting ages, school structures, curriculum and year 12 certificates and university entry. I am calling for the development of a truly national curriculum and consistency in school starting ages.

We also cannot hope to raise standards in our schools if we continue with the fallacy that teachers do not deserve incentives and rewards for better performance. That is why I am developing options for greater consistency in professional development for teachers as well as calling on the states to provide higher salaries, and with an element of performance or merit based pay, and greater workforce flexibility. For example, we should be rewarding teachers who work in our most disadvantaged schools and achieve outstanding results or specialist teachers such as in science or maths.

This bill responds to the specific needs of schools and school communities. This government will continue to identify and respond to community aspirations for Australian schools to deliver the highest standard of education. The Australian government is committed to supporting a quality school education for all Australian children. The programs and initiatives it is putting in place are helping to create an Australian education system of high national standards, national consistency and quality so that all young people are prepared to meet the future demands of life, study and work. I commend the bill to the Senate.

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

The Senate divided. [1.07 pm]
(The Deputy President—Senator JJ Hogg)

Ayes............ 29
Noes............ 33
Majority........ 4

AYES

Allison, L.F. Bartlett, A.J.J.
Bishop, T.M. Brown, B.J.
Brown, C.L. Campbell, G.
Carr, K.J. Conroy, S.M.
Crossin, P.M. Forshaw, M.G.
I move the Australian Greens second reading amendment circulated in my name:

At the end of the motion, add: “but the Senate condemns the Government for not funding schools on the basis of genuine need which necessarily requires funding to be diverted from being provided to the wealthiest private schools and instead being redirected to the most needy public schools”.

Question put.

The Senate divided. [1.11 pm]

(The Deputy President—Senator JJ Hogg)

Ayes…………….. 7
Nees……………. 53
Majority………… 46

A Y E S

Abetz, E. Adams, J.
Barnett, G. Boswell, R.L.D.
Brandis, G.H. Campbell, I.G.
Chapman, H.G.P. Colbeck, R.
Eggleston, A. Ellison, C.M.
Ferguson, A.B. Fielding, S.
Fierravanti-Wells, C. Fifield, M.P.
Heffernan, W. Humphries, G.
Johnston, D. Joyce, B.
Kemp, C.R. Lightfoot, P.R.
Macdonald, I. Macdonald, J.A.L.
Mason, B.J. McGauran, J.J.J.
Minchin, N.H. Nash, F.*
Parry, S. Patterson, K.C.
Payne, M.A. Ronaldson, M.
Scullion, N.G. Troeth, J.M.
Trood, R.B.

N O E S

Abetz, E. Adams, J.
Barnett, G. Boswell, R.L.D.
Brandis, G.H. Campbell, I.G.
Chapman, H.G.P. Colbeck, R.
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Parry, S. Patterson, K.C.
Payne, M.A. Ronaldson, M.
Scullion, N.G. Troeth, J.M.
Trood, R.B.

* denotes teller

Question negatived.

Senator NETTLE (New South Wales) (1.10 pm)—I move the Australian Greens second reading amendment circulated in my name:

At the end of the motion, add: “but the Senate condemns the Government for not funding schools on the basis of genuine need which necessarily requires funding to be diverted from being provided to the wealthiest private schools and instead being redirected to the most needy public schools”.

Question put.

The Senate divided. [1.11 pm]

(The Deputy President—Senator JJ Hogg)

Ayes…………….. 7
Nees……………. 53
Majority………… 46

A Y E S

Abetz, E. Adams, J.
Barnett, G. Boswell, R.L.D.
Brandis, G.H. Campbell, I.G.
Chapman, H.G.P. Colbeck, R.
Eggleston, A. Ellison, C.M.
Ferguson, A.B. Fielding, S.
Fierravanti-Wells, C. Fifield, M.P.
Heffernan, W. Humphries, G.
Johnston, D. Joyce, B.
Kemp, C.R. Lightfoot, P.R.
Macdonald, I. Macdonald, J.A.L.
Mason, B.J. McGauran, J.J.J.
Minchin, N.H. Nash, F.*
Parry, S. Patterson, K.C.
Payne, M.A. Ronaldson, M.
Scullion, N.G. Troeth, J.M.
Trood, R.B.

N O E S

Abetz, E. Adams, J.
Barnett, G. Boswell, R.L.D.
Brandis, G.H. Campbell, I.G.
Chapman, H.G.P. Colbeck, R.
Eggleston, A. Ellison, C.M.
Ferguson, A.B. Fielding, S.
Fierravanti-Wells, C. Fifield, M.P.
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Payne, M.A. Ronaldson, M.
Scullion, N.G. Troeth, J.M.
Trood, R.B.

* denotes teller

Question negatived.

Original question agreed to.

Bill read a second time.
Third Reading
Bill passed through its remaining stages without amendment or debate.

PERSONAL EXPLANATIONS
Senator BRANDIS (Queensland—Minister for the Arts and Sport) (1.16 pm)—I seek leave to make a personal explanation.
Leave granted.
Senator BRANDIS—It has come to my attention that a number of this morning’s newspapers, in particular the Adelaide Advertiser, the Canberra Times and the Launceston Examiner, carry an item under the by-line of Paul Osborne concerning the selection of the replacement for Senator Santoro, which reports me as having said that there should be a ‘full preselection’. The article goes on to say—and the following words are those of the journalist, not a quote from me:

A full preselection would also mean sitting Senator Ian Macdonald ... would have to battle to retain his spot on the ticket.

This attributes to me a view that, when the Queensland division of the Liberal Party chooses its nominee to replace Senator Santoro, it should reopen nominations for all positions on its 2007 Senate ticket, not just that vacated in consequence of Senator Santoro’s resignation.

That is not a view that I hold or have ever expressed. It is based on a misunderstanding of my response to a question during an interview with Peta Donald on the ABC’s World Today program yesterday. The full text of my remarks, which gives the context of the misunderstood answer, makes it perfectly clear that I was speaking only about the replacement of Senator Santoro. The expression ‘full preselection’ is obviously a reference to the Liberal Party’s ordinary constitutional processes being fully observed. That is in contradistinction to any abridged process, such as selection by the management committee or by the party’s state council, which might in special circumstances, of which this is not one, be adopted.

What the journalist has done is confuse the expression ‘full preselection’ with a preselection for the full ticket. That is obviously not what I was saying. And I might point out that other news agencies that reported my remarks, including ABC radio news and this morning’s Australian Financial Review, did not make the same mistake.

Senator Crossin interjecting—

The ACTING DEPUTY PRESIDENT (Senator Chapman)—Order! Senator Crossin.

Senator Carr interjecting—

The ACTING DEPUTY PRESIDENT—You too, Senator Carr.

Senator BRANDIS—As recently as the night before last I was asked, at a meeting of Queensland Liberal members and senators, my opinion about the legalities of this matter. In the presence of many colleagues, including Senator Ian Macdonald, I expressed the firm view that it would not be lawful for the Queensland division of the Liberal Party to reopen Senator Ian Macdonald’s preselection for the No. 1 position on the Queensland Liberal Senate ticket, since that preselection has already taken place. The only vacancies that will have been created by Senator Santoro’s resignation—

Senator Ludwig—Mr Acting Deputy President, I rise on a point of order. I respect the minister’s ability to be able to provide a personal explanation. I am not sure whether we have now fallen into an argument about ifs or buts or what have you.

Senator Ray—We have, but I am enjoying it!

Senator Ludwig—It might be very enjoyable, but it is a question of whether it has
gone past simply being a personal explanation.

The ACTING DEPUTY PRESIDENT—I remind the minister that, under the standing orders, he is entitled to make a personal explanation but not to debate the matter. I will listen carefully to the minister’s comments.

Senator BRANDIS—Thank you, Mr Acting Deputy President. I am nearly finished.

Opposition senators interjecting—

The ACTING DEPUTY PRESIDENT—Before you proceed, I ask honourable senators on my left to please remain silent and listen to the minister.

Senator BRANDIS—The only vacancies that will have been created when Senator Santoro’s resignation takes effect are the casual vacancies for the unexpired portion of his Senate term and for the No. 2 position on the 2007 Senate ticket. Senator Ian Macdonald’s position is completely unaffected, and any suggestion by the journalist—

Senator Carr—Which fence are you sitting on?

The ACTING DEPUTY PRESIDENT—Order! Senator Carr, I have already called you to order once.

Senator BRANDIS—that I proposed anything else is a misunderstanding of my response. What I have to say about the matter reflects my view of the correct legal interpretation of the relevant provisions of the Liberal Party’s state constitution. Although that is purely my view as a lawyer I should add that Senator Ian Macdonald also has my strong political and personal support as the nominee for the No. 1 position on the Queensland Liberal Senate ticket. I regret any concern which the misreporting of my remarks may have caused him.

NATIVE TITLE AMENDMENT BILL 2006

In Committee

Bill—by leave—taken as a whole.

Senator LUDWIG (Queensland) (1.21 pm)—With the first amendment, although the running sheet has opposition amendment sheet 5208 revised to oppose schedule 1, I would like to deal with those amendments that go to schedule 1 first. It would seem more logical, should the government not accept those amendments, that we then deal with the complete opposition to schedule 1. I imagine that that would be the more logical way to deal with it.

Unfortunately, I have not had an opportunity of explaining that to the clerks, so I apportion no blame to them. It is entirely a matter for me. It would be more logical to next proceed to the Australian Greens amendments and move on through them until such time as we reach the top of page 3 and the last amendment to schedule 1 item 43. Logically, at the conclusion of that I would then move—should the government not pick up all my amendments—opposition to schedule 1. If the Australian Greens want to proceed with their amendment, that would be helpful in the scheme of things.

Senator SIEWERT (Western Australia) (1.22 pm)—The Greens oppose item 7 in schedule 1 in the following terms:

(5) Schedule 1, item 7, page 4 (lines 25 to 30), TO BE OPPOSED.

The Greens have made clear that we have some very deep concerns about this bill, and we are seeking to move a series of amendments to fix some of the issues. This amendment opposes the imposition of periodic recognition, which is schedule 1, item 7. The Greens believe that limited term recognition periods are unnecessary and that there are already sufficient provisions available to the minister in the limited number of cases where there may be problems with the proper
administration and effective functioning of particular representative bodies.

This provision is a very blunt instrument and will introduce substantial administration and transition costs without a clear rationale. We do not believe that it will produce any tangible benefits. Periodic recognition undermines the security, stability and administrative independence of representative bodies to no good cause. We are concerned that it will expose representative bodies to political pressures. It undermines their ability to plan for activities for the longer term. The minister already has the discretion to use the periodic funding provisions and to impose accountability measures as a condition of funding. The minister already has the discretion to withdraw recognition where an NTRB is not performing. We believe that limited recognition would give too much discretionary power to the executive.

I will note, as I did in my speech on the second reading, that the Minerals Council also has very strong concerns about the native title representative bodies being undermined and about the introduction of a further element of instability through these provisions. I believe that this particular provision will not help to achieve better functioning representative bodies. As I said, this will further undermine them. If we were really about improving the capacity of representative bodies, we would be looking at better funding and better capacity building for the representative bodies rather than introducing an extremely blunt instrument.

I have a series of questions. What is the intent of this particular provision to do with periodic recognition? How is it supposed to work better? Why won’t it create more bureaucracy? Why won’t it create instability and uncertainty? The industry opposes this provision and others. Why does the government think that is? What happens to ongoing native title claims and negotiations when the time runs out?

Senator JOHNSTON (Western Australia—Minister for Justice and Customs) (1.26 pm)—I am obliged to the senator for her interest in the subject matter. The opposition and minor parties are opposed to this mechanism. It is clearly an accountability mechanism. The native title regime is not about the process. Senator—through you, Chair—you used the word ‘industry’. It is not about the native title industry. This is about claimants and delivering outcomes for claimants. That is the priority; that is the focus that we seek to have. Fixed terms are integral to a more efficient, effective and accountable system. That is the intent: accountability, performance and benchmarking.

Representative bodies that are good performers have nothing to fear. Bureaucratic, slow, ponderous, process driven representative bodies that are not focused on outcomes have a lot to be fearful of. Indeed, their constituents have a lot to be pleased about with respect to these provisions. Poor performers should be wary. Native title claimants deserve much better than they have been getting. Public funding needs to be used in efficient and accountable ways, and that is the motivation for this. I am very interested to hear whether learned senators are opposed to these principles.

Fixed terms will not be unduly disruptive. The application process requires a minimal amount of paperwork. The opposition have said that fixed terms will undermine the ability of representative bodies to attract staff into the future. We see that a better performing representative body will have much more respect, be much more administratively competent and be able to perform in a much more professional way. On that basis, it should attract more employees. I do not think that I can say any more other than to reiterate
that this is about accountability; it is not about ‘the industry’.

Senator SIEWERT (Western Australia) (1.29 pm)—I want to clarify. When I was referring to ‘the industry’, I was talking about the mining industry.

Senator JOHNSTON (Western Australia—Minister for Justice and Customs) (1.29 pm)—I thought that it was the Aboriginal or Indigenous industry. However, if you heard the summing up of my second reading speech, you would know that the mining industry is quite happy with these provisions.

Senator SIEWERT (Western Australia) (1.29 pm)—I know you think that the mining industry is quite happy with it, but I can quote to you from the Minerals Council of Australia submission, where they say:
The additional measures have the potential to divert already limited resources towards bureaucratic processes, unnecessarily onerous compliance obligations or the winding-up and establishment of new services ...
They go on to say:
... such organisational changes can add significant delays and additional costs to industry in:
> suspending existing negotiations;
> requiring the renegotiation of certain matters previously agreed upon;
> requiring the building of new relationships with new NTRB staff; and
> requiring new NTRB staff to acquaint themselves with the particular matter and the relevant native title holder/claimant group.
Unless they have changed their minds since they put in the submission to the Senate inquiry, those are the comments of the Minerals Council of Australia.

Senator JOHNSTON (Western Australia—Minister for Justice and Customs) (1.30 pm)—I love the way that quotations are taken entirely out of context! The Minerals Council said, and the senator well knows they said this:
The MCA ... supports the proposed reforms to the NTA—
the Native Title Act—
relating to representative Aboriginal and Torres Strait Islander bodies including:
> a simplified de-recognition process for poorly performing NTRBs ...

Senator BARTLETT (Queensland) (1.30 pm)—Clearly, the government is not in a mood to take on board the shared concerns of all parties on this side of the chamber, which I think is unfortunate because those concerns also reflect evidence that was provided to the Senate committee inquiry. The minister has taken a quote there, accused Senator Siewert of selectively quoting and then selected a quote himself that suits his argument. But I think the other point that needs to be made is that the rationales that the minister put forward for this measure of accountability and about improving performance and outcomes are not something that anybody disagrees with, either in this chamber or amongst any of those people from all sides of the spectrum who engage with the native title process. The view of the Democrats and, I suspect, others, and certainly the view of many submitters to the committee who engage with this process—not just native title rep bodies themselves but others—is that there are other ways to ensure adequate accountability.

