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RADIO BROADCASTS

Broadcasts of proceedings of the Parliament can be heard on the following Parliamentary and News Network radio stations, in the areas identified.

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- **SYDNEY**: 630 AM
- **NEWCASTLE**: 1458 AM
- **GOSFORD**: 98.1 FM
- **BRISBANE**: 936 AM
- **GOLD COAST**: 95.7 FM
- **MELBOURNE**: 1026 AM
- **ADELAIDE**: 972 AM
- **PERTH**: 585 AM
- **HOBART**: 747 AM
- **NORTHERN TASMANIA**: 92.5 FM
- **DARWIN**: 102.5 FM
FORTY-FIRST PARLIAMENT
FIRST SESSION—EIGHTH PERIOD

Governor-General

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

Senate Officeholders

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

Senate Party Leaders and Whips

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

Printed by authority of the Senate
## Members of the Senate

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

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

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

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<td>Treasurer</td>
<td>The Hon. Mark Anthony James Vaile MP</td>
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<tr>
<td>Minister for Transport and Regional Services and</td>
<td>The Hon. Peter Howard Costello MP</td>
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<td>Deputy Prime Minister</td>
<td>The Hon. Warren Errol Truss MP</td>
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<td>Minister for Defence</td>
<td>The Hon. Dr Brendan John Nelson MP</td>
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<td>The Hon. Alexander John Gosse Downer MP</td>
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<td>Minister for Health and Ageing and Leader of the House</td>
<td>The Hon. Anthony John Abbott MP</td>
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(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: Kevin Michael Rudd MP
Deputy Leader of the Opposition, Shadow Minister for Employment and Industrial Relations and Shadow Minister for Social Inclusion: Julia Eileen Gillard MP
Leader of the Opposition in the Senate and Shadow Minister for National Development, Resources and Energy: Senator Christopher Vaughan Evans
Deputy Leader of the Opposition in the Senate and Shadow Minister for Communications and Information Technology: Senator Stephen Michael Conroy
Shadow Minister for Infrastructure and Water and Manager of Opposition Business in the House: Anthony Norman Albanese MP
Shadow Minister for Homeland Security, Shadow Minister for Justice and Customs and Shadow Minister for Territories: The Hon. Archibald Ronald Bevis MP
Shadow Assistant Treasurer and Shadow Minister for Revenue and Competition Policy: Christopher Eyles Bowen MP
Shadow Minister for Immigration, Integration and Citizenship: Anthony Stephen Burke MP
Shadow Minister for Industry and Shadow Minister for Innovation, Science and Research: Senator Kim John Carr
Shadow Minister for Trade and Shadow Minister for Regional Development: The Hon. Simon Findlay Crean MP
Shadow Minister for Service Economy, Small Business and Independent Contractors: Craig Anthony Emerson MP
Shadow Minister for Multicultural Affairs, Shadow Minister for Urban Development and Shadow Minister for Consumer Affairs: Laurence Donald Thomas Ferguson MP
Shadow Minister for Transport, Roads and Tourism: Martin John Ferguson MP
Shadow Minister for Defence: Joel Andrew Fitzgibbon MP
Shadow Minister for Climate Change, Environment and Heritage and Shadow Minister for the Arts: Peter Robert Garrett MP
Shadow Minister for Veterans’ Affairs, Shadow Minister for Defence Science and Personnel and Shadow Special Minister of State: Alan Peter Griffin MP
Shadow Attorney-General and Manager of Opposition Business in the Senate: Senator Joseph William Ludwig
Shadow Minister for Sport and Recreation, Shadow Minister for Health Promotion and Shadow Minister for Local Government: Senator Kate Alexandria Lundy
Shadow Minister for Families and Community Services and Shadow Minister for Indigenous Affairs and Reconciliation: Jennifer Louise Macklin MP
Shadow Minister for Foreign Affairs: Robert Bruce McClelland MP
Shadow Minister for Ageing, Disabilities and Carers: Senator Jan Elizabeth McLucas
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<td>Shadow Minister for Primary Industries, Fisheries and Forestry</td>
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The President (Senator the Hon. Paul Calvert) took the chair at 12.30 pm and read prayers.

**BUDGET**

**Consideration by Estimates Committees**

Senator ABETZ (Tasmania—Manager of Government Business in the Senate) (12.30 pm)—I move:

That the order of the Senate of 7 December 2006 relating to committee groupings for estimates hearings, as amended, be modified as follows:

**Group A:**
- Environment, Communications, Information Technology and the Arts
- Finance and Public Administration
- Legal and Constitutional Affairs
- Rural and Regional Affairs and Transport

**Group B:**
- Community Affairs
- Economics
- Employment, Workplace Relations and Education
- Foreign Affairs, Defence and Trade.

Question agreed to.

**NATIVE TITLE AMENDMENT BILL 2006**

In Committee

Consideration resumed from 23 March.

Senator JOHNSTON (Western Australia—Minister for Justice and Customs) (12.33 pm)—by leave—I move government amendments (9) and (10) on sheet QW307 together:

(9) Schedule 2, item 35, page 31 (lines 4 to 6), omit subparagraph 87A(1)(c)(iii).