The problem with this—and I accept that it is put forward as an accountability measure, and in that sense I am not criticising the intent but the consequence or at least the potential consequence—is that it will affect stability. It will affect the ability to engage in long-term planning. As we all know, probably unfortunately but probably, at least in some cases, unavoidably, native title matters can stretch out over a very long period of time. A rep body can have a number of them ongoing in any one period of time and has to
decide where to direct its resources. It is very difficult to do that if it does not have a reasonable degree of certainty into the long term. So the concern is that the government’s measure, whilst it is aimed at accountability, will unnecessarily impact on stability, on the ability to engage in long-term planning, and that in itself can impact on the performance and the outcome, which is what we are all interested in. I do not think we should be spending our time arguing backwards and forwards about which of us cares about getting good outcomes. That is what we all want. I think we have different views about how we can get there. Clearly there was a lot of evidence that this is not the best way to address accountability issues. It is certainly my recollection from the spoken evidence to the Senate committee inquiry that this aspect was seen as a potential problem, and I think it is unfortunate that the government has not taken that into account.

But the other point needs to be made that, in proposing that this measure not be incorporated into the law, there are other measures and proposals put forward that would address some of the accountability concerns but do not have the potential consequential problems of impacting on stability and planning. We all know that, with a whole range of organisations that are dependent on government funding in a whole range of sectors, particularly in Indigenous service delivery organisations that are community based, it can be very difficult to retain staff if there is not long-term certainty, and it can be very difficult to gain staff.

I am not saying that this measure alone is going to lead to wholesale problems—and I am not saying that there are not problems with regard to that already, for that matter—but these are all factors that need to be taken into account, particularly if you are looking at practical outcomes. That is what we are talking about here. It is certainly what the Democrats are talking about. It is what I have been talking about with regard to Indigenous issues for a long time: practical outcomes. If we are going to make significant changes to the Native Title Act in a range of areas, as this bill seeks to do, then we want to make sure that it is going to improve the practical outcomes, not make them worse.

Senator CROSSIN (Northern Territory) (1.35 pm)—I just want to indicate that the Labor Party will be supporting this amendment. As I pointed out in my speech on this bill, we indicated in our minority report to the Senate Standing Committee on Legal and Constitutional Affairs inquiry into this bill that we do not support the time limit for the registration of native title rep bodies. We do not believe that there has been significant evidence presented to the committee or even in fact to this government to suggest that that is the way in which they need to move.

Senator Johnston talks about accountability and increased accountability. From evidence presented to the Senate inquiry, the accountability is already there. The one particular native title rep body that was not accountable has not passed the registration process again. All of the rep bodies will now be forced to comply with a more bureaucratic requirement, when in fact only one has not met the expectations in the past. So it is a very heavy-handed approach by this government, in that we are going to make everybody step up to the mark now and be even more accountable—there will be increased accountability and more bureaucratic paperwork—in order for native title rep bodies to continue their existence, when, quite frankly, there is absolutely no evidence that the current system is not working. The current system is working. In fact, when there has been a problem with the rep bodies, we know that the system has moved into place and the rep bodies that have not complied have been
dealt with. So there is really no suggestion at all that this system needs to be now overly administered.

We did hear plenty of evidence in the inquiry that people would be spending a lot of time reapplying for registration and that it would severely affect the number or quality of staff that rep bodies can attract. The consistent view was that if the rep body were only registered for two years then that would mean considerable constraints on getting the well-qualified lawyers, anthropologists and other skilled people that they need to come on board, because it would be for only a two-year period. They would not be able to give people extended contracts of employment beyond two years because the rep body would only have the funding for that length of time. So the government is clearly not listening to one side of the industry here in putting these constraints on native title rep bodies.

The minister argues that this is going to make them all the more accountable and going to make the process more transparent. We had no evidence whatsoever in the inquiry to suggest that the system is not already accountable and not already transparent. It is a case of: if the system is not broken then why make these changes? Everybody agreed that native title rep bodies are, by and large, performing well. We have one out of 13 or 14 that is not—two or three service providers. There has been one problem in this time, yet all of them out there are going to be made to comply with this requirement.

The other issue is that there are some claims that do take longer than six years. For some bizarre reason, there is now a requirement that rep bodies can only be registered for six years. Yet we know that claims have taken much longer than that. So we do not believe that this is going to make the system better. We do not believe that there is a need to impose a time limit on the registration of these rep bodies. So we will be supporting the Greens’ opposition to item 7, schedule 1.

Senator JOHNSTON (Western Australia—Minister for Justice and Customs) (1.39 pm)—I am very respectful of Senator Crossin’s opinions on these matters. She has done a lot of work in this regard. But can I say that this is not about anthropologists and lawyers; it is about the constituents of these rep bodies. Mirimbiak in Victoria collapsed. The New South Wales Aboriginal Land Council handed its recognition back. The Pilbara land council was replaced. The Carpentaria Land Council is under external administration. Only 18 months ago five rep bodies had funding controls in place. The system is clearly in need of greater accountability. This is not about the processes; it is about commanding outcomes. This is about greater involvement through accountability measures to satisfy those people that Senator Crossin knows are out there saying, ‘What has native title delivered for us?’

According to Senator Crossin’s view, everybody out there is very happy with native title. It may be that some of the people who have now received a favourable determination in the Northern Territory, where she comes from, are happy. But I can tell her that amongst the other claimants, under some 600 claims, it is very hard to find anybody who says that the system is working well. It is all very well to say that we do not need accountability, but that is at the nub of the problem. These changes go a long way towards fixing the problem.

Senator CROSSIN (Northern Territory) (1.41 pm)—I thank the minister for those comments. But I think the fact that there are a number of rep bodies or land councils in that situation where they have either handed back their responsibilities or have administrators in place actually shows that the sys-
tem is working. Where there have been prob-
lems, the system has moved in to deal with
those problems. In relation to your comment
that this is not about lawyers and not about
anthropologists, I would say that it is about
that, because if you cannot attract highly
skilled, highly experienced staff in this area
then the losers will be the Indigenous people
that they are there to represent and advocate
for. We do not want in the system—and we
should not be encouraging in the system—
just people who are there to get experience
or to learn on the job; we want a mixture of
experienced specialists in this field as well as
those who are there to gain experience.

I also think there is a problem in putting a
specific limit on registering the rep bodies.
Many of the people who provided submis-
sions to the committee in fact were not in
favour of this, and I still say to you that I do
not believe that there has been enough evi-
dence provided to the government to warrant
such major changes—particularly when at
the same time in this bill you are not requir-
ing these rep bodies to provide a strategic
plan. So there is some hypocrisy and incon-
sistency in your approach here. On one hand
we are going to tighten the accountability
procedures, but on the other hand there are
amendments in this bill that say the rep bod-
ies no longer have to provide a strategic or
business plan as part of their operation. I
reiterate that we do not believe that this is
going to make the system more efficient and
deliver better outcomes for Indigenous peo-
ple; in fact we believe it will clog up the sys-

The TEMPORARY CHAIRMAN
(Senator Chapman)—The question is that
item 7 in schedule 1 stand as printed.

Question agreed to.

Senator JOHNSTON (Western Austra-
lia—Minister for Justice and Customs) (1.44
pm)—by leave—I move government
amendments (1) to (5) and (7) on sheet
QW307 together:

(1) Schedule 1, page 4 (after line 24), after item
6, insert:

6A Subsection 203A(1)
Repeal the subsection, substitute:

(1) Subject to section 203AA, the Com-
monwealth Minister may:

(a) invite applications from eligible
bodies, in the way determined in
writing by the Commonwealth Min-
ister, for recognition as the represen-
tative body for an area; or

(b) invite an eligible body, in writing, to
make an application for recognition
as the representative body for an
area.

6B Subsection 203A(2)
After “for which”, insert “an applica-
tion or”.

6C Subsection 203A(3)
After “within which”, insert “the appli-
cation or”.

(2) Schedule 1, item 7, page 4 (lines 27 to 30),
omit subsection 203A(3A), substitute:

(3A) The invitation may specify the period
for which an eligible body would be
recognised, if the body successfully
applied for recognition. The period
must be:

(a) unless subsection (3B) applies, of no
less than 2 years; and

(b) of no more than 6 years.

(3B) The period specified may be of less
than 2 years, but no less than 1 year, if:

(a) the body is under external admini-
strition; or

(b) a person is currently appointed, un-
der a condition imposed by the Sec-
retary in compliance with paragraph
203CA(1)(e), to deal with funds
provided under Division 4 of this
Part to the body; or

(c) the Commonwealth Minister is of
the opinion that specifying a period
of that length would promote the efficient performance of the functions mentioned in subsection 203B(1).

(3) Schedule 1, page 4 (after line 30), after item 7, insert:

**7A Subsection 203A(4)**

Omit “under subsection (1) for inviting applications”, substitute “under paragraph (1)(a) for inviting applications from eligible bodies”.

(4) Schedule 1, item 8, page 5 (lines 27 to 29), omit subsection 203AA(3), substitute:

(3) The invitation must specify the period for which the body would be recognised, if an application were made. The period specified must be:

(a) unless subsection (3A) applies, of no less than 2 years; and

(b) of no more than 6 years.

(3A) The period specified may be of less than 2 years, but no less than 1 year, if:

(a) the body is under external administration; or

(b) a person is currently appointed, under a condition imposed by the Secretary in compliance with paragraph 203CA(1)(e), to deal with funds provided under Division 4 of this Part to the body; or

(c) the Commonwealth Minister is of the opinion that specifying a period of that length would promote the efficient performance of the functions mentioned in subsection 203B(1).

(5) Schedule 1, page 6 (after line 8), after item 8, insert:

**8A Subsection 203AB(1)**

Repeal the subsection, substitute:

(1) Subject to subsection (3), an eligible body may apply to the Commonwealth Minister, in the form approved by the Commonwealth Minister, for recognition as the representative body for the area, or for one or more of the areas, in respect of which:

(a) the body has been invited under section 203A to make an application; or

(b) eligible bodies have been invited under section 203A to make applications.

(7) Schedule 1, item 15, page 8 (lines 12 to 16), omit paragraph 203AD(2D)(b), substitute:

(b) if the body applied for recognition on the basis of an invitation in which no period of recognition was specified—the period of recognition specified in the instrument of recognition must be:

(i) unless subsection (2E) applies, of no less than 2 years; and

(ii) of no more than 6 years.

(2E) The period specified may be of less than 2 years, but no less than 1 year, if:

(a) the body is under external administration; or

(b) a person is currently appointed, under a condition imposed by the Secretary in compliance with paragraph 203CA(1)(e), to deal with funds provided under Division 4 of this Part to the body; or

(c) the Commonwealth Minister is of the opinion that specifying a period of that length would promote the efficient performance of the functions mentioned in subsection 203B(1).

I table the supplementary explanatory memorandum, which I found beneath a large pile of papers on my desk.

Question agreed to.

Senator LUDWIG (Queensland) (1.45 pm)—by leave—I move Labor amendments (2), (4) and (7) on sheet 5208 revised, together:

(2) Schedule 1, item 5, page 4 (line 6), omit “Corporations Act 2001”, substitute “Corporations (Aboriginal and Torres Strait Islander) Act 2006”.

CHAMBER
(2) The Commonwealth Minister may, by legislative instrument, withdraw the recognition of a body as the representative body for an area if satisfied that:

(a) the body:
   (i) is not satisfactorily representing the native title holders or persons who may hold native title in the area; or
   (ii) the body is not consulting effectively with Aboriginal peoples and Torres Strait Islanders living in the area; or
   (iii) the body is not satisfactorily performing its functions; or
   (iv) there are serious or repeated irregularities in the financial affairs of the body; and

(b) the body is unlikely to take steps to ensure that, within a reasonable period, none of subparagraphs (a)(i), (ii) and (iii) continue to apply in relation to the body.

I also foreshadow that Labor will oppose schedule 1 in the following terms:

(5) Schedule 1, item 13, page 6 (lines 30 and 31), TO BE OPPOSED.

(6) Schedule 1, items 18 to 21, page 8 (line 26) to page 13 (line 18), TO BE OPPOSED.

(8) Schedule 1, item 27, page 14 (lines 16 to 25), TO BE OPPOSED.

(9) Schedule 1, items 30 to 35, page 15 (lines 1 to 16), TO BE OPPOSED.

(11) Schedule 1, item 46, page 22 (lines 3 and 4), TO BE OPPOSED.

(12) Schedule 1, item 49, page 23 (lines 6 to 8), TO BE OPPOSED.

(13) Schedule 1, items 51 to 54, page 23 (lines 13 to 28), TO BE OPPOSED.

(14) Schedule 1, items 56 and 57, page 24 (lines 5 to 15), TO BE OPPOSED.

(15) Schedule 1, item 59, page 24 (lines 20 to 22), TO BE OPPOSED.

The TEMPORARY CHAIRMAN (Senator Chapman)—You may speak to opposition amendments (2), (4) and (7) as well as the items that you have foreshadowed you will be opposing in schedule 1, but the votes will have to be taken separately.

Senator LUDWIG—I will depart for just a second before I deal with each of those amendments—(2), (4) and (7). Notwithstanding the denial by the government, it seems to me that in this exercise you have a range of amendments to the native title system, to use a broader term, which appear to be adding more red tape and to be bureaucratic in nature, and which appear to provide for small changes all the way throughout. They are peppered throughout; each one of them might on its own have some merit, but it is not clear where that merit is and how that merit is going to work in effect. When you then look more broadly at the system, you ask, ‘If the government did have an opportunity’—which it has—‘to improve the system, why wouldn’t it look more broadly at the system and, if there are significant failings within it, bring forward bill recommendations, develop amendments to it and then pursue those amendments broadly, through a consultative process as well, to build cooperation and understanding of why these amendments are here?’ I do not see that that has been adopted in this process.