(10) Schedule 2, item 52, page 39 (table item 3), omit the table item, substitute:

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<td>3 a party that is provided with funds by the Attorney-General under section 183</td>
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These amendments would make technical corrections to the bill. Government amendment (9) would remove a redundant provision from proposed section 87A. Proposed section 87A would enable the court to make a determination of native title where some but not all parties agree to the determination. As drafted, the provision would require the consent of any registered native title body corporate for the area that is a party to the claim before the determination could be made. This amendment would remove the requirement as it is not possible for a registered native title body corporate to be a party to an application for a determination of native title. Government amendment (10) deals with the reports about breaches of good faith obligation. Funding to non-government respondents in native title claims is provided by the Attorney-General rather than the Secretary of the Attorney-General’s Department. The provision as drafted erroneously referred to the secretary and that is a correction we are making which is largely housekeeping. This government amendment will change that provision so that any report will be provided to the Attorney-General.

Senator LUDWIG (Queensland) (12.34 pm)—I will just indicate Labor’s support for these amendments. They are technical in part, but they go to improving the bill.

Question agreed to.

Senator LUDWIG (Queensland) (12.35 pm)—by leave—I move opposition amendments (22), (24), (25), (27) and (29) together:

(22) Schedule 2, item 51, page 38 (line 28) to page 39 (line 2), omit subsection 136G(3B).
(24) Schedule 2, item 53, page 44 (line 20), at the end of subsection 136GE(2), add “; provided that the parties to the proceeding agree.”.

(25) Schedule 2, item 57, page 46 (lines 8 to 10), omit subsection 138B(3).

(27) Schedule 2, item 67, page 50 (line 18), after “must”, insert “, provided the parties consent,”.

(29) Schedule 2, page 52 (after line 22), after item 73, insert:

73A Subsection 203C(1)

After “body”, insert “or a prescribed body corporate”.

I will see if I can deal with those seriatim. They would then deal with all of the amendments save for opposition amendment (26) and, ultimately, schedule 2. I will confine my comments to the significant parts of the bill that we wish to see some improvement in and give the government the opportunity to have a look at those particular areas. Amendments (17) and (20) both concern the effect of proposed item 36 in the bill, which would insert proposed section 94C. This proposed section would require the court to dismiss an application in response to a future act if certain criteria were met. Further acts are defined under section 233 of the act as acts which in particular circumstances affect or purport to extinguish native title.

There is no reason why native title applications lodged with the motive of protecting native title, where a future act is notified, should be regarded as improper or an abuse of process. To make them the subject of summary strike-out can only be regarded as an unfair attempt to deprive native title claimants of their rights to pursue the proper court processes available to attain their rights. It is also unnecessary, given that the courts can already strike out claims if they are manifestly unsound. So in this instance there is the ability for the courts to deal with these types of applications. You can also have an application by the respondents to bring that about, but that is an aside really. The real issue of course is: it seems that the amendments of the government in this bill will reduce the rights of those people bringing claims and may in fact impinge on existing rights.

Amendment (18) in addition moves to strike out item 19 of the bill, which reduces the ability of the Federal Court to monitor and supervise the progress of mediation of matters before it and, when it considers it appropriate, to explore other ways to resolve matters, through court based mediation.

For the benefit of people listening: Labor is just going through the relevant amendments that we seek to move and speaking to those. Some of them are consequential so I will not go through those in any detail. It is clear from the amendments that they are in fact consequential. Amendments (19) and (21) both relate to the production of documents, albeit in different contexts. Amendment (19) relates to the bill’s item 31, which would provide a mechanism for the courts to enforce a direction given by the member presiding over the Native Title Tribunal mediation conference where a party fails to comply with the direction. That can be seen in schedule 1, items 45 and 47, which propose to empower the presiding member to direct parties to attend mediation and produce documents.

Amendment (21) would give the presiding member of the tribunal the power to direct the production of a document which might assist the parties to reach agreement on any matters mentioned. This is not conducive to the mediation process. If mediation is designed to get the parties together to come to a result, that would be better served if the government actually turned its mind to how it could improve the mediation process overall rather than by making these proposed
amendments. Labor seeks to ensure that the parties can use the mediation process.

Although the bill’s explanatory memorandum states that the parties will not be required to produce documents that are subject to legal professional privilege, it is not made explicit. Labor believes that it should be. Amendment (22) relates to item 51, which provides for reports by the tribunal to the court on progress in mediation. Section 136G(3B) provides for the tribunal to include in the reports proposed breaches of duty to mediate in good faith and to appear and produce documents. The last two obligations are opposed by Labor. The inclusion of all of these aspects in reports to the court is not conducive to the mediation process and could compromise the court’s position as the ultimate arbitrator of the matter before the court.

It might be worth explaining what I am seeking to do. I sought leave to move that first group of amendments, but I am also dealing with a second group. I do understand that the questions have to be put separately, but I think for the sense of ensuring that all these amendments are before—

The TEMPORARY CHAIRMAN (Senator Troeth)—You can still speak to them.

Senator LUDWIG—Amendment (23), if adopted, would delete item 52 from the bill, which provides an ability for the tribunal to report breaches in respect of mediating in good faith to various external bodies, including the Commonwealth and state ministers, secretaries of funding bodies and legal professional bodies that issue practising certificates. This is a peculiar section, in that it does not seem to me to be conducive to the mediation process. Labor is unaware of what value the government says it will provide to the mediation process.

In mediation there may be events that occur that are confidential between the parties and that might cause some people to raise an eyebrow. In these instances, if there is a breach in respect of good faith, it might be a minor breach. The legislation does not talk about the scale of the breach. With a mediation that is actually finalising a successful outcome, there might have been some minor transgressions that occurred in good faith that the parties sorted out on the way. In other words, during the mediation process the matter might have come to light and been resolved and the parties moved on.

But there is this follow-up position where all of these matters are circulating which would otherwise have been confidential between the parties. When people come to the bargaining table and have the mediator mediate, they will be aware of the issues that will otherwise flow. In other words, if there are breaches in respect of good faith, then various external bodies will all find that they have the notification process.

It would seem strange if there was finally a successful outcome and yet the parties were distracted by the breaches in respect of good faith, if I can put it that way. That is not to say that the mediator and the parties should not act in good faith. It is a requirement. They should act in good faith. If the government supports that principle, it would be helpful to see it elsewhere in the legislation and in other Commonwealth legislation as well.

The other point, though, is that where there are breakdowns in good faith there needs to be remedial action. That is the usual course. To use a well-worn expression, I think the jury is still out on whether the report actually provides for the type of remedial action that the government envisages—that is, getting the parties to deal with the
matter in good faith. Labor is unconvinced that that will assist.

On that basis, that requirement does not seem to add anything and it would be much better to leave it out, more because of the way it has been defined and the way it will work in practice. Therefore, whilst we do support good faith as a concept, the way it has been put in here would really undermine its utility. It is disappointing to see that.

Amendment (24) seeks to amend item 53, which inserts division 4AA of part 6, reviewing whether there are native title rights and interests. This would give the tribunal the power to conduct a review on whether a native title claim group holds a native title over its claim area. According to the explanatory memorandum, the purpose of this is to make mediation more effective and facilitate agreement between parties. The other items are incidental to this.

This section is problematic. Under item 53 as to section 136GC(7), evidence given in the course of the review cannot be raised in later court proceedings without the consent of the participating parties, effectively without privilege protection. However, proposed section 136GE provides that the person conducting the review is to prepare a report and may provide a copy to the court. According to the explanatory memorandum, the court can then adopt the findings of the review. Section 136GE also provides that a copy of the report may be given to other parties. These provisions would defeat the protection under 136GC(7). This could be remedied by an amendment to the effect that review reports can only be provided to the federal court and non-participating parties—that is, section 136GE(2)—with the consent of the participating parties, and that is the rationale underpinning amendment (24).

Amendment (25) amends item 57, which would insert subdivision AA into division 5 of part 6. These inquiries are to be conducted by the tribunal, which is section 138B(3), as per Labor’s amendment, which would mean that inquiries could not be requested prior to a general referral to a mediation. This matter was recommended by the Aboriginal and Torres Strait Islander Social Justice Commissioner.

Amendment (27) amends item 67, which provides for the inquiry report to be given to the court, and inserts a requirement that the parties must consent to this. The proposed amendment to the item is recommended by the Aboriginal and Torres Strait Islander Social Justice Commissioner.

Amendment (28) seeks to delete item 73, which proposes to empower the court to summarily dismiss native title claims that do not pass the merits aspect of the tribunal administered registration test in section 190B. Quite frankly, this is unlikely to relieve the overload on the system, as the Native Title Tribunal will have to retest all unregistered applications.

There is also a view that the registration test provisions are not the same in law as the legal test for native title, which is set out on a different basis for quality control for the rights to negotiate purposes. The court already has sufficient powers to strike out claims that are unsound. Therefore, Labor thinks that the change is unnecessary.

Amendment (29) has been revised and the revised amendment (29) has been circulated, or it will be circulated. I am not sure if it has been at this point. My instructions are that if it has not then it can be. We might have to come back to amendment (29). We will deal with amendment (29) separately when everyone in the chamber has that amendment. It amends it to ensure that the correct wording is used throughout when we talk about bodies corporate. The revision does not make any material change to amendment (29) but,
to give everyone a reasonable opportunity to have a look at it, I will deal with it separately.

I will recap where we are at. Opposition amendments will be dealt with in two parts. I will move amendment (29) straight after that. I would like to mention one of the arguments that the government might raise in response, which is that Labor does not support good faith bargaining. But we do; we just do not support the way it has been reflected in the legislation. I will head that criticism off first.

Good faith bargaining would be good to see in a lot of the Commonwealth legislation around mediation, but the government has reflected it in this legislation in such a way that it cannot be supported by Labor in these circumstances because we think it will not add much to the bargaining process; it may in fact slow it down even further. That goes to the same issues. I will not reiterate what was said in respect of schedule 1—that Labor is concerned that the amendments proposed by the government will add red tape. Labor has tried to ameliorate that with some of its amendments, at least in a spirit of cooperation. If they are not picked up, as we have indicated, we will seek to oppose schedule 2 because, on balance, we do not believe that it adds to the Native Title Tribunal process in a positive way. I still have amendment (29) to deal with.

Senator JOHNSTON (Western Australia—Minister for Justice and Customs) (12.53 pm)—I thank Senator Ludwig for his work on these amendments. Let me clarify what these amendments seek to do. I will start with opposition amendment (17) and work through all of them to (29), touching on the substance of (29) in light of Senator Ludwig addressing them across two segregated groups. Opposition amendment (17) removes the provisions consequent to dismissal of future act claims. Speaking generally, these amendments overall appear to overlook the fact that native title claims are matters within the jurisdiction of the Federal Court and are under the constant supervision of the Federal Court throughout the carriage of the action.