Even when you then examine the Senate committee report—just on a range of those amendments—you end up with criticisms, from both the majority report and the minority report, of those exact issues. And the criticisms do not come from just the one
quarter. In the area that I have worked in, usually you end up with the issues or the criticism coming from one group or one quarter. Rarely do you see them combine, where you have the disciplines within the native title system and the miners and claimants and all the others adding their weight to the criticism of the process. They include similar phrases, agreeing that the current system is taking a long time to process, but they do not see how these amendments which you are proposing are going to improve the system substantially. You might then say, ‘Well, time will tell,’ and time might be on your side. I do not see it on the side of the participants in the system. The system has not produced an effective and efficient system to date. It has tried; there is no doubt about that, and it should be commended for that. It is unclear how the amendments that you are now proposing will provide an efficient and effective process for all to enjoy, especially when you find—even amongst the criticisms, which I do not see often in the Senate Legal and Constitutional Legislation Committee—people who you would think have disparate views and different positions coming together to complain that the system needs to provide effective, efficient and quick outcomes but not cheapen the process either, because it has to be enduring. For it to be enduring, you expect that the participants who are the negotiators and claimants are also enduring in the system. It seems to me that the amendments the government has put forward in this bill do not provide significant benefit and do not provide an enduring system where parties can be confident that over time they will be dealing with the same participants throughout.

Having said all that, I will turn to some of the specifics. Ultimately, if the government does not agree to these amendments that Labor are proposing, we will oppose schedule 1 because we do not in total see the benefits that are contained within it. We think that government, in picking up some of the committee recommendations, has still not gone far enough to ensure that the various areas that are recognised are sufficiently dealt with in a sensible manner, especially when you look at how these bodies—particularly native title bodies—work on the ground. You then have to ask yourself: will it benefit the claimants in that system; will it ensure that there are bodies that will endure? You raise an interesting point: you say there have been those that have not worked. It strikes me, though, to ask: is this the way to provide for machinery amendments to a legislative enactment as a way of fixing it? Without more, my answer would be no.

What I would also like to hear from the government during this debate is what else they will do to try to facilitate the process, because a lot of the participants in the system who provided information to the Senate committee report talked about broader issues as well. In short, without more, the system will continue as it is.

I will deal with amendments (2) to (9). Amendments (2) and (5) relate to the definition and criteria of what is an eligible body. Amendment (2) proposes a change that would extend the bodies which can operate NTRBs to include corporations incorporated under the Corporations Act 2001. Such corporations do not have special constitutional requirements relating to Indigenous membership as do Aboriginal corporations under the Aboriginal Councils and Associations Act 1976 and its replacement, the Corporations (Aboriginal and Torres Strait Islander) Act 2006. Such a change is a shift away from the importance of the representative nature of the NTRBs. Amendment (2) seeks to rectify this imbalance.

Amendment (5) eliminates an unacceptable change to the criteria of eligibility that
the Commonwealth minister is presently re-
quired to be satisfied about before recognis-
ing an eligible body as a representative body under subsection 203AD(1), whether during or after the transition period. Those are: (a) the body does or will satisfactorily represent native title holders and persons who may hold native title in its area; and (b) the body does or will consult effectively with Aborigi-
nal peoples and Torres Strait Islanders living in its area. Thus the only criteria would be: (c) that, if the body is already a representa-
tive body, the body satisfactorily performs its existing functions; and (d) the body would be able to perform satisfactorily the functions of a representative body.

This proposed change potentially limits the importance of Aboriginal representation by representative bodies representing the native title holder and potential native title holders. Consulting effectively with Aborigi-
nal people and Torres Strait Islanders goes to the heart of the function of a representative body. It is therefore unacceptable to Labor. Changes are sought as part of that.

When you examine it, I do not think the EM adequately explains the direction the government is going with this. I do not think the government has articulated its motive behind many of these changes. Hopefully during this debate we might be able to tease out some of the underlying motive of the government. It is not apparent that it is about improving the system; it is not apparent that it is about removing the red tape. It is said to be about accountability, but accountability comes with responsibility—responsibility to ensure that the Aboriginal and Torres Strait Islander people have a say and a stake in the process and are able to adequately do that. I am not convinced that the changes that are proposed will do that, and that is why Labor is moving its amendments. I will pause there and see if anyone wants to comment, other-
wise I will run into the 15-minute rule again, as I did yesterday. I will wait for a moment.

Senator CROSSIN (Northern Territory) (1.56 pm)—I also want to provide a contribution to this and will go to the reasons why the opposition has in fact put up these amendments. Let us face it: the amendments that we are now moving—essentially the block of (2) to (15)—really go to the heart of some of the major changes in this bill, and that is a complete abrogation by this gov-
ernment of absolutely and categorically guaranteeing that Indigenous people are in-
volved in this whole process. I am surprised that the government would want to go to this length to ensure that the native title process effectively, by and large, can exclude Indige-
nous people. That is really what these amendments go to. These amendments, if they get up, will ensure that Indigenous peo-
ple still have a very big voice in this.

I know the minister will get up and say, ‘Senator Crossin, I think you’re being a bit extreme here,’ but that is not the case. When-
ever you move amendments to a native title bill, it just opens the door a fraction to allow native title rep bodies, for example, to be registered. In the registration process, if there is not a mandatory requirement that they have at least a majority of Indigenous people on their rep body, then you open the door to ensuring that legal firms or corporations rep-
resenting people in a native title arena in this country are not driven by Indigenous peo-
ple—that they do not have a majority of In-
digenous people or, potentially, native title holders driving the process.

This government now wants to remove the Corporations (Aboriginal and Torres Strait Islander) Act and suggests that there would be another form of act that could substitute the requirement for having Indigenous peo-
ple involved in the process. What we actually want to do here is propose a change that
would extend the bodies which can become native title reps to include corporations under the Corporations Act. Such corporations do not have special constitutional requirements relating to Indigenous members, as do Aboriginal corporations under the Aboriginal Councils and Associations Act and the replacement act that we put in place in this chamber sometime in the last 12 months.

The shift here from the government is away from the importance of the representative nature of the native title rep bodies. When the minister has to recognise an eligible body now, one of the things they must do is satisfy themselves that that rep body represents native title holders, that they will consult effectively with Aboriginal people in this country. Under this legislation, we see that this government would allow the minister to recognise a rep body if it just performs, or would be able to perform, its functions satisfactorily. It is a very slight shift. There is a very small crack in the door here. But it seriously limits the importance and the recognition of Aboriginal representatives and the role they play in the rep bodies.

Our amendments also go to striking out the change that would allow the minister to extend or vary an area covered by the rep body without the consent of the body in question. We do not believe that that is acceptable either. Our amendments would make such a change conditional on the consent of the rep body concerned so that the minister could not unilaterally make changes to those boundaries without having consulted and gained the consent of the body.

Let us be very clear about this. This is the thin end of the wedge. These changes proposed by this government to the Native Title Act continue to diminish the voices of Indigenous people in this process. No matter what this minister is about to say to defend the government’s position, that is the reality here. If in legislation you do not mandate it and have a requirement to specifically consult and get the consent of Indigenous people then it provides you with the opportunity to not have to do that. That very small opportunity will become quite a large opportunity in this government if it ever gets the chance to totally ignore the wishes of Indigenous people and to ensure that those Indigenous people are not represented on a rep body and are not driving the process. This starts to shift the balance in a very major way.

These are minor amendments, but they will have quite a major impact out there in the field. They will have an impact in the sense that once again Indigenous people are going to be one step removed from this process under this government. If this legislation goes through as it is without the amendments from the Labor Party, it will ensure that Indigenous people can potentially be locked out of this process in some instances.

So we ask the government to seriously look at this and to take on board their commitment. They talk about practical reconciliation. Well, practically recognise now the role of Indigenous people in the native title process and support our amendments, particularly to this section of the bill.

Senator JOHNSTON (Western Australia—Minister for Justice and Customs) (2.03 pm)—The rep bodies are funded to provide a service, not to undertake a broader advocacy role with respect to the nebulous nature of Indigenous affairs. They are there for a discrete purpose, and that is to provide outcomes and to assist in the expeditious processing of native title claims to the satisfaction of the claimants and with the recognition of their rights. The functions of rep bodies will not be changed. Obligations of rep bodies are not changed or amended through this legislation. The amendments that the opposition seeks to move are opposed to the further
emphasis upon the outcome. This is not about the process. This is not about the rep bodies having some sort of secure position in life; this is about having them do the right thing by the intended beneficiaries of this legislation. The intended beneficiaries were the native title holders.

Let us talk about opposition amendment (2) on sheet 5208. The opposition opposes the extension of eligibility for recognition to Corporations Act companies. Anybody with any experience in this area knows that representative bodies right around Australia from time to time employ corporate consultants, and indeed large law firms from the capital cities, to administer and assist in the future process and in the processing of claims through the Federal Court.

For some reason unbeknownst to the government the opposition is very frightened that somehow an efficient corporate entity or consultant will come along and usurp the bureaucratic dream that rep bodies in Australia have become. Who could complain about the very good work being done by New South Wales Native Title Services, Queensland South Native Title Services and Native Title Services Victoria—three corporate entities who are doing a very good job and stand as a practical example of what we are seeking to enable the minister to do to facilitate the delivery of an outcome to native title claimants? But, no, the opposition cannot see that and does not want to see that.

With respect to amendment (4), the opposition are proposing to remove a provision that helps to guarantee that only existing rep bodies are invited to apply for recognition during the transition period. They complain about stability. They complain about all these things. Here is an example of what we are doing: only existing rep bodies are invited to apply. The opposition’s position is a confused position up against all of the other amendments that they seek to put up. Certainly the government would not resile from its public commitment to guarantee all existing native title representative bodies a term of recognition under the new arrangements if they want one. This is what native title rep bodies have been promised and what they expect, and it is what they will get. If what the opposition were really trying to do was oppose fixed terms altogether, of course that would be an entirely unacceptable outcome.

Turning to amendment (7), the opposition wants to largely retain the unworkable criteria for derecognition. It is cumbersome and ineffective. No-one can forget the Queensland South Representative Body that laboured on, ineffectual and racked with division, for some 18 months because the powers were not sufficient or effective enough to enable a quick and speedy solution to that problem. Who suffers when these representative bodies cannot find their way to delivering the service? It is the people whom the act intended to benefit: the native title claimants. It is totally unacceptable that claimants can be left without services for a year and a half while a clearly dysfunctional organisation drags out the process of its inevitable demise. We are arresting that; we are changing that; we are fixing that to the benefit of Aboriginal people. The outcome is very clear, and yet the opposition opposes this move.

Let us move to opposition amendments (5), (6), (8), (9) and (11) to (15) on sheet 5208. Amendment (5) wants to prevent a simplification of the recognition criteria. I would have thought that was a very good thing. Amendment (6) wants to prevent the minister extending boundaries of rep bodies on his initiative and simplify the criteria for extending those boundaries. The opposition are opposed to that. Interesting—I cannot understand it. It is not in line with their platitudes. Amendment (8) prevents changes to when the minister must consider the fairness
of bodies’ organisational structures and administrative processes consequent on changes to recognition and related criteria. I would have thought that spoke for itself. Amendment (9) wants to prevent consequential amendment following the removal of strategic plans. Amendment (11) will prevent consequential amendment following the removal of annual reports. These are things that make life easier for these rep bodies. Amendments (12), (13), (14) and (15) remove application provisions consequent on other opposition amendments.

I do not think I need to say much more other than to underline that the government’s reforms are clearly designed to simplify the process. These reforms will simplify the way that services can be delivered and that accountability and oversight can occur with respect to these rep bodies in the hope and with the intent and the objective that there will be better outcomes for Indigenous people who are native title claimants.

Senator SIEWERT (Western Australia) (2.10 pm)—The Greens will be supporting these amendments. People will be aware that the Greens have a similar amendment relating to the inclusion of non-Indigenous people being recognised in rep bodies. I was interested to hear the minister’s response to the opposition’s amendments when he said that this is not about representation. He may be able to say that if these amendments pass, because they are taking out some of the requirements and criteria for representation and consultation with native title holders. I believe that the combination of a series of these amendments is, in fact, reducing the involvement of Aboriginal people in native title. These amendments reduce Aboriginal people’s involvement in native title; that is what they are about.

Senator Johnston—It doesn’t do that.

Senator SIEWERT—It does do that. These amendments take away the requirement for native title representative bodies to consult and be representative of native title holders. The Greens, for one, oppose this legislation. That is why we have also proposed an amendment to oppose that section of the bill. We will be supporting the opposition’s amendments because we do not believe further removing and disenfranchising Aboriginal people from the process when it has not been working optimally is the appropriate way to go. These amendments will make the process more complicated and reduce their involvement even further instead of dealing with the real issues: providing adequate resources and capacity building.

Instead of facilitating greater involvement by native title holders and Aboriginal people in the process by increasing resources and increasing their capacity, the government is trying to remove and lessen their involvement. What the government should be doing is improving involvement by providing extra capacity. Those are the two areas that were consistently and repeatedly pointed to during both the Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Account inquiry and the Senate inquiry. A lack of resources and a lack of capacity were repeatedly identified as being the two major stumbling blocks. Instead of actually addressing those two things—resources and capacity—we are removing Aboriginal people’s involvement in native title. The Greens will be supporting the opposition’s amendments.

Senator LUDWIG (Queensland) (2.13 pm)—We are talking about the role of NTRBs. What concerns me with all of this is that the government’s position seems to focus on the bean-counting role—as it should—to ensure that Commonwealth monies are spent effectively. The role that the NTRBs play is a very important one. They
assist and facilitate the preparation of native title applications, including mediation, negotiations and proceedings relating to native title and related processes. They provide written certification of applications for determinations of native title and related processes for land or waters in the representative body area.

They also promote dispute resolution between constituents about native title applications, so that is very much involved with native title, the participants and claimants in the system. They can also be party to Indigenous land use agreements. Those are the functions of NTRBs. So given that, Minister—I should say, ‘Through the chair,’ although it is not adequate dealing with it in that way—it strikes me that the direction the government is going in this schedule, schedule 1, is underpinned by its words of improving accountability without more. The more is if the government maintains that there are more efficient, more effective examples that can be used.

So what work has the government undertaken to promote those examples across other NTRBs? Has it undertaken casework, case studies—promoted those? Has it effectively ensured that, if there are successful NTRBs, the government can hold them up to the light and say they pass the accountability test, they pass the efficiency test and they are effective in their representation and their role? What work has the government undertaken to promote those examples? Has it undertaken case studies? Has it provided improvements to others and modelled arrangements? Has it provided guidelines? Has it said, ‘These are successful and provide effective representation’?

Those are issues where the government could come to the table and say, ‘You’re not meeting those benchmarks, those requirements, the guidelines,’ or however else the government wants to do it. An area springs to mind, although it is unrelated: when the government moved to outsourcing legal services in 1999 post the Logan review, we then went through a situation where departments were able to seek their own outsourced legal service and maintain an in-house legal service or other models—although it is my view that it went all over the shop. There has been an audit report or two into this area plus the Tongue report, which demonstrated there were failings in the system that needed addressing.