After carrying out consultations across Australia, the consultants who carried out the claims resolution review were firmly of the view that these additional powers and functions, as attacked in these amendments, were required to enable the National Native Title Tribunal to mediate more effectively. I underline that and say we are seeking more expeditious and efficient outcomes with respect to native title. The tribunal is the primary native title mediation body, but different claims may require different processes to advance them in different parts of Australia, which might immediately include mediation by the tribunal or the court, the taking of evidence by the court to inform a tribunal mediation, the referral of a question of law to the court, or proceeding directly to trial where issues are not susceptible to a mediated outcome. All of those variations of the mediation process can certainly occur. These reforms will allow the court to be better informed by the tribunal and parties as to the needs of a particular client when making orders for that claim to be progressed and they provide additional options that parties may choose to avail themselves of in seeking a resolution. So what we are seeking to do is provide maximum flexibility and maximum options for the tribunal and for the court to seek to obtain a negotiated as opposed to a litigated outcome. The reforms will ensure that the court and the tribunal can work together in guiding parties to the more expeditious resolution, as I say, of native title claims.

I will examine each of these amendments. Opposition amendment (17) seeks, as I say, to remove provisions consequent to dismissal
of future act claims. Amendment (18) seeks to remove prohibition on the court mediating while a matter is in the tribunal for mediation. Amendment (19) seeks to remove the ability of the court to enforce tribunal directions. Amendment (20) deletes provisions enabling dismissal of future act claims and deletes provisions requiring the court to take into account mediation reports, regional mediation reports and work plans. Amendment (21) removes the tribunal power to direct parties to produce documents. Amendment (22) removes the ability of the tribunal to report to court about parties' failure to comply with directions. Amendment (23) removes the ability of the tribunal to report breaches of good faith.

Opposition amendment (24) requires that the report after connection review be provided to other parties only if parties to the review agree. Amendment (25) removes the ability for parties and courts to request a native title application inquiry before the matter is in the tribunal mediation process. Amendment (27) provides that the tribunal would only report to the court after native title application inquiry if parties consent. Amendment (28) removes the provisions enabling the court to dismiss unregistered claims. Amendment (29) allows the prescribed bodies corporate to apply to the secretary of FaCSIA for funding. Obviously amendment (29) will be different to the one that has been circulated, and we await the circulation of that, but I understand that the amendment is a matter of remedial wording.

Turning to amendment (17), in any civil proceedings applicants are required to prosecute their claim and the court is at liberty to dismiss a claim where the applicant fails to do so. Native title claimants should be no different. These amendments will not result in the automatic dismissal of claims made in response to a future act notice; rather they will require the court to dismiss a future act claim where the claimant has failed to produce evidence in support of the claim and where the claimant has failed to take other steps to resolve the claim where the court directs them to do so. Where the court otherwise considers the claimant has failed within a reasonable time to take steps to have the claim resolved, the court will have the power to seek dismissal. It is very clear in the nature of these proceedings that that is a reasonable and appropriate power in the nature of what occurs with respect to a claim.

Opposition amendment (18) would remove the prohibition on the court mediating a matter whilst it is in tribunal mediation. The claims resolution review found that the existing duplication in mediation of functions between the court and the tribunal creates confusion and has significant resource implications, as one might logically expect when two mediations of the same matter occur at the same time or one after the other. A key recommendation of the review is to ensure that matters are not mediated by more than one body at once. The government has accepted this recommendation upon the basis that it is inefficient to require parties to participate in two separate alternative dispute resolution processes before two different institutions at the same time.

With amendments (19) and (21), the opposition seeks to delete provisions enabling the tribunal to direct parties to produce certain documents. The claims resolution review found that mediation of native title claims is being hampered by the lack of statutory powers in the tribunal. The new powers of compulsion for the tribunal are aimed at equipping it with the necessary tools to facilitate the negotiated resolution of claims. The opposition's amendments would remove the ability of the court to enforce tribunal directions. The tribunal is an administrative body and it is necessary that it be subject to judi-
cial oversight to enable its directions to be enforced.

Opposition amendment (20) would remove the requirement for the court to take into account mediation reports, regional mediation reports and regional work plans, provided to the court by the tribunal. We think that the court should have access to and should be able to take into account those important reports from the tribunal.

Opposition amendment (22) would remove the ability of the tribunal to report to the court where a party fails to comply with a direction from the tribunal to attend a mediation conference or to produce documents. The government has accepted the recommendation of the resolution review committee which found that mediation of native title claims is being hampered by the lack of statutory powers. The new powers of compulsion for the tribunal are aimed at equipping it where necessary with further tools to negotiate resolution of these claims.

With amendment (23), the opposition seek to remove the ability of the tribunal to report to various entities about breaches of obligations to mediate in good faith. In the government’s opinion, the key to securing enduring outcomes in native title is in the behaviour of the parties themselves. The obligation to act in good faith will make clear that a basic standard of behaviour is required in mediation conferences. In other words, people need to understand that the mediation is directed to achieving a much more expeditious outcome than weeks and months of hearings in the Federal Court. The reporting mechanisms will complement the good faith obligations by ensuring that appropriate funding bodies, disciplinary bodies and the court, which retains oversight of all native title matters, are aware of the behaviour of the parties.

With amendment (24), the opposition proposed that the tribunal only provide a report following a connection review to other parties if the parties to the review agree. The purpose of a connection review is to facilitate parties to reach agreement on issues where possible, or to narrow the issues in dispute. The utility of a connection review is likely to be significantly restrained if the opposition amendment is accepted. It is difficult to see how the review could be used to narrow or resolve issues in dispute if relevant parties are not privy to the findings. That speaks for itself and is fundamentally obvious.