One of the things they talked about significantly was ensuring that there were strategic plans, strategic direction, and areas which would go to not only accountability but framework mechanisms to ensure that people understood what their requirements were. The role of the outsourced legal service provider was to ensure that they were meeting the guidelines but also that the people within each department would then ensure those guidelines were being met. I know I digress, but what is the government doing in this area if it is going to pursue these amendments over our objection?

I turn specifically to amendments (7) and (8). They would substitute a different section 203AH(2), which deals with discretionary withdrawal of a representative body’s recognition. The government’s proposed changes would remove representation of native title holders and consultation with Aboriginal people and Torres Strait Islanders as matters which the minister needs to consider in removing recognition. It would also insert serious and repeated irregularities in the financial affairs of the body as a criterion for withdrawal. Labor’s substitute under amendment (7) delivers the good outcomes the government wants while preserving the integrity of the process, while amendment (8) is consequential upon that.
Amendment (9) deals with reporting requirements. As proposed, the bill would remove the requirements for representative bodies to prepare strategic plans and prepare annual reports. Annual reports provide invaluable insight into the operation of rep bodies, providing information on the performance of functions and the exercise of powers. They are also required to contain audited financial statements. Importantly section 203DC(6) stipulates that the minister must put the report before parliament. This allows the content of the report to be discussed in the House and committees. It is also a valuable accountability mechanism.

As senators would know, annual reports are, by and large, pored over, read and looked at often as accountability documents, not only for the good read they sometimes provide. It would seem to be important to preserve that process. It would be unusual to find an annual report that is not chased up, and provided by the department. It would seem important that they do that, whereas in this instance the government is proposing not to continue with this process. In my view that would be tantamount to saying the minor agencies or even important agencies of some size should not provide annual reports about their performance and should not have audited accounts tabled in parliament so that parliament can have the opportunity of examining them.

The government’s answer is that reports still have to be prepared, but it seems trite not to seek to have them lodged in parliament as well. Perhaps the government can explain the rationale for that. Amendments (11) to (15)—and (30), which is yet to be moved—are consequential amendments, and I will not deal with them at any length.

**Senator JOHNSTON** (Western Australia—Minister for Justice and Customs) (2.21 pm)—I want to briefly clarify some things because I am not sure that senators have a clear grasp of what rep bodies are supposed to do. Section 203B sets out the functions of rep bodies, and those functions are in subsection (1): (a) facilitation and assistance functions; (b) certification functions; (c) dispute resolution functions; (d) notification functions referred to in section 203BG; (e) agreement-making function; (f) internal review functions. These functions are all very outcomes based and service related. The facilitation function, for example, is:

(a) to research and prepare native title applications, and to facilitate research into, preparation of and making of native title applications.

These are rudimentary tasks. These are outcomes based functions. Section 203BB(1)(b) is:

(b) to assist registered native title bodies corporate, native title holders and persons who may hold native title ... in consultations, mediations, negotiations and proceedings—and so it goes on. The certification function is set out in section 203BE:

(1) The certification functions of a representative body are:

(a) to certify, in writing, applications for determinations of native title relating to areas of land or waters wholly or partly within the area for which the body is the representative body.

This is about getting the job done. It has not been getting done. The changes will assist it to get done, and that is the obligation of these rep bodies. They are not some fanciful political mechanism that becomes a bureaucratic dream team for a whole lot of do-gooders. This is outcomes based, and we want to see them start performing.

**Senator BARTLETT** (Queensland) (2.23 pm)—I put on record the Democrat position on this. I have heard some of the things that the minister has been saying and I think that perhaps the words ‘representative’ and ‘representation’ can mean a lot of different
things. It is probably not his intent, but I do think some of his last comments suggested or could leave the impression that the problems with the current native title determination process predominantly fall at the feet of the representative bodies. I am certainly not saying that they are blameless, particularly in a few instances, but, even in some of the areas in which rep bodies have not been able to deliver as adequately or as quickly as is desirable, some of that is due to factors outside matters we are dealing with here and matters within the act itself, such as resourcing and capacity et cetera.

That was very clear from the evidence given at the Senate committee inquiry, not just from Indigenous representatives but from the mining council as well. They were calling for more resourcing, more capacity and more assistance for rep bodies. I wanted to make it clear, certainly from the Democrats’ perspective, that no impression should be left that rep bodies are at the core of problems that exist. I will not go too far down the track of pointing to some other reasons why I think there are problems, although I do think the lack of enthusiastic embracing of native title by a few state governments in certain circumstances could certainly be part of the reason, as could be some individual companies at various times. There are always a range of reasons.

The minister has read out components from the act about what rep bodies do, and he is right to again point out that this is about getting the job done. I think it is right to point out in response that, from the Democrats’ perspective, our key concern is also about getting the job done. But part of the job is to represent. As I said, ‘represent’ means different things. You can represent in a legal sense, in a political sense and in an in-between advocacy sort of sense. Some of those are appropriate and some of them are not. Certainly, rep bodies are not meant to be there to just be large-scale advocacy representatives for Indigenous people in general. Unfortunately, at the moment, we do not have terribly effective representative bodies for Indigenous representation in a political sense either, but that is a separate debate to the one we are on now.

I should say, though, that it is that lack of other avenues for genuine representation of Indigenous views and voices on a whole range of issues that is in part making people almost involuntarily or subconsciously look a bit towards the role of native title rep bodies. They are one of the few Indigenous related institutions that are still in place—that have not been pulled down, defunded, turned on their heads or continually shifted from one role to another. That is partly why, to some extent, that wider notion of what sort of other role rep bodies could play is potentially creeping into people’s views, I suspect. But, because it is moving outside the specifics of the native title legislation, I do not want to go further down that path at the moment, beyond flagging that it is a real problem and that the government’s own National Indigenous Council has acknowledged it as a real problem—that is, representation of Indigenous voices at the regional level. If that were there more effectively then, frankly, apart from anything else, it would ease some of the burden on native title rep bodies, whichever way you want to define it and constrain it.

But it is appropriate to pull it back to what the minister said, to look at what native title rep bodies are there for, and they are there to assist in the progressing of native title claims and getting the job done. That is what they should be there for. They should not be there, ideally, for a range of other perhaps linked but broader reasons. In that sense, there is some substance to what the minister said. But I think it is also worth pointing out the specific nature of native title, the unique as-
pects of it and the benefit in terms of the effectiveness of the process, because it is appropriate to be pulling it back to that and for there to be that sense of a representative body being able to represent rather than just being a pure service delivery organisation in the most narrow sense of the words. That is at the heart of what these amendments are about. They do not seek to make rep bodies into some other regional council a la ATSIC or anything like that. They seek to ensure, in my view, that there is still a clear link there that would, more often than not, mean that the outcomes would be better. They would be better for Indigenous people, but I think in general terms that also means that they would be better for everybody.

Senator SIEWERT (Western Australia) (2.29 pm)—In whose opinion and in whose view is it about getting the job done? Is it native title holders? Or is it about helping to facilitate getting this done more quickly for mining interests? The fact is that the issue we are discussing at the moment is about representation and part of it is about effective consultation, and it was clearly the intent, because it is in the act, that rep bodies should be able to satisfactorily represent persons who hold or may hold native title in the area. That means, to me, that when this act was formulated we had enough foresight to know that to get the job done they had to be able to adequately represent persons who hold or may hold native title in the area. I also think that is why the act put in place that they needed to be able to consult effectively with Aboriginal people and Torres Strait Islanders living in the area, because that is also about getting the job done. To get an effective job done that delivers meaningful outcomes to native title holders you need to be able to satisfactorily represent those people who hold or may hold title and you need to be able to consult.

Senator CROSSIN (Northern Territory) (2.31 pm)—I have a question for the minister, and it is this: if in fact the criteria for native title rep bodies are that they would be able to perform satisfactorily the functions of a rep body, would they include a specific requirement that they satisfactorily represent the native title holders and that they consult effectively with Indigenous people? And how would you seek to measure that?

Senator JOHNSTON (Western Australia—Minister for Justice and Customs) (2.32 pm)—Senator Crossin knows full well that the requirements of the functions of a rep body are set out in the act, and compliance with the act is very easily discernible.

Senator CROSSIN (Northern Territory) (2.32 pm)—Section 203B of the Native Title Act does not actually contain, to my knowledge, a specific requirement to effectively consult or to represent. Bearing that in mind, is it the intention of the government that they would rule out categorically the open market possibility that a native title rep body may well be a corporate law firm in this country?

Senator JOHNSTON (Western Australia—Minister for Justice and Customs) (2.33 pm)—
pm)—Senator Crossin well knows that corporate law firms do an awful lot of work for rep bodies now.

Senator CROSSIN—But they are not the rep body.

Senator JOHNSTON—But they are not the rep body. Nothing in here makes any corporate law firm a rep body. What Senator Crossin needs to understand is that the functions of a rep body—and if it is a rep body now it will get priority to be a rep body after these provisions are passed—have not changed. Rep bodies are funded by the Australian government under the act to provide the service, to adhere to the statutory functions that the act commands of them. The functions are not changed in any shape or form. The obligations to represent their clients, the beneficiaries in native title matters, have not at all been diminished.

Senator CROSSIN (Northern Territory) (2.34 pm)—We could probably debate this endlessly, but I still have not had an answer from you about why there is a need to remove specifically these two criteria that the Commonwealth minister would use to be satisfied that a rep body should continue to be eligible. I would have thought, given all you have said this morning in responses, that these two criteria would actually enhance the functions of a rep body and therefore ought to remain in the act. What is it about the functions of a rep body that you believe can be enhanced by explicitly removing the requirement to represent and consult effectively with Indigenous people?

Senator JOHNSTON (Western Australia—Minister for Justice and Customs) (2.35 pm)—The senator I think does know the answer to that. The new and the only criterion for recognising a body as a native title representative body under the act is whether the body can satisfactorily perform its statutory functions. I would have thought that that position is a very strong position to indicate that the government, as I say, is all about delivering proper outcomes and getting the job done for the benefit of Indigenous people who are claimants.

Senator CROSSIN (Northern Territory) (2.36 pm)—We do not agree, which is why, of course, we have put up these amendments. I just want to go to one other section that this parcel of amendments goes to, seeing that we are talking about the Native Title Act, and that is a change of the boundaries. We are proposing that we remove all of the items that relate to the ability of the minister to unilaterally extend a boundary being covered by a rep body. Our amendments make it such that it would be conditional on the consent of that body. We do not agree that the minister should vary the boundaries without consent of the rep bodies, nor do we believe the minister should be able to consider reducing the rep bodies without the consultation of the native title holders and consultation with Indigenous people. I wonder if the minister could please explain to the Senate why it is that this government also believes that lack of consultation, consent or approval even by rep bodies is needed to vary the boundaries. Why is it that the minister should have this power unilaterally?

Senator JOHNSTON (Western Australia—Minister for Justice and Customs) (2.37 pm)—It frustrates me that the glass is always half-empty for Senator Crossin. The new provisions governing extension or variation of boundaries will allow the minister to respond in a timely and flexible way to changes within the rep body system. Before extending or varying rep body areas on his own initiative, the minister must notify relevant native title representative bodies and give the public 60 days to make submissions and consider any submissions made. The requirement to consider submissions from the public ensures that the minister will be
informed of the wishes of the rep body and the rep body’s clients, as well as the bodies themselves. It will be open to those rep bodies and the public to raise concern about whether a proposed extension or variation is culturally appropriate, whether it is accurate and whether it meets the needs of one or more claimant groups.

On the ground, these things cannot be done in a vacuum. These amendments recognise that the minister has to roll up his sleeves, identify what is happening, engage and then make a decision. The minister must be satisfied that, after a proposed extension or variation, relevant rep bodies will satisfactorily perform their functions. The minister would thus need to consider whether any rep body had any opposition to a proposed extension or variation, based on cultural or other grounds—namely, the area is too big or the rep body has a group of claimants who are culturally diverse or separate from another part within the rep body area—that would compromise service delivery. These are very good considerations. Indeed, Senator Crossin, I am sure that, if you thought it through in the Northern Territory, you would see some benefit in going this way.

It should be noted that the amendments also make it easy for rep bodies themselves to initiate extension and variation of their areas. The government think this is a very sound change that provides a capacity to resolve issues, to firm up these boundaries and to have some certainty so that the claims can move forward, instead of fighting and bickering over which river, which riverbank, which road, which fence or whatever.

Senator CROSSIN (Northern Territory) (2.40 pm)—Minister, it is a bit harsh to suggest that the glass is half-empty or half-full. Perhaps my glass is always half-full in favour of trying to protect Indigenous rights in this country, instead of just pandering to the wishes of the mining industry and the bosses of the world. Let us not stoop to that level.

Senator Johnston interjecting—

Senator CROSSIN—You started it! Let’s just say that we on this side actually provide some balance in legislation. Maybe the imbalance that is in the Workplace Relations Act is now coming to the Native Title Act. You are reducing the notice period from 90 to 60 days so, effectively, people now have only two months rather than three months.

Senator Johnston—It is more efficient.

Senator CROSSIN—You say it is more efficient, but sometimes these native title rep bodies are stretched and they have limited resources. You sat on the Joint Statutory Committee on Native Title and the Aboriginal and Torres Strait Islander Land Account—in fact, you may well have been the chair—when we handed down our report into the funding of native title rep bodies where we said they specifically needed better resourcing, better funding and better assistance. So you, probably more than any other person on your front bench at this point, would know the constraints that native title rep bodies are under.

I do not see how a more efficient system cuts out the requirement to consult rep bodies, to get the consent of the rep bodies and to consider consultation before the areas are reduced. There is now not a requirement. You say that that is what ministers would be expected to do. You say that they will take it into account but, unless it is in the law, there is no specific requirement for them to do that. That is why we have moved these amendments and that is why we disagree with the actions the government have taken in relation to amending the Native Title Act in this way.

The TEMPORARY CHAIRMAN (Senator Murray)—The question is that
opposition amendments (2), (4) and (7) on sheet 5208 revised be agreed to.

Question negatived.

Senator CROSSIN (Northern Territory) (2.43 pm)—The opposition opposes items 13, 18 to 21, 27, 30 to 35, 46, 49, 51 to 54, 56, 57 and 59 in schedule 1 in the following terms:

(5) Schedule 1, item 13, page 6 (lines 30 and 31), TO BE OPPOSED.
(6) Schedule 1, items 18 to 21, page 8 (line 26) to page 13 (line 18), TO BE OPPOSED.
(8) Schedule 1, item 27, page 14 (lines 16 to 25), TO BE OPPOSED.
(9) Schedule 1, items 30 to 35, page 15 (lines 1 to 16), TO BE OPPOSED.
(11) Schedule 1, item 46, page 22 (lines 3 and 4), TO BE OPPOSED.
(12) Schedule 1, item 49, page 23 (lines 6 to 8), TO BE OPPOSED.
(13) Schedule 1, items 51 to 54, page 23 (lines 13 to 28), TO BE OPPOSED.
(14) Schedule 1, items 56 and 57, page 24 (lines 5 to 15), TO BE OPPOSED.
(15) Schedule 1, item 59, page 24 (lines 20 to 22), TO BE OPPOSED.

The TEMPORARY CHAIRMAN—The question is that items 13, 18 to 21, 27, 30 to 35, 46, 49, 51 to 54, 56, 57 and 59 in schedule 1 stand as printed.

Senator CROSSIN—I reiterate for the record that we have given many reasons in the preceding hour or so for our opposition to these items, so I will not put them on the record again.

Senator JOHNSTON (Western Australia)—Minister for Justice and Customs) (2.43 pm)—We have also given as many reasons why we cannot accept them.

Question agreed to.

Senator SIEWERT (Western Australia) (2.44 pm)—by leave—I move Greens amendments (4), (6), (7), (8) and (17) on sheet 5201 revised together:

(4) Schedule 1, item 7, page 4 (lines 27 to 30), omit subsection 203A(3A), substitute:

(3A) The invitation may specify the period for which an eligible body would be recognised, if the body successfully applied for recognition. The period specified must be no less than 3 years and no more than 6 years.

(6) Schedule 1, page 4 (after line 30), after item 7, insert:

7A After subsection 203A(3)

Insert:

(3B) If an eligible body has been recognised, the Minister must, before the expiration of the period of recognition mentioned in subsection (3A), invite the representative body for a further period of recognition.

(7) Schedule 1, page 4 (after line 30), after item 7, insert:

7B After subsection 203A(3)

Insert:

(3C) If a recognition period for a representative body has been specified under subsection 203A(3A) for a period of less than 6 years, the Minister must give to the applicant a reason in writing for having specified a period of less than 6 years.

(8) Schedule 1, page 4 (after line 30), after item 7, insert:

7C After subsection 203A(3)

Insert:

(3D) If a recognition period for a representative body has been specified under subsection 203A(3A), the Minister must invite that representative body to apply for further recognition no later than 6 months before the end of that recognition period, except in circumstances where notice is given by the Minister at or before this point in time of an intention to withdraw recognition in accor-
dance with subsections 203AH(2) and (3).

(17) Schedule 1, page 14 (after line 27), after item 28, insert:

28A After section 203C
Insert:

203CAA Link between recognition and funding

It is a general principal of this Act that:
(a) where recognition has been given to an eligible body in accordance with Division 2, the Secretary of the Department is required to provide funds to the recognised eligible body; and
(b) funding will be provided for the duration of the period of recognition; and
(c) funding periods and recognition periods will be of the same duration.

I realise that one of these amendments seeks to deal with an issue that the government has amended, but I would like to put on the record that the Greens do not think that the period the government has changed the minimum recognition period to is adequate. We are moving an amendment to change that to three years because we believe that that enables a greater period of stability for rep bodies. It also means that they do not have to continually be reapplying for recognition, which would place an associated administrative burden on those groups.

Amendment (6) relates to requiring the minister to invite rep bodies to reapply for recognition before the recognition period expires. This is about giving a greater degree of certainty to native title rep bodies.

Amendment (7) states that, if the minister chooses to recognise a native title rep body for less than the default recognition period of six years, the minister should be required to give a reason in writing for the shorter period of recognition so that there is a degree of transparency. As I have mentioned previously, we believe that the executive is being given far too much power and is in fact not subjecting itself to processes that require openness and transparency. The government keeps talking about native title rep bodies having to be accountable, yet I believe that this bill introduces amendments that give the executive more power but do not subject it to the same requirements for accountability and transparency. We believe that the default period for recognition should be six years with a minimum of three years. Therefore, if the minister decides that they should not be recognised for that default period of six years, the minister should be required to give notice in writing.

Amendment (8) requires the minister to give the rep bodies reasonable notice before the expiry of the period of recognition, inviting them to reapply or giving notice of intention to withdraw recognition. Again, this amendment is designed to ensure that there is a greater degree of stability for rep bodies so that they can do long-term planning and can get on with the job.

Amendment (17) is about coinciding the recognition and funding periods for native title rep bodies. Again, this is about increasing stability for native title rep bodies so that they do not have to keep reapplying for funding. This amendment also addresses the issue that is constantly raised, as I have said previously, about the need for greater resources for native title rep bodies to get on and do their jobs. We believe that the period of recognition and the funding period should be coincided so, again, the administrative burden for rep bodies is reduced.

I am aware that we are jumping between amendments at the moment. As I said, part of the issue of the period of recognition has been addressed. But our amendments seek to give a greater degree of certainty to native
title rep bodies so that, as the minister said, they can get on and do their jobs.

Senator LUDWIG (Queensland) (2.48 pm)—I indicate our support for those amendments, for the reasons articulated by Senator Siewert. I will not go to them in detail. It is clear that the position that the government have adopted, in my view, is not tenable. They should really be persuaded to adopt our position—or, if not ours then Senator Siewert’s, representing the Greens. These amendments go in part to some of the areas we have already covered. I will not go through those again. I indicate our support for the amendments.

Question negatived.

Senator BARTLETT (Queensland) (2.50 pm)—by leave—I move Democrat amendments (3), (4) and (5) on sheet 5192 together:

(3) Schedule 1, item 7, page 4 (lines 29 and 30), omit “The period specified must be of no less than 1 year and no more than 6 years.”.

(4) Schedule 1, page 4 (after line 30), after item 7, insert:

7A After subsection 203A(1)

Insert:

(1A) If an eligible body has been recognised, the Minister must, not less than 90 days before the expiration of the period of recognition specified under section 203AD, invite the representative body to apply for a further period of recognition as the representative body for that area.

(5) Schedule 1, page 4 (after line 30), after item 7, insert:

7B After subsection 203A(3)

Insert:

(3B) Subject to subsection (3C), the period to be specified in an invitation is to be 6 years.

(3C) When, pursuant to subsection (1A), the Minister gives an invitation to an eligible body that has been recognised, the Minister may specify a period less than 6 years, but not less than 2 years, if, during the current period of recognition:

(a) the body has failed, in a material respect, to comply with conditions to which funding is subject pursuant to section 203CA; or

(b) the body has failed, in a material respect, to comply with section 203DA; or

(c) the body has failed, in a material respect, to comply with section 203DB; or

(d) there have been serious or repeated irregularities in the financial affairs of the representative body; or

(e) the body has not satisfactorily performed its functions.

Again, these amendments deal with issues that we have talked about in various ways. The Greens, Democrats and Labor amendments have dealt with similar issues in different ways in different combinations. These amendments again seek to provide an alternative to the recognition period issues that the government decided to persevere with. I think our approach here would have provided a better result with regard to ensuring accountability whilst also ensuring better outcomes on the ground. The amendments basically require the minister, no later than a specified time before the expiry of the period of recognition of a rep body, to invite them to apply for a further period of recognition. They also provide some criteria for making decisions about the length of the recognition periods the rep bodies would be offered. This would make things more transparent and predictable, which is important if you want to focus on getting the best results out on the ground and the best delivery of service.

Senator LUDWIG (Queensland) (2.51 pm)—The opposition supports the Democrats amendments. I will not go into this in
detail. Senator Bartlett has outlined what the amendments do. Anything is better than what
the government is putting up. We need to ameliorate what the government intends. The
government is not clear about the true motive behind all of this. It says that it is about ac-
countability, improvement, efficiency and effectiveness. These provisions add bureau-
cracy and red tape to the overall process. They will not allow the NTRBs to do their job ef-
fectively and efficiently, quite frankly. I said that at the beginning and it continues to an-
noy me.

Question negatived.

Senator SIEWERT (Western Australia) (2.52 pm)—The Greens oppose items 2 to 6,
8 to 11, 13 to 16, 18 to 20, 24 and 27 of schedule 1 in the following terms:

(1) Schedule 1, items 2 to 4, page 3 (line 21) to page 4 (line 3), TO BE OPPOSED.
(2) Schedule 1, item 5, page 4 (lines 4 to 6), TO BE OPPOSED.
(3) Schedule 1, item 6, page 4 (lines 7 to 24), TO BE OPPOSED.
(9) Schedule 1, items 8 to 11, page 4 (line 31) to page 6 (line 27), TO BE OPPOSED.
(10) Schedule 1, item 13, page 6 (lines 30 and 31), TO BE OPPOSED.
(11) Schedule 1, items 14 to 16, page 6 (line 32) to page 8 (line 18), TO BE OPPOSED.
(12) Schedule 1, item 18, page 8 (line 26) to page 10 (line 31), TO BE OPPOSED.
(13) Schedule 1, item 19, page 10 (line 32) to page 13 (line 4), TO BE OPPOSED.
(14) Schedule 1, item 20, page 13 (lines 5 to 16), TO BE OPPOSED.
(15) Schedule 1, item 24, page 13 (line 28) to page 14 (line 7), TO BE OPPOSED.
(16) Schedule 1, item 27, page 14 (lines 16 to 25), TO BE OPPOSED.

These cover a range of issues. We are oppos-
ing the transition arrangements—the gov-
ernment proposals which effectively spill
recognition of all NTRBs once the bill is
enacted and force them to reapply for recog-
nition during the transition period, which
ends 30 June 2007. The existing NTRBs will
be the only ones invited to reapply during the
transition period and the minister will be
required to, as the bill says, recognise all
applicants. We do not believe that this serves
a useful purpose. It is a vast bureaucratic
undertaking and it seems that limited NTRB
administrative resources will be put to no
real effect. The only decision that the minis-
ter will be making at this point is the period
for which NTRBs will be recognised. This
decision could be made based on existing
strategic plans and performance. I suggest
therefore that we are wasting the precious
time and resources of NTRBs, which could
be put to better use.

What is the intent of the transition period?
Am I accurate in my assessment of what the
transition period will accomplish? Will
NTRBs only have to submit a brief letter
applying for re-recognition or will there be a
much more substantial process? At the mo-
moment, as I understand it, that is the minister’s
decision. How will it work in practice, given
that section 203AB(1)(a) implies that re-
recognition is automatic regardless of the
content of the proposal? Is the default posi-
tion going to be the full six-year recognition
period or is it designed so that a small group
of NTRBs will be given a much smaller pe-
riod of recognition?

Senator JOHNSTON (Western Austral-
ia—Minister for Justice and Customs) (2.56
pm)—They will be offered between one and
six years and all they have to do is say yes or
no.

Senator SIEWERT (Western Australia)
(2.56 pm)—On what basis will they be of-
fered a period of between one and six years?
I understand from what has just passed that
the minimum is now to be two unless other
criteria kick in. Does that mean that groups
will be offered six? On what basis will the decision be made to offer groups between two and six years?

Senator JOHNSTON (Western Australia—Minister for Justice and Customs) (2.56 pm)—The learned senator mentioned the criteria. The performance history, the level of delivery of service and the financial accountability of the representative body, among other things, will all be taken into account.

Senator SIEWERT (Western Australia) (2.57 pm)—There are other things included in this batch of items to be opposed relating to representative bodies being required to consult and be representative, the extension of and variation to representative areas and non-Indigenous corporations not being representative bodies. We have been discussing those things at length. I do not intend to debate those yet again, other than to reiterate that we have a great deal of concern about the impact that these changes will have for native title representative bodies.

The TEMPORARY CHAIRMAN (Senator Moore)—The question is that items 2 to 6, 9 to 11, 13, 14, 16, 18 to 20, 24 and 27 of schedule 1 stand as printed and that schedule 1, items 8 and 15, as amended, be agreed to.

Question agreed to.

Senator JOHNSTON (Western Australia—Minister for Justice and Customs) (2.58 pm)—by leave—I move government amendments (6) and (8) on sheet QW307 together:

(6) Schedule 1, item 14, page 7 (after line 12), after subsection 203AD(1A), insert:

Instrument recognising body not disallowable

(1B) Section 42 of the Legislative Instruments Act 2003 does not apply to a legislative instrument made under subsection (1A).

(8) Schedule 1, Part 1, page 22 (after line 6), at the end of the Part, add:

Legislative Instruments Act 2003

47A Subsection 54(2) (table item 26)

Omit “section 203AD, 203AE, 203AF or 203AG subsection 203AH(1) or (2),”, substitute “subsection”.

Government amendments (6) and (8) are amendments about certain legislative instruments. Government amendment (6) will provide for instruments recognising existing representative bodies for their areas during the transition period to be exempt from disallowance. This is because these instruments are mandatory in nature. The bill provides that the minister must recognise an existing representative body that applies to be recognised for its area in response to an invitation made during the transition period. It also provides that that representative body must be recognised for the term specified in the invitation. If parliament disallowed these instruments there would no longer be compliance with the statutory requirement. It is therefore appropriate to exempt these instruments from disallowance.

Government amendment (8) makes a consequential amendment to the Legislative Instruments Act to ensure that it reflects the changes made in the bill—a recognition that related instruments are presently exempt from sunsetting under the Legislative Instruments Act. This means that they do not need to be remade every 10 years. The change to fixed-term recognition periods for rep bodies means that recognition in related instruments will cease to have effect after a maximum of six years. There is thus no need to exempt these instruments from sunsetting.

Senator CROSSIN (Northern Territory) (3.00 pm)—This is probably what I would describe as the feel-good amendment. This makes you feel good because you can stand up and say, ‘Look, we’ve picked up the recommendation of the legal and constitutional committee report. We’ve listened—we’ve
truly listened—and we are going to mandate now for a two-year minimum period for the registration of native title rep bodies.' But, wait, there is the fine print. It actually gives the minister the discretion to ignore the mandatory two-year minimum period, so in fact native title rep bodies can be registered for only one year. So I call this the feel-good amendment: it makes you look good; it makes you look as if you are listening, but really, at the end of the day, nothing can change because the minister can still register a native title rep body for only one year. So it will not come as any surprise to you that the Labor Party will be opposing this move.

Senator JOHNSTON (Western Australia—Minister for Justice and Customs) (3.01 pm)—With respect, just to clarify: I think the learned senator was talking about the wrong amendments there. These are not the recognition amendments.

The TEMPORARY CHAIRMAN (Senator Moore)—These are government amendments (6) and (8) together, Senator Crossin.

Senator CROSSIN (Northern Territory) (3.00 pm)—These are my general comments in relation to the native title rep bodies, in relation to schedule 1. I think I am right, am I not, if I look at your amendment sheet?

The TEMPORARY CHAIRMAN—it is sheet QW307, Senator.

Senator CROSSIN—Yes, that is right.

Question agreed to.