With amendment (25), the opposition makes a number of amendments in relation to the new native title application inquiry function. The government does not see any merit in opposition amendments (25) and (27). One opposition amendment would remove the ability of the court or a party to the proceedings to request that a native title application be held before a matter is in the Native Title Tribunal mediation. Enabling the request to be made before a matter is in mediation may allow issues to be identified and prioritised at an early point. Another opposition amendment would require the consent of parties before a report about the inquiry could be provided to the court. Where parties do not follow the recommendation made by the tribunal following a native title application inquiry, the provision of a report to the court will enable the court to consider whether to accept the transcript of evidence from inquiry.

Opposition amendments (28) and (30) would also remove all provisions relating to the dismissal of unregistered claims. These amendments implement one of the recommendations of the claims resolution review, namely, that the court will only be able to dismiss claims where the claim has failed to meet a basic standard of merit. The govern-
ment's amendments should ultimately result in stronger claims which have a better chance of resolution. Moreover, the final decision as to whether a claim is dismissed rests of course with the court.

Old opposition amendment (29) will be subject to my commentary now, notwithstanding that there are some changes which I understand are rather cursory. With this amendment, the opposition wants the prescribed bodies corporate to be able to apply for funding directly from the department. There may be some circumstances where this is appropriate, although usually we would expect that support be provided through national native title representative bodies. In accordance with the recommendation by the Senate Standing Committee on Legal and Constitutional Affairs, the government is implementing proposed funding arrangements for prescribed bodies corporate as a high priority. This can be done without legislative changes.

Senator BARTLETT (Queensland) (1.05 pm)—Some of the amendments—although not all—that Senator Ludwig has moved mirror what had been circulated in the Democrats' name, particularly in regard to various items of schedule 2 which we are also opposing. Not surprisingly, I agree with the ALP's position on those. As I said when we were debating this legislation last Friday, I think there is, to a fair degree, a shared view around the chamber about the outcome people would like: a native title determination system that will work more effectively and efficiently. I think there is simply a disagreement about how best to achieve that. In some of the responses the minister gave, he was talking about the government's amendments being derived from a review, or one aspect of the review and consultation that were done. That is true, but I also think it is true to say that evidence from a number of different witnesses to the Senate committee of inquiry was that the government did not get it right in the component of the review it chose to go with. At the end, it just comes down to a matter of judgement as to whose assessment or judgement you go with. A lot of different aspects have been put forward by Senator Ludwig, and the minister responded to a lot of them. But I think there is a particularly problem here, that what is being put forward in the government's amendments is almost at cross-purposes. I think removing parts of it, as proposed by the opposition's amendments, is a safer approach.

The aspect with regard to item 31, which the opposition is seeking to remove, gives the court power to make orders consistent with directions by the tribunal, and that includes things like directing a party to produce documents—for example, for the purposes of mediation. In evidence provided to the committee by those who quite regularly engage in this area of activity, there was a lot of concern about that—not so much that a power like that might exist, but that it is conveying a mixed message about the approach of the tribunal and the role of mediation more broadly. It is potentially problematic. I know evidence was provided to the committee that reinforced this view that providing powers to direct the production of documents is appropriate to a forum that has a role in determining facts. The purpose of mediation is not to determine facts, per se; it is to encourage parties to reach agreement on relevant matters.

If a tribunal is running mediation and then comes in with the power to demand that documents be produced, I think that is potentially problematic. I am not saying it will automatically blow everything out of the water all the time, but there is confusion, in my view, about the nature and purpose of mediation and what sorts of things make mediation work well. If you are forcing people to comply with mediation then it is not me-
diation, and you might as well not call it mediation and call it something else so everybody is clear about it. You cannot have it both ways with something like mediation. If you are trying to do that then it is hard to make it work if it has a range of compulsory aspects to it. People may still engage with it, but the way they engage with it and how effectively and constructively they engage with it may not produce the outcomes that people expect.

Obviously the government has a different view in regard to that. There is no greater sign of a desire to listen to the arguments being put now than there was at the end of last week. I thought there might be a freshening of the approach over the weekend, but that does not appear to be the case. I will not continue making these points, but I will make a few more points when it comes to the Democrat amendments.

Senator SIEWERT (Western Australia) (1.10 pm)—The Greens will be supporting these opposition amendments. As I outlined in my contribution to the second reading debate, we have a number of concerns about the potential coercive powers of the tribunal. We do not think it is appropriate for a body that is supposed to be mediating between parties to have these sorts of powers. We believe it could potentially disadvantage the negotiations rather than improve them in terms of requiring evidence to be produced. It takes it more into the judicial realm than we believe is appropriate for a body that is responsible for mediation.

We have a number of concerns about the way some of the tribunals have been performing in the different states around Australia and the way some of the outcomes have not been delivering for native title holders. We think the government should have concentrated on those weaknesses with the tribunals rather than going down the path that it has. I refer to the comments I made in my second reading contribution about the findings of Professor O’Faircheallaigh from Griffith University that show some serious shortcomings in what has been delivered for native title holders in the so-called negotiations and in the so-called mediated outcomes, which by far are in favour of the mining companies rather than native title holders. We suggest there are some very significant shortcomings with the current process. These are not addressed in the amendments to the legislation and we believe this will result in further negative outcomes for native title holders. We do not believe this is the way to go. We have made that point abundantly clear and will be supporting the ALP amendments.

Senator JOHNSTON (Western Australia—Minister for Justice and Customs) (1.12 pm)—I want to thank the senators for their contributions. I believe all the matters they have raised have been addressed in my formal response to the opposition amendments.

Senator LUDWIG (Queensland) (1.12 pm)—I want to thank the Greens and the Democrats for their support. I understand that the government has not been particularly accommodating in schedule 2. I note that it looked at one amendment in schedule 1. As I understand it there are no amendments in schedule 2 that the government is enamoured with.

I want to go now to opposition amendment (29). Now that the revised amendments have been circulated, I could seek leave to include them and speak to them now.

The TEMPORARY CHAIRMAN (Senator Troeth)—In that case, Senator Ludwig, would you like to withdraw amendment (29) and substitute amendment R(29)?
Senator LUDWIG—I seek leave to replace amendment (29) with amendment R(29) on sheet 5208 revised.

Leave granted.

Senator LUDWIG—I realise the government understands the importance of amendment (29), in any event. It amends the definition of representative bodies to include prescribed bodies for the purposes of this division. Amendments R(29A), R(29B) and R(29C) will mean that when a prescribed body corporate is replaced by another under section 60 of the act, the remaining funding will need to be returned to the Commonwealth. In effect, the replacing prescribed body corporate will need to reapply for fresh funding. Amendments R(29A) to R(29C) ensure there is consistency throughout, particularly sections 203C and 203CA(1A)(a), but I will not go into the technicalities of it. It does not change the nature of what we are seeking to do in (29); it just tidies up how it would operate.

The TEMPORARY CHAIRMAN (Senator Troeth)—In that case, Senator Ludwig, do you wish by leave to add R(29) to R(29C) to this as well?

Senator LUDWIG—Yes.

Leave granted.

Senator LUDWIG—I thank the Senate. I move:

R(29) Schedule 2, page 52 (after line 22), after item 73, insert:

73A At the end of section 203C
Add:
(4) For the purposes of this Division, representative body also includes a prescribed body corporate under Division 6.

R(29A) Schedule 2, page 52 (after line 22), after item 73, insert:

73B Paragraph 203CA(1A)(a)

After “203AH”, insert “or the prescribed body is replaced under section 60”.

R(29B) Schedule 2, page 52 (after line 22), after item 73, insert:

73C Paragraph 203CA(1A)(b)

After “withdrawal”, insert “or replacement”.

R(29C) Schedule 2, page 52 (after line 22), after item 73, insert:

73D At the end of subsection 203CA(1A)

Add “or the replacement occurs”.

Senator CROSSIN (Northern Territory) (1.15 pm)—I just want to provide some comments about the suite of amendments that have been moved by the opposition. Senator Johnston would be aware that this is where we have some fundamental difficulties with the changes being requested of the government—that is, a shift of emphasis from the Federal Court to the NNTT. This is in a climate where we clearly heard during the Senate inquiry—particularly from Ron Levy from the Northern Land Council—that there is support for the Federal Court to maintain the directions of the mediation, and we heard that the National Native Title Tribunal is clearly under-resourced, that there are not enough full-time members and that those who are members undergo five or maybe 10 days training in mediation. My question to the government is: what plans are there to actually provide more mediation training, more support or more resources for the NNTT to be able to undertake this increased role?

Senator JOHNSTON (Western Australia—Minister for Justice and Customs) (1.16 pm)—The premise that the very learned senator puts forward is that the National Native Title Tribunal members are not skilled negotiators and do not have any experience. Can I just say that most of them spend a sig-
significant amount of time—probably in excess of 50 to 60 per cent of their time—in mediation. They already have extensive skills. On top of that, the mediation that you have talked about I think augments what are already very good mediators. May I pause to say that the tribunal has received in many circumstances very good negotiated outcomes. Indeed, the government seeks to leverage off that track record.

Senator CROSSIN (Northern Territory) (1.17 pm)—Senator Johnston, you were at the hearings and heard the same evidence that I did. In some instances that is not in fact what we heard. In fact, Mr Neate admitted to us that he found that the five days of initial mediation training was inadequate, so the NNTT moved to provide people with a further five days. I have another question. This parliament once had a joint parliamentary committee on native title and the Indigenous Land Fund, admittedly under a section of the Native Title Act. That section has now required for that committee to no longer exist, because it was under a 10-year sunset clause. We both sat on that committee and my recollection is that that was at least an external body that had the power to inquire into and report on the annual report of the NNTT, monitor the operations of the NNTT and have a really good look at exactly how all of the native title processes were going under the NNTT. So does the government have any plans to reconstitute a joint parliamentary committee or reconvene some sort of committee of this parliament that will have an ongoing oversight of the native title regime, including scrutiny of the NNTT?

Senator JOHNSTON (Western Australia—Minister for Justice and Customs) (1.19 pm)—I can inform the senator that I think most of the issues that were dealt with by the Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund will end up in the Senate Standing Committee on Legal and Constitutional Affairs. That is an area where, both at estimates and in the general scheme of terms of reference, these matters can be oversighted. I think the senator well knows that that is an appropriate task for that committee, which is skilled in oversighting native title matters, given of course that the Attorney-General is the responsible minister.

The TEMPORARY CHAIRMAN—The question is that opposition amendments (22), (24), (25), (27), R(29), R(29A), R(29B) and R(29C) be agreed to.

Question negatived.

The TEMPORARY CHAIRMAN—The question is now that schedule 2, items 2, 19, 31, 36, 47, 73, 89 and 90 stand as printed, and that schedule 2, item 52, as amended, be agreed to.

Question agreed to.

Senator BARTLETT (Queensland) (1.20 pm)—by leave—I move amendments (24) and (29) together:

(24) Schedule 2, item 35, page 31 (lines 1 to 3), omit subparagraph 87A(1)(c)(ii).