Senator BARTLETT (Queensland) (3.01 pm)—I move Democrat amendment (17) on sheet 5192:

(17) Schedule 1, page 14 (after line 27), after item 28, insert:

28A After section 203C

Insert:

203CAA Link between recognition and funding

It is a general principal of this Act that:

(a) where recognition has been given to an eligible body in accordance with Division 2, the Secretary of the Department is required to provide funds to the recognised eligible body; and

(b) funding will be provided for the duration of the period of recognition; and

(c) funding periods and recognition periods will be of the same duration.

I also have a number of other amendments which are opposing a range of items in schedule 1, which you can read out a bit later.

The TEMPORARY CHAIRMAN—Is this amendment (17) singly, Senator?

Senator BARTLETT—Yes. I will speak to all the others as well, because they link together to a fair extent and some of them, I might say, are issues that have been raised already in previous amendments. As I said, there tends to be an intertwining between various amendments from the Democrats, Labor and the Greens. Amendment (17) amends item 28 of the bill to set out criteria to establish a link between recognition and funding. If limited-term recognition periods are introduced, as they are going to be, then there ought to be some formal legal link established between recognition and funding so that the periods are the same. If we do not do that, it would result in two periods subject—potentially anyway—to independently exercised discretions, each of which will effectively determine whether the body concerned continues to be able to perform its role. To me, that seems to be unnecessarily bureaucratic and extra red tape in an act where there is already quite a lot, particularly on the rep bodies themselves.

The various other items of schedule 1 which we seek to oppose—and, again, a lot of them were mentioned previously in Sena-
tor Siewert’s earlier contribution—all go to matters that, to a large extent, I think are not particularly necessary, about transition periods and the like. I should emphasise that a lot of these amendments are derived from submissions provided to the Senate committee inquiry, in particular submissions and proposals from Tom Calma, the social justice commissioner covering Indigenous issues under the Human Rights and Equal Opportunity Commission. It is reasonable to state that Mr Calma knows what he is talking about with regard to the Native Title Act and how it operates. I think any suggestion that we have got the wrong end of the stick here and do not quite understand what is going on would, quite frankly, be a reflection not just on him but on a number of others who put in submissions to the Senate committee inquiry.

I would make that broad point again: the people who gave evidence to the Senate committee inquiry—as Senator Johnston would know, because he was on the committee at the time when we had the public hearing, before he moved on to his current esteemed role—were not engaging in ideological frolics. They were not putting forward evidence with an aim of trying to score political points or trying to slam the government or put forward some other form of ideological nirvana; they were talking about what they thought would work. I think that a lot of what the government has put forward does have that intent as well, the intent to make the legislation work better, but I suppose from the Democrats’ point of view—and this is a wider comment as well as specific to native title—things are more likely to work better in the native title area as well as other areas if affected Indigenous groups and people themselves believe it is a process that they have some genuine input into and have a fair go at, rather than just this morass of red tape or an uneven playing field. If you focus solely on what might seem to be a straight, quick, best outcome in terms of just getting the job completed, without looking at the nature of the job, it is perhaps not surprising that we are ending up in two different locations, even if we nominally desire to get to the same place. But that is probably a broader comment about the differing approaches that various parties are taking to this issue.

Turning to amendment (17) in particular: it does stand alone, as I understand it. Amendment (17) in itself would be beneficial. It would reduce some red tape and add some certainty for native title rep bodies, which, as we have said a number of times, do not have as much certainty as would be desirable and certainly do have very significant accountability requirements. We all support accountability, but we also need to get the balance right between accountability and excessive bureaucratic control.

This is a government that likes to have control. It likes to have micro control of a lot of things. It is a government that has made major power grabs in a whole range of areas. It has centralised power in a whole range of areas. In the Indigenous area it has removed power from Indigenous people and taken more control itself. Perhaps it should come as no surprise that in this area as well—as we saw last year in the land rights legislation for the Northern Territory—there are heaps of areas of discretion for the government and the minister and heaps of obligations on the part of the Indigenous organisations. Amendment (17) would at least streamline one of those processes.

**Senator LUDWIG** (Queensland) (3.08 pm)—The opposition supports the Democrat amendment. Much of this has been covered, I know, in the sense that we have run it up to the government, and the government has ignored it as usual and maintained its position. The Democrat amendments do try to
ameliorate some of the problems that beset this bill. The ultimate test of this bill will be whether it does endure and this amendment does do what the government claims it will do. On that score, it will be helpful if, in a while, the government can come back with the figures to say how this is such an improvement on the past, demonstrating that it has provided support and assistance to the bodies in their tasks and showing that the claims get processed, not just in the sense of numbers but in the sense of proper and enduring outcomes. That will be the ultimate test of the words here and what we are arguing here. The ultimate test is for the government to demonstrate that in the ensuing period.

Labor does not think that these changes will provide that. It does not think that there will be sufficient outcomes. When you look at the range of submitters to the Senate committee inquiry who were not convinced and when you look at the changes themselves, the various amendments, and hold them up to the light, they do not, on face value, look like they will provide a better outcome. There is still a range of serious problems with the bill. It is recognised that, in picking up some of the recommendations, there will be a slight improvement. But it seems to be that, even with that, you do have serious problems that face the bill and face the native title process today, particularly the length of time taken for the resolution of claims and the view that the system is clogged, bureaucratic and tied up with red tape. I have already mentioned those things, in my speech in the second reading debate. I reiterate that Labor does not believe that these changes—I will not call them reforms—will reduce red tape and does not believe that they will save taxpayers money.

Senator SIEWERT (Western Australia) (3.10 pm)—I would like to put on record that the Greens support this amendment.

Senator BARTLETT (Queensland) (3.11 pm)—The Democrats oppose schedule 1 in the following terms:

(1) Schedule 1, item 5, page 4 (lines 4 to 6), TO BE OPPOSED.
(2) Schedule 1, item 8, page 4 (line 31) to page 6 (line 8), TO BE OPPOSED.
(3) Schedule 1, item 12, page 6 (lines 28 and 29), TO BE OPPOSED.
(4) Schedule 1, item 13, page 6 (lines 30 and 31), TO BE OPPOSED.
(5) Schedule 1, items 18 to 20, page 8 (line 26) to page 13 (line 16), TO BE OPPOSED.
(6) Schedule 1, items 23 and 24, page 13 (line 26) to page 14 (line 7), TO BE OPPOSED.
(7) Schedule 1, item 27, page 14 (lines 16 to 25), TO BE OPPOSED.
(8) Schedule 1, item 31, page 15 (lines 3 and 4), TO BE OPPOSED.

The TEMPORARY CHAIRMAN (Senator Moore)—The question is that schedule 1, items 5, 12, 13, 18 to 20, 23, 24, 27 and 31, stand as printed and that schedule 1, item 8, as amended, be agreed to.

Question agreed to.

Senator BARTLETT (Queensland) (3.11 pm)—by leave—I move Democrat amendments (10) to (13) on sheet 5192 together:

(10) Schedule 1, item 18, page 9 (lines 18 and 19), omit paragraph 203AE(4)(b).
(11) Schedule 1, item 18, page 9 (lines 30 to 35), omit subsection 203AE(6).
(12) Schedule 1, item 19, page 11 (lines 23 and 24), omit paragraph 203AF(4)(b).
(13) Schedule 1, item 19, page 12 (lines 4 to 9), omit subsection 203AF(6).

These amendments are based on a recommendation from Tom Calma in his submission to the Senate committee. He is the Aboriginal and Torres Strait Islander Social Justice Commissioner of the Human Rights and Equal Opportunity Commission. These
amendments go to the issue of the public’s right to comment on extensions and variations. It is probably easier if I quote from the submission. Mr Calma said:

46. I am concerned that the proposed changes to the way in which decisions to extend, vary or reduce a representative body area are made.

47. Presently, such decisions cannot be made without -
   a. in case of extension:
      • the representative body’s agreement [s203AE(f)], and
      • Ministerial satisfaction that the body will ‘satisfactorily represent persons who hold or may hold native title’ [s203AE(c)], and
      • Ministerial satisfaction that the body ‘will be able to consult effectively with ATSI peoples living in the area’ [s203AE(d)], and
      • Ministerial satisfaction that the body will satisfactorily perform its functions [s203AE(f)];
   b. in the case of variation:
      • joint application for variation being made by the representative bodies [s203AF(1)], and
      • a consultation requirement [s203AF(2) & (3)], and
      • Ministerial satisfaction that the body will satisfactorily represent native title holders and claimants [s203AF(4)(a)] and effectively consult with Aboriginal and Torres Strait Islander peoples [s203AF(4)(b)], and
      • Ministerial satisfaction that the body will satisfactorily perform its functions [s203AF(4)(c)];
   c. in the case of reduction:
      • Ministerial satisfaction that the body is not satisfactorily representing native title holders and claimants or effectively consulting with Aboriginal and Torres Strait Islander peoples [s203AG(1)(a) & (b) but will do so in relation to the remainder of the area [s 203AG(2)(a) & (b)];
      • Ministerial satisfaction that the body will satisfactorily perform its functions [s203AG(2)(c)].

48. It is proposed to remove all of these criteria save the sole criterion that the Minister is satisfied that, after the extension or variation, the representative body or bodies will satisfactorily perform statutory representative body functions in relation to the extended, varied or reduced areas.

In this regard, Mr Calma noted that representative bodies’ functions do not include general representation and consultation requirements—something that the minister himself was indicating earlier on—and that they did not suggest any standard for representation and consultation. So under the proposed changes the minister would, in relation to extension and variation decisions, be required to give 60 days notice of his or her intentions to the public inviting submissions about the matter and to consider any submissions made by the public before making a decision.

Mr Calma’s submission continues:

51. I am concerned that ‘the public’ are thought of as having:
   • any relevant interest in which particular body will be responsible for providing legal representation to native title holders in an area, or
   • any relevant opinion about the likelihood of satisfactory performance of statutory functions by any particular body.

52. The inclusion in the Bill of a proposed requirement that there be notice of these matters to the public and consideration of the public’s submissions, underscores my concerns that leaving recognition decisions to be decided solely on the basis of a broadly defined criterion susceptible to differing interpretations, exposes representative bodies to an actual or at least perceived danger that decision making will be influenced by political considerations.

When one talks about the danger of political consideration, it is always worth emphasising that it is not necessarily attempting to cast a slur on the current government or the current minister. It is always worth noting that we are not here deciding whether or not to make life easier for the current government; we are deciding whether or not to change the law. Of course that law stays, potentially, for decades to come—well past
the life of this government and perhaps its successor. So we have to look at what is likely to work and at what the potential consequences and uses are of a section of an act once it is agreed to.

It is a combination here of the fact that all of these current requirements are being removed and left basically solely with ministerial discretion, combined with the ability to take notice of opinions from a wider group of people than would necessarily have any relevant interest, particularly with regard to which particular body would be responsible for providing legal representation to native title holders in an area. I am certainly not against consultation, but, in changing the law to basically give much wider, more open-ended discretion for the minister and on top of that allowing the minister to take into account a much wider range of opinions or views in coming to the decision, there is a potential risk and certainly potential for perceptions about political considerations.

Again, I point out that this is coming from the Social Justice Commissioner and reflects views from some sections of the Indigenous community about how some of these powers might be used. It is a matter of whether or not people will have confidence and be relaxed about how discretion might be used down the track and whether people and representative bodies can feel secure in what they are doing, or whether in undertaking their tasks they will have a little extra creeping suspicion at the backs of their minds that upsetting the wrong person might come back to bite them. Once we take out all those specific legislation criteria and leave open-ended discretion, it opens up that risk.

On the flipside of it, there is also the issue of providing some security for the relevant minister, whoever it might be down the track. As we have seen in some other areas, such as migration, when there is nothing else there but ministerial discretion it can actually leave ministers and decision makers exposed to unfair perceptions about the reasons behind their decisions. To me that also suggests there are good public policy reasons for having more specific criteria outlined.

Question negatived.

Senator BARTLETT (Queensland) (3.19 pm)—I move Democrats amendment (16) on sheet 5192:

(16) Schedule 1, item 27, page 14 (lines 24 and 25), omit “the body’s organisational structures and administrative processes will operate, or are operating, in a fair manner”, substitute “on the basis of published criteria:

(a) the body’s organisational structures and administrative processes will operate, or are operating, in a fair manner; and

(b) there has been satisfactory compliance with approved statutory plans under section 203D; and

(c) the body has effective planning procedures in place and complies with them; and

(d) there has been satisfactory representation and effective consultation with constituents.”.

I might have lost that last vote, but I do not think I lost the debate.

Senator Ludwig—Don’t give up now!

Senator BARTLETT—I did not hear any good arguments against it. This next amendment is an alternative to a previous Democrat amendment, (15), which was actually opposing a schedule. It seeks to set out some relevant criteria for the exercise of the broad ministerial discretion, including compliance with approved statutory plans and satisfactory representation and effective consultation with constituents. Again, it simply seeks to put in place just a couple of criteria that would go to inform the exercise of the very broad ministerial discretion that will now be in place. As I have just stated, it will also be of assistance to the minister of the
day as well as being of assistance to those whom the minister will be making decisions about.

Senator JOHNSTON (Western Australia—Minister for Justice and Customs) (3.20 pm)—In response to the senator, I do respect his work on this matter. Democrat amendment (16) seeks to introduce further matters that the minister needs to take into consideration before deciding whether a body can satisfactorily perform its functions as a rep body. This amendment includes the concept of fairness of a body’s organisational structures and administrative processes. The government has already provided for that to be included. It also includes where a body has complied with a strategic plan, and of course, Senator—through the chair—the bill removes strategic plans. I do not think I need to say any more.

Question negatived.

Senator CROSSIN (Northern Territory) (3.21 pm)—The opposition opposes schedule 1 in the following terms:

(10) Schedule 1, item 43, page 16 (lines 11 to 20), TO BE OPPOSED.

I move this amendment on behalf of the opposition to remove this item, which actually limits the ability of the secretary of the department to make funding available to Indigenous people in areas where there is no representative body, only in circumstances where in the opinion of the secretary the function would not be performed in an efficient and timely manner without such funding. This is not a requirement for funding to Indigenous people in other areas. We do not believe it is necessary, so we will be seeking to have it removed.

The ACTING DEPUTY PRESIDENT (Senator Moore)—The question is that schedule 1, item 43 stand as printed.

Question negatived.

Senator LUDWIG (Queensland) (3.23 pm)—We oppose schedule 1 in the following terms:

(1) Schedule 1, page 3 (line 2) to page 24 (line 33), TO BE OPPOSED.

The whole of the debate was that, if the government were not going to pick up the substantive amendments that we moved, then as a consequence we would move this amendment. I recognise that the government moved maybe one step out of a long march, but it certainly was not far enough.