(29) Schedule 2, item 48, page 37 (lines 4 to 8), omit subsection 136DA(1), substitute:

(1) Subject to subsections (2) and (3), if the presiding member considers that a party to a proceeding:

(a) is not a person covered by paragraph 66(3)(a); and

(b) does not have an interest that may be effected by a determination in the proceeding;

he or she may refer to the Federal Court the question of whether the party should cease to be a party to the proceeding.

Amendment (24) amends item 35 of schedule 2 of the bill to clarify the meaning of the reference in section 87 to ‘each registered native title applicant’. The act provides that the court will determine native title in rela-
tion to part of a claim area on the agreement of the parties. Proposed new section 87A limits the range of parties whose agreement is needed for such a determination to be made. This amendment is derived from concern expressed by the Social Justice Commissioner about how clear the definition was or what was meant by the words ‘each registered native title claimant’ in relation to any part of a determination area. He noted that perhaps what is meant is the applicant in any other proceeding to an application for a determination of native title in relation to any part of that area—that it is meant to cover those instances in which there are overlapping claims.

Amendment (29) amends item 48 of schedule 2 to clarify the meaning of ‘relevant interest’ and again is derived from concerns expressed by the Social Justice Commissioner, Mr Calma. He supported the intent of the proposed new section 136DA but was concerned whether the test of the words ‘does not have a relevant interest in the proceeding’ was sufficiently clearly articulated to be readily applied by the presiding member of the Native Title Tribunal. He suggested that the test should be reworked to refer to whether or not the person’s interests are likely to be significantly affected by a determination if they cease to be a party. Currently it reads:

... if the presiding member considers that a party to a proceeding does not have a relevant interest in the proceeding, he or she may refer to the Federal Court the question of whether the party should cease to be a party to the proceeding.

The Democrat amendment here suggests that that criterion be clarified somewhat so that it would apply:

... if the presiding member considers that a party to a proceeding:

(a) is not a person covered by paragraph 66(3)(a); and

(b) does not have an interest that may be affected by a determination in the proceeding;

I think it makes it clearer and also a bit safer in regard to how that new provision may be interpreted.

While I am on my feet, I will mention the other Democrat amendment here, which has oppositions to a range of items, some of which are the same as those that have already been put forward by Senator Ludwig on behalf of the ALP. They broadly go to the issue of mediation and the way that may apply, but there are a few extra ones in here. They go to what the outcome will be, how much it leaves to the decision making of the representative bodies, and the flexibility for them to make their own decisions about how they are being controlled and the allocation of their resources—the potential, to use one example, for regional work plans to be made and priorities to be set without proper regard to the objectives and priorities of the relevant representative body or bodies. Given the circumstances and the time, I will not elaborate on those in any great depth this time around, as we have already covered a lot of that.

A lot of the concerns that the Democrats have in regard to this go to the balance of things—how they are going to apply once these new changes are gone through. We are giving a fair few extra powers to the Native Title Tribunal. Some of those are justifiable and we are not opposing them. But it should be mentioned again and reinforced—I think Senator Siewert and Senator Crossin have both referred to it—that there was a reasonable degree of evidence provided to the Senate committee that the tribunal is not necessarily operating in a way that is receiving a universal seal of approval from all of the people who have to engage with it. That is not just those from the Indigenous side of things. Obviously, nothing is perfect, but, in a situation where a reasonable cross-section
of those who are engaging with the tribunal as it operates at the moment are suggesting that in some circumstances it was not operating particularly well, to be giving a lot of extra powers on top of that without really going to recognising or resolving some of the existing problems does not particularly give a lot of confidence that this will necessarily lead to an overall improvement.

By giving all these extra powers to the tribunal we are also putting in place—even though the final oversight is still with the court—what was described by the Social Justice Commissioner as having the disadvantages of trial but without the advantages. That in my view and the Democrats’ view is not likely to lead to better outcomes. I would reinforce again that that is what we are about here: trying to get better outcomes—not just quicker ones for the sake of completing them, but actually better, fairer, more just, more complete and more positive outcomes.

It should be emphasised, to go to the broader points in my speech in the second reading debate, that we still do need to do more to highlight the positive opportunities that native title presents for everybody. Obviously there are times—and these amendments go to some of those times—where you have people on opposing sides unable to reach agreement and with competing interests. But there are many circumstances where, particularly if we could get the mediation process working better and the broader support and encouragement from governments working better, there are opportunities for positive gains for everybody. That is really what we should be aiming for wherever possible. I do not think we have done enough of that either in this process here or in the wider approach to native title.

There is still, clearly, a pretty widespread view—and in my view a justified one—that there is still an imbalance with regard to the Indigenous applicants. They have less in terms of resources, capacity and continuity. There are a lot of difficulties there in terms of the burden of reviews, inquiries and what has to be demonstrated. That is already the case. Some of the submissions to the inquiry suggest that this further burden of reviews and inquiries will fall unequally on the applicant. They bear the burden of proof in relation to most of the matters at issue in native title proceedings. If anything, this is going to make it more difficult. Again, the concern has been raised that a number of these proposals that the Democrats are therefore opposing will further complicate the institutional framework for the resolution of native title proceedings. It is already complex because the tribunal and the court must be involved in every proceeding. That is something that this bill and the government seek to address but I do not think they have got it right.

That is a broad snapshot of the reasons the Democrats are opposing a number of these items—not all of them—in schedule 2. In broad terms, we are not convinced that they are going to work. We are not convinced that they are going to have the effect that the government says they will. We are concerned that, in a worse-case scenario, they may further complicate matters and make things more difficult, more expensive and less smooth. That is not where we want to end up.