Question put:

That schedule 1, as amended, be agreed to.

The committee divided. [3.28 pm]

(The Temporary Chairman—Senator C Moore)

Ayes............ 32
Noes............ 28
Majority........ 4

AYES


NOES


AYES

The DEPUTY PRESIDENT—Senator Colbeck, ignore the interjections and refer your comments to the chair.

Senator COLBECK—after 25 years in the competition. I do pay tribute to New South Wales for a magnificent effort in reaching the final. It is the world’s premier competition on a national level and I think it is a great achievement for the Tasmanian team to have won the final today. It was a great effort by New South Wales. It was a very strong competition.

I want to pay particular tribute to the Tasmanian team, coached by Tim Coyle, captained by Dan Marsh and compromising Michael DiVenuto, Tim Paine, Michael Dighton, Travis Birt, George Bailey, Sean Clingeleffer, Luke Butterworth, Damien Wright, Adam Griffith, Ben Hilfenhaus and the 12th man, Brendan Drew. Luke Butterworth, in his first season in the competition, won the Man of the Match award, and it was terrific to see the side making such a significant contribution to the efforts this year.

Of course, over the 25 years of the competition there have been a number of players who really have helped build the Tasmanian side. I remember when I was much younger watching ‘Flat Jack’ Simmons lead the side to a 47-run win over Western Australia in the Gillette Cup. Those players who helped Tasmania build the strength of the team certainly deserve credit and brought on players like David Boon, Jamie Cox, Shaun Young and many others, including of course the Australian captain, Ricky Ponting, who today is defending the world cup in the Caribbean. They are great players that have been developed as part of the growth of cricket in Tasmania. David Boon and Jamie Cox are now Tasmanian selectors.

Senator Faulkner—Jamie Cox is a national selector.
Senator COLBECK—You are right; I will take your interjection, Senator Faulkner. Both David Boon and Jamie Cox are Australian selectors, not Tasmanian selectors.

Senator Forshaw interjecting—

The DEPUTY PRESIDENT—Order! Senator Forshaw, this is a serious matter.

Senator COLBECK—It is a serious matter for Tasmania, Mr Deputy President; I thank you for your defence. I am very pleased that Tasmania has made this significant contribution to its sporting history, and I congratulate all of those involved: the players, the supporters of the team and, of course, the Tasmanian Cricket Association.

Register of Senators’ Interests

Senator MASON (Queensland—Parliamentary Secretary to the Minister for Health and Ageing) (3.35 pm)—I want to briefly address the Senate to acknowledge that I made an honest error in failing to comply in certain respects with the reporting requirements of the Senate’s register of interests. When I checked my records earlier this week, I promptly moved to correct my return. It was an oversight that I sincerely regret and for which I take full responsibility. I have taken steps to ensure that such an error will not occur in the future.

Chaplaincy Services for Veterans

Senator McEWEN (South Australia) (3.36 pm)—This week we noted the fourth anniversary of the commencement of the war in Iraq. Last month, we remembered the bombing of Darwin 65 years ago during the Second World War. Next month, on Anzac Day, we will honour the efforts of all our service men and women, with particular reference to those who served in the First World War.

During any year, we also remember tragedies involving our service personnel that happened away from conflict zones and in times of peace. On 10 February this year, we noted the 43rd anniversary of the collision of the HMAS Melbourne and the HMAS Voyager, which killed 82 naval personnel and injured hundreds more. Just yesterday, the family of Trooper Joshua Porter attended his funeral. His death was as a result of the crash of an army helicopter during exercises in Fiji, an incident that also claimed the life of Captain Mark Bingley.

Throughout our nation’s relatively short history, our defence forces have always been engaged in wars, conflicts or manoeuvres that put them at risk. Many service personnel have died and many more have suffered physical or mental injuries that have had both immediate and enduring effects on their quality of life and often on their families. We call those people who have served in our defence forces ‘veterans’, and that is a title that brings with it the connotation of effort and survival. We have got better at acknowledging not just the physical but also the psychological and social impacts on veterans and service personnel who have, voluntarily or compulsorily, served in our defence forces.

I am sure that every senator’s office has at some time been approached by a veteran, their family or a veterans organisation for assistance—often in dealing with the Department of Veterans’ Affairs. As the daughter of a veteran, I am well aware of the many services that are funded by the DVA and provided to our veterans who need and deserve those services. As well as the medical and rehabilitation services provided through the DVA, some veterans and their families find pastoral care to be of much support and comfort. I am also sure that every senator is receiving emails and letters from veterans and their advocates expressing concerns about funding and retention of chaplaincy services for veterans in our hospitals.
Labor have asked questions at Senate estimates about the review currently being conducted by the Department of Veterans’ Affairs into the provision of chaplaincy services to veterans at the Repatriation General Hospital at Daw Park in Adelaide—the Repat, as it is known. In particular, we have asked whether or not the government can guarantee that funding for chaplaincy services will not be reduced as a result of the review. We have also asked why the review panel does not include representatives of the churches. In particular, why was the Heads of Christian Churches Chaplaincy Advisory Committee not part of the review panel?

The committee itself sought to be involved but its request has not been agreed to by the minister. One would have thought that the review panel should include representatives of the organisations that actually work on a daily basis with veterans and their families in delivery of chaplaincy services, but this is apparently not the view of the minister. Answers given to Labor’s questions at estimates have so far not been satisfactory to either the opposition or veterans groups. We are hopeful that the result of the current review will be satisfactory to the veterans community. Labor will continue to monitor the process carefully through Senate estimates questions and through our ongoing contact with veterans and their advocates.

Last week, together with the shadow minister for veteran’s affairs, Mr Alan Griffin, I met with the coordinating chaplain from the Pastoral Care Unit at the Repatriation Hospital, Reverend Bruce Stocks. Also in attendance were veterans representatives, who are extremely anxious that chaplaincy services continue to be provided by people who understand what veterans need and in a context that veterans are comfortable with. To ensure this happens, and that adequate ongoing funding is made available, veterans groups say that the DVA must continue to be responsible for funding and for ensuring that services are targeted to veterans even if provision of actual services is in a state owned or controlled hospital which also has non-veteran patients in need of pastoral care.

As the veterans representatives said at the meeting last week, civilians just do not understand the special needs of veterans and veterans families whose lives have been disrupted by physical and/or emotional damage resulting from service in our defence forces. It is always confronting for civilians like me to hear, as I did at the meeting last week, men and women who served in World War II, and who are now approaching 90 years of age, who can still describe what they saw and felt in a battle or conflict more than 60 years ago as if it happened to them only yesterday. It is only in the last few years that some of our surviving World War II veterans have been treated for post-traumatic stress disorder which they have been suffering, though it usually remained nameless, for sometimes 60 years or more. And, of course, as a nation we have belatedly come to acknowledge, and are still struggling to adequately deal with, the impact of the Vietnam conflict on veterans and their families.

While the Pastoral Care Unit at the Repat serves both veteran and non-veteran patients, the majority of the unit’s chaplains’ and volunteers’ time—on average 70 per cent of the Pastoral Care Unit’s time during the last three years—has been spent with veterans. While the number of veteran admissions to the hospital has declined by approximately 20 per cent over the past 10 years, veterans still account for 41 per cent of occupied bed days at the Repat and veterans typically have longer periods of admission. In the last six months of 2006, the Pastoral Care Unit provided more than 2,800 pastoral and counseling services to veterans. Chaplains from the unit also conduct funerals for veterans and memorial services for battalion commemora-
tions and on days of note such as Anzac Day and Remembrance Day. Each Sunday the Repat chaplains take it in turns to perform a service which is broadcast from the Repat’s beautiful non-denominational chapel to patients in the hospital via bedside broadcast.

The Pastoral Care Unit estimates that the cost of continuing to provide the services at the current level will be in the order of $277,000 in 2008. The unit has proposed that the federal government meet a proportion of that cost—approximately 70 per cent—based on the proportion of services provided to veterans. It is a small amount in the scheme of things and one is ever hopeful—but far from certain—that this government will do the right thing by our veterans and their families. I am also aware of other arguments that are brought into this debate, which I think are often to deflect attention from the core issue: government funding of chaplaincy services and the retention of responsibility for veterans services in the Department of Veterans’ Affairs and under the auspices of the federal government.

Some of those other issues include whether it is the state or federal government that should be responsible for such services in state administered hospitals; there is an element of the federal government’s favoured blame game in this aspect of the argument. There is also the argument as to whether or not there is any medical evidence that spiritual intervention assists with physical recovery. An interesting diversionary tactic that emerged in the debate attempts to portray the various church denominations as competitors against each other to provide these services. With regard to this last point, it is worth recalling the words of one of the veterans with whom I met last week. He said that when you are about to go into a battle that you might not come out of, you will kneel down in front of any padre who puts their hand up to give a blessing, regardless of which denomination they are.

In conclusion, I would like to encourage the government to respond appropriately to the current review that is being undertaken, and I look forward to the report of that review. I would also like to acknowledge while I have the opportunity the excellent work of the chaplains and volunteers who continue to provide much needed care to the patients at the Repatriation General Hospital in Daw Park.

**Meander Dam**

*Senator Barnett (Tasmania) (3.45 pm) — I stand today to speak to the merits of the Meander Dam development in northern Tasmania. An open day is planned this Sunday for members of the public to visit the Meander Dam, and I am sure it will be a most informative, educational and enjoyable day for all those who attend.*

The Meander Dam is a project that has been on the planning board for decades. It is now happening. It is being developed, and I am a very strong supporter together with the Tasmanian Liberal Senate team and Ben Quin, the federal Liberal candidate for Lyons, who is very supportive of the project and is aware of the many benefits that it will deliver to the people of the Meander Valley, northern Tasmania and the entire state of Tasmania.

I will give an overview of the Meander Dam and discuss some of the benefits it will deliver to Tasmania. My family were born and bred on the Meander River at Hagley, and I lived there all of my childhood. My family farmed on the river for 40 years. In the winter it flooded and made farming difficult not just for us but for all the farms along the river. In the summer, of course, it has been getting worse and worse: the Meander River has been trickling almost to a halt. Irrigation has been precarious, so the dam will
alleviate those concerns about flooding in the winter and drought and dryness in the summer.

The dam will provide many benefits. It will be constructed using the roller compacted concrete method and will be 47 metres from the bed of the river to the top of the crest. The dam is 170 metres from abutment to abutment, and 50 metres upstream toe to the downstream toe. The area to be inundated is 364 hectares and the gross storage capacity is in the order of 43,000 megalitres. The effective storage capacity is 41,000 megalitres and irrigation water is a little over half that, with 24,000 megalitres per annum available to those who wish to use it.

There are many economic benefits but there are also community and environmental benefits. I would like to speak to each of those. Regarding environmental benefits, the river will be guaranteed a minimum flow, even in midsummer, to sustain the important ecological processes so vital to the future sustainability of such a river.

In terms of community benefits, yes, there will be a reduction in the severity of flooding as I indicated. There will be year-round improvement in water quality and enhanced recreation and tourism opportunities. The dam will provide brilliant opportunities for trout fishing, for example, and I hope to be one of the first members of the public to be able to avail myself of that opportunity. I know many Tasmanians—over 25,000 of them—enjoy trout fishing every year. It is vitally important for our economy and tourism and the Meander Dam will simply add to the tremendous trout fishing opportunities in Tasmania, which are world-class. I commend Tasmania’s trout fishing to my colleagues here and to the members of the public.

Economically, the additional water for irrigation each year will lead to increased farm income of an early estimate of nearly $15 million dollars per annum at full water intake; total benefits, including the flow-on benefits, of some $53 million per annum to the Tasmanian economy; and, on recent advice, an increase in employment of over 150 jobs—that is on-farm and off-farm jobs. There will also be investments of on-farm infrastructure with many of the value added activities that farmers will undertake a result of having access to that water. Across Australia water, particularly over the summer period, is renowned as liquid gold, and we believe it will be well used.

The experience in Tasmania is that in the Cole River Valley the Craigbourne Dam has done wonders. It was dryland farming for decades and it has been transformed into—I will not say an oasis—an area for stone fruit, grapes and a whole range of crops. It has been a tremendous value-adding opportunity—jobs, growth and development—for that entire community and southern Tasmania. The Meander will also produce in the order of 10,000 megawatts of electricity per annum, an added benefit which is good news.

The Australian government has had responsibilities under the Environment Protection and Biodiversity Conservation Act and those commitments have been met. I want to thank Minister Truss, who visited the dam site a few years ago, and also more recently the Hon. Malcolm Turnbull, who I have had discussions with on behalf of the Tasmanian Liberal team about his interest in and commitment to the Meander Dam. Our government has committed $2.6 million to this development. We believe it is an excellent investment and already we have committed $2.1 million to make this development a success, with a further half a million dollars payable once the irrigation rights have been provided.
I would, however, like to make a few additional comments about the process of the dam development, but, before doing so, say that I believe that the open day organised by the Rivers and Water Supply Commission for this Sunday will be a great success. I thank them for organising it and making it available to the public. I plan to get there via the Western Tiers cycle challenge—that is, riding my pushbike along the Meander Valley Highway with many other Tasmanians, raising money for the New Horizons organisation for people with disabilities. We start at 9 am this Sunday from the Launceston Country Club casino. We are riding to Westbury, and some of us are riding to Deloraine. So that is the mechanism to get there.

Some other additional comments I want to make are on the disappointment I have about the state Labor government’s management of the project—or, more specifically, its mismanagement of the project—over many years. The state government minister at the time, back in 2003, Brian Green, said on the public record that his government and his department had taken a passive approach. That is very disappointing. The Leader of the Opposition at the time, Rene Hidding, the state member for Lyons, said on 10 April 2003:

Mr Green today incredibly admitted his guilt and culpability for losing the Meander Dam appeal, admitting it “could be argued” that he and his department took a “passive” approach to the appeal.

Mr Hidding was right, and I thank Mr Hidding for his advocacy and for his efforts. He has been an ardent supporter of the dam.

Mr Hidding was of course talking about the Greens Tasmanian Conservation Trust appeal, which has delayed the development of the dam. As a result of those delays, there have been many millions of dollars in increased development costs which, of course, have to flow through to the end recipients—that is, the farmers who are involved in accessing the water via their irrigation rights. Up to $13 million was added to the cost of the Meander Dam through unnecessary delays including frivolous and vexatious appeals. In 2001 the dam was priced at approximately $23 million. Several years later, it is in the order of $35 million or more. So, in my view, those frivolous and vexatious appeals by the green lobby or anybody else should not be allowed to occur without consequences. Those undue delays have increased the cost of the dam and placed an unfair burden on the Meander Valley farmers and the community.

I want to pause and congratulate the Tasmanian Farmers and Graziers Association and Mayor Mark Shelton and the Meander Valley Council for their support and commitment to making this dam a success and bringing it to fruition. So I have added those two concerns, and Ben Quin and I will be there this weekend to support those in the community who support the Meander Dam development. We look forward to the benefits ensuing to the local community in the usual way.

Senate adjourned at 3.55 pm
QUESTIONS ON NOTICE

The following answers to questions were circulated:

**Exclusive Brethren**

(Question No. 2532)

**Senator Bob Brown** asked the Minister representing the Minister for Immigration and Citizenship, upon notice, on 4 October 2006:

With reference to meetings between the Minister and representatives of the Exclusive Brethren: Has the Minister met with representatives of the Exclusive Brethren in the past 5 years: if so, in each case: (a) when was the meeting; where was the meeting held; (c) who attended the meeting; and (d) what matters were discussed.

**Senator Ian Campbell**—The Minister for Immigration and Citizenship has provided the following answer to the honourable senator’s question:

The former Minister for Immigration and Multicultural Affairs, the Hon. Senator Amanda Vanstone, has no electronic record of a meeting with representatives of the Exclusive Brethren in the past 5 years.

**Immigration and Citizenship**

(Question No. 2640)

**Senator O’Brien** asked the Minister representing the Minister for Immigration and Citizenship, 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 Ellison**—The Minister for Immigration and Citizenship has provided the following answer to the honourable senator’s question:

(1) The department has instituted one cost recovery system:

(a) In 1996 Translating and Interpreting Service (TIS) commenced phasing in a “User Pays” system as large numbers of government agencies were accessing TIS interpreting services for free. This was recognised as a form of cost transfer between agencies and jurisdictions. The principle adopted was that costs should be borne by the agencies using them (i.e. user pays). The TIS full cost recovery regime was instituted from 2002/2003; and (b) No costing is available on the cost of instituting the TIS cost recovery system.

(2) As at September 2006 the department employed 6588 staff at various levels. The table below provides: (a) the number of staff at each APS level (including executive and senior executive level staff) by division and state office; and (b) the average salary of staff for each APS level (including executive and senior executive level staff) by division and state office.

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**Galiwinku Community**

*(Question No. 2767)*

**Senator Crossin** asked the Minister for Families, Community Services and Indigenous Affairs, upon notice, on 15 November 2006:
With reference to the agreement being negotiated at Galiwinku Community in the Northern Territory
announced in a press release by the Minister on 19 June 2006:

(1) (a) Who has visited Galiwinku to discuss this plan since the announcement; (b) on what dates; and
(c) how long was each visit.

(2) (a) With whom have they met (for example, traditional owners, ordinary people, the Galiwinku
Community Council); (b) where have these meetings been held; and (c) how have they been adver-
tised in the community.

(3) (a) How many traditional owners have been positively identified; and (b) by whom.

(4) Does the Northern Land Council have a role; if so, what is it.

(5) (a) Who explained the legalities and technicalities of a 99 year lease; and (b) how did they explain
the legal terminology.

(6) How has the Government ensured that the people of the community understand the plan and the
overall concept of the 99 year lease (for example, what interpreters have been used).

(7) Is it correct that 30 November 2006 is the deadline for the people of the community to make their
decision on the 99 year lease.

(8) (a) What absolute safeguards will there be to ensure that the Indigenous people do not lose control
of their land; and (b) if they agree to a 99 year lease, how will they be able to terminate that lease,
or a sub-lease.

(9) (a) Is it correct that in signing a head lease, there is no absolute requirement to ensure that the land
owner fully understands it and that unless there is fraud committed, once signed, a lease stands; and
(b) is this an unfair loophole.

(10) (a) After 99 years, what guarantee is there of the land reverting back to Indigenous control and in
an undamaged useable state if business has operated on it.

(11) Is there any way that a guaranteed minimum of any leased land can be sub-leased only to Indige-
nous people.

(12) What home loan terms and conditions have been negotiated with Indigenous Business Australia for
the people of the community, many of whom are and will remain on the Community Development
Employment Program or social security.

(13) What happens to the 50 extra houses if the community decides not to sign a 99 year lease.

(14) What happens to other services such as the health centre.

Senator Scullion—The Minister for Families, Community Services and Indigenous Affairs
has provided the following answer to the honourable senator’s question:

Responses to the above questions may be found by referring to Questions on Notice 85-98, as tabled on
8 February 2007.

Mr David Hicks
(Question No. 2963)

Senator Allison asked the Minister representing the Attorney-General, upon notice, on 15
January 2007:

With reference to the evidentiary provisions which are to apply in the forthcoming trial of Mr David
Hicks under the newly constituted Military Commissions Act (2006) of the United States of America’s
(US):

(1) Does the Attorney-General understand that Mr Hicks will face charges before the newly constituted
Military Commission that are similar to those made in June 2004.
(2) Can the Attorney-General confirm that, under the Military Commissions Act, statements made by Mr Hicks and obtained by cruel, inhuman or degrading treatment before 30 December 2005 will not be automatically excluded from evidence by the commission; if so, does the Attorney-General consider that such evidence is in accordance with Article 16 of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to which both the US and Australia are party; if not, why not.

(3) What does the Attorney-General understand to be the reason for this time-related qualification on admissible evidence, given that the decision by the US Supreme Court in Hamdan vs Rumsfeld in June 2006, determined that presidential appointments of military commissions were illegal and that lawfully appointed commissions would have needed to comply with common Article 3 of the Geneva Conventions.

(4) Can the Attorney-General confirm that if Mr Hicks were to have been charged before a US court-martial such evidence would be inadmissible.

(5) Has the Australian Government made representation to the US Government requesting: (a) that Mr Hicks be tried by court martial; if not, why not; and (b) through regulation or instruction, that no statement by Mr Hicks obtained by cruel, inhuman or degrading conduct, whether before or after 30 December 2005, will be admissible in the proposed commission; if not, why not.

Senator Ellison—The Attorney-General has provided the following answer to the honourable senator’s question:

(1) Mr Hicks faces a charge of providing material support for terrorism arising from acts allegedly committed by him whilst overseas. Under the previous military commission system, Mr Hicks was charged with conspiracy to commit war crimes, attempted murder by an unprivileged belligerent and aiding the enemy.

(2) The Australian Government has no information to suggest that Mr Hicks has been subjected to abuse or mistreatment while in US custody. Under the Military Commissions Act, if a statement has been obtained prior to 30 December 2005 and the degree of coercion is at issue, the statement may be admitted only if the military judge finds that the totality of the circumstances renders the statement reliable and possessing sufficient probative value and the interests of justice would best be served by admitting it into evidence. The compliance of United States domestic law with international law, such as the Convention Against Torture, will ultimately be a matter for the United States.

(3) The time-related qualification on admissible evidence obtained by coercion coincides with the enactment of the Detainee Treatment Act of 30 December 2005, which prohibited the use of coercion from that date.

(4) The decision to use the military commission system rather than the court martial system is a matter for the United States Government and it would not be appropriate for me to give a legal opinion about a hypothetical situation in these circumstances.

(5) The decision to use the military commission system rather than the court martial system is a matter for the United States Government. Whether evidence is admissible in Mr Hicks’ military commission trial will be a matter for determination by the military judge.

The Australian Government asked the US Government that Mr Hicks be treated humanely and in accordance with international standards in interrogations, and the United States reassured the Government that this would occur. The US has provided assurances that Mr Hicks was treated in accordance with the standards required by the Geneva Convention. The Pentagon has specifically confirmed that the interrogation techniques approved in 2002 by the then Secretary of Defense, Mr Rumsfeld, were not used for Mr Hicks.
Australian Communications and Media Authority: Complaints
(Question No. 2972)

Senator Conroy asked the Minister for Communications, Information Technology and the Arts, upon notice, on 29 January 2007:

(1) Why has the investigation by the Australian Communications and Media Authority (ACMA) of Telstra’s recent complaint about stories on the Today Tonight program taken more than 12 months to resolve.

(2) Is it acceptable that complaints about breaches of the commercial television code of conduct should take this long to reach a conclusion.

(3) Since the ACMA was established, what has been the average length of time for the authority to resolve complaints concerning the commercial television code of conduct.

(4) Is the Government or the ACMA taking steps to accelerate the resolution of complaints under codes of conduct registered with the ACMA.

(5) Will the Government commit to ensuring that all complaints are resolved within 3 months.

Senator Coonan—The answer to the honourable senator’s question is as follows:

(1) The Australian Communications and Media Authority (ACMA) has advised that Telstra’s complaint concerned four separate episodes of the Today Tonight program broadcast in September and October 2005. The complaint contained approximately 20 separate complex matters that required close consideration. The outcome of the investigation has been met with satisfaction by the parties involved.

(2) ACMA advises that it is committed to completing its investigations in a timely and efficient manner. It is also committed to fulfilling its obligation under the law to provide procedural fairness to affected licensees.

(3) ACMA has advised that since it was established on 1 July 2005 to 31 December 2006, it has completed 98 investigations into complaints about matters covered by the commercial television industry code of practice. The average time taken to complete the investigations was 4.8 months.

(4) ACMA is currently revising its timeframes for the completion of broadcasting investigations. ACMA also expects that the recently-conferred additional broadcasting enforcement powers will enhance its effectiveness in this area.

(5) The processes for undertaking investigations are a matter for ACMA. ACMA is exploring options for reducing the timeframe for investigations, consistent with procedural fairness to affected licensees (see answer to Part (4)).

India: Nuclear issues
(Question No. 3024)

Senator Allison asked the Minister representing the Minister for Foreign Affairs, upon notice, on 23 February 2007:

With reference to the United States (US) of America agreement to supply uranium to India:

(1) What is the status and timeframe for decision-making by the Nuclear Suppliers Group (NSG) to exempt India from laws that prohibit the sale of nuclear technology and uranium to countries not party to the Nuclear Non-Proliferation Treaty (NPT).

(2) In regard to the reported offer by the Government of India to open some of its nuclear facilities for International Atomic Energy Agency (IAEA) monitoring, is it the case that India proposes to exclude from IAEA monitoring: (a) reactors that make plutonium for nuclear weapons; (b) nine
power reactors including a plutonium breeder reactor; (c) India’s three reprocessing plants; and (d) the 11.5 tons of reactor grade plutonium produced in the spent fuel of India’s power reactors.

(3) Which if any of the above exclusions will or has the Australian Government agreed to.

(4) Does the Australian Government agree with the report of the International Panel on Fissile Materials at www.fissilematerials.org indicating that these facilities could be used to add significantly to India’s stock of nuclear weapons; if not, why not.

(5) Can the Australian Government confirm that: (a) India has about 500 kg of weapons grade plutonium which would enable it to produce 100 nuclear warheads; (b) India’s prototype fast breeder reactor: (i) is scheduled to start operating in 2010, (ii) will be fuelled with reactor grade plutonium, and (iii) will produce weapons grade plutonium, increasing by fourfold, India’s current weapons grade plutonium production; and (c) by substituting imports of uranium for domestic uranium and expanding existing uranium recycling efforts, India would be capable of producing up to 200 kg a year of weapons grade plutonium in those reactors proposed to be excluded from IAEA monitoring.

(6) What does the Australian Government consider is the impact of the US-India uranium supply agreement on: (a) the effectiveness of the NPT; (b) relations between India and Pakistan in regard to nuclear weapons capability and potential use; and (c) the effectiveness of the United Nations Security Council’s Resolution 1172, calling on India and Pakistan to ‘immediately stop their nuclear weapon development programmes …and any further production of fissile material for nuclear weapons’.

(7) How will Australia vote when approval is sought from the NSG of the proposed arrangements under the US-India uranium agreement.

(8) Will the Australian Government allow Australian-sourced uranium to be supplied to India as part of this proposed agreement.

Senator Coonan—The following answer has been provided by the Minister for Foreign Affairs to the honourable senator’s question:

(1) Current Nuclear Suppliers Group (NSG) guidelines, which are legally non-binding, preclude most forms of nuclear supply to non-nuclear weapon States that do not have IAEA safeguards arrangements in place covering all source and special fissionable material with regard to current and future peaceful activities. An amendment to NSG guidelines would not require any change to the nuclear supply policy of participating governments. While the United States has foreshadowed that it will at some stage be seeking a decision by the NSG to enable expanded civil nuclear supply to India, the United States has not yet asked the NSG to make a decision on this issue. The matter could be discussed at the next NSG Plenary meeting that will be held from 16 – 20 April 2007, depending on progress in the negotiation of a bilateral nuclear agreement between the United States and India and progress in the negotiation of a safeguards agreement between India and the IAEA, or it may be discussed at a subsequent meeting.

(2) (a) and (b) Under the separation plan of 2 March 2006, India agreed that facilities identified as civilian will be offered for safeguards in phases to be decided by India. It committed to include in the civilian list facilities offered for safeguards that, after separation, will no longer be engaged in activities of strategic significance. A civilian facility would, therefore, be one that India has determined not to be relevant to its strategic programme.

(c) and (d) In its separation plan, India committed to identify and place under IAEA safeguards in perpetuity 14 thermal power reactors between 2006 and 2014. This will comprise the four presently safeguarded reactors (TAPS 1&2, RAPS 1&2), two reactors (KK 1&2) currently under construction and eight pressurised heavy water reactors, each of a capacity of 220 MW(e). India has also committed to place under safeguards all future civilian thermal power reactors
and civilian breeder reactors. India proposes to accept safeguards in the “campaign mode” after 2010 in respect of the Tarapur Power Reactor Fuel Reprocessing Plant.

(3) India’s separation plan is a bilateral agreement between India and the United States and the Australian Government is not party to it.

(4) The Australian Government has noted the report of the International Panel on Fissile Materials and has taken no position on it.

(5) No, the Australian Government cannot confirm any of the statements in the question.

(6) The US-India agreement is an initiative regarding civil nuclear energy cooperation, which may or may not include uranium supply. The initiative addresses the separation of India’s civil nuclear energy sector from its military sector and the placing of the civilian sector under IAEA safeguards. The initiative does not have any impact on the legally-binding commitments NPT parties have given with respect to nuclear non-proliferation. The initiative includes a number of significant non-proliferation commitments by India, including a commitment to continue India’s unilateral moratorium on nuclear testing and to work with the United States on the conclusion of a Fissile Material Cut-off Treaty (FMCT). If implemented, the initiative will bring India into closer alignment with international non-proliferation standards and practices than at any previous time.

(7) No decision has been taken yet on what position Australia would take on a proposal to adjust NSG guidelines that would allow expanded civil nuclear supply to India.

(8) No, the Australian Government is not party to any proposed agreement between India and the United States pursuant to the US-India civil nuclear cooperation initiative.