Senator JOHNSTON (Western Australia—Minister for Justice and Customs) (1.31 pm)—Very briefly, I have answered most of the questions raised by the Democrat amendments. If amendment (24) were to proceed, it would remove the requirement that the registered native title claimants be required to consent to a determination under proposed new section 87(A). Removing the ability for claimants in registered overlapping claims to participate in a determination
would have a significant impact upon their rights. From a government’s perspective that would be completely and entirely counter-productive. The provisions that we have inaugurated provide that all parties claiming to hold native title in an area must consent to a determination of native title under the provisions, which protects their rights.

Democrat amendment (29) would affect the ability of the provision it refers to, which is designed to enable parties without relevant interests to no longer be involved in native title matters in appropriate circumstances. With respect to Democrat amendments (19) and (25), I refer to what I said with respect to opposition amendments (17) and (20). We oppose amendments (21), (27) and (28) and I refer to what was said with respect to opposition amendments (18), (19) and (24). We oppose Democrat amendments (22) and (30). With respect to (30) I refer to what was said with respect to opposition amendment (19). There is nothing more I can say. Most of the issues raised by the learned senator have been dealt with.

Senator LUDWIG (Queensland) (1.32 pm)—I indicate Labor’s support for the Democrat amendments. I will not go to the detail. Senator Bartlett made all the relevant points in his contribution.

The TEMPORARY CHAIRMAN (Senator Murray)—The question is that Democrat amendments (24) and (29) on sheet 5192 be agreed.

Question negatived.

The TEMPORARY CHAIRMAN—The question is that schedule 2 items 2, 31, 33, 36, 45, 47, 51, 53 to 67 and 73 stand as printed.

Question agreed to.

Senator BARTLETT (Queensland) (1.33 pm)—I move:

(20) Schedule 2, item 2, page 26 (after line 5), after subsection 66C(2), insert:

(2A) Advice by the NNTT Registrar in accordance with subsection (1) is not of itself sufficient for the dismissal of the proceedings but the Federal Court retains its discretion to do so.

This amendment is an alternative to one of the amendments that was just put. We have just attempted to delete item 2 of schedule 2. That was not agreed to, so this is a compromise amendment in a spirit of cooperation and constructive engagement. I am sure the government will take a similar view and consider the arguments put forward. Amendment (20) is fairly straightforward. It seeks to amend that item of the bill so that information provided by the Native Title Tribunal Registrar under the new section 66C(2) should not of itself be sufficient for the dismissal of proceedings. It would mean that the court is not obliged to dismiss the proceedings but retains its discretion to do so. We think this would be a better approach. It is a good compromise approach.

Senator JOHNSTON (Western Australia—Minister for Justice and Customs) (1.34 pm)—The government do not think this amendment would add anything to the bill. It already provides for the decision to dismiss a claim under proposed section 94C to be a matter for the Federal Court, which we think is an adequate protection in itself.

Senator LUDWIG (Queensland) (1.35 pm)—I indicate the opposition’s support for that amendment. I foreshadow that we will also be supporting Democrat amendments (23), (26), (32) and (38). That saves me jumping up and down to say we agree to individual amendments. The Democrats have put the merit behind those amendments, and we understand that. We support the merit and we support the amendments they are seeking. They are effectively trying to improve the bill. Ultimately, we have formed the view,
which I suspect the Democrats have also formed, that the government is not going to accede to any of those amendments. That is the motivation by Labor to ultimately oppose schedule 2 in the final position, which we will get to shortly.

Senator SIEWERT (Western Australia) (1.36 pm)—Following the lead of Senator Ludwig, the Greens—this probably comes as no surprise—are also supporting the Democrat amendment. We also supported the previous ones. We have made our views about the negative aspects of this legislation extremely clear. We do not think it will improve the native title process. In fact, I very strongly suspect it will make outcomes worse for native title holders. I believe that the amendments the Democrats are proposing here, along with the ones from the opposition and those proposed by the Greens on Friday, would improve the bill and lead to better outcomes for native title holders.

Question negatived.

Senator BARTLETT (Queensland) (1.37 pm)—I move Democrat amendment (23) on sheet 5192:

(23) Schedule 2, page 30 (after line 14), after item 33, insert:

33A At the end of section 86E

Add:

(3) A report or a plan in accordance with paragraph (2)(a) or (b) must:

(a) be prepared after consultation by the NNTT with all representative bodies in whose areas the region concerned is located; and

(b) must take account of the views of and the terms of any operational or strategic plan of those representative bodies.

I hear that I already have Labor and Green support without even starting to explain it, so we are almost there and I will focus my positive thoughts on Senator Johnston. This is also an alternative to previous proposals to delete item 33 within schedule 2 of the bill. The relevant item in the bill, item 33, will enable the Federal Court to request the Native Title Tribunal to provide a report to assist their court in progressing proceedings, a report on either the progress of all the mediations conducted by the tribunal and/or a work plan setting out the priority given to each mediation being conducted by the tribunal. That is in the legislation.

The Democrat amendment seeks to add a provision to ensure that in the preparation of such a report or reports the tribunal is to consult with the relative representative bodies and have regard to their views in relation to the development of the work plan and to its strategic and operational plans for the relevant period. It provides for the relevant representative body to receive a copy of the regional report or work plan sufficiently in advance of the directions hearing as to allow it to make any submission to the court about the report or plan that it considers necessary. If we are going to require the preparation of these reports to maximise their value, we should ensure that they are prepared after consultation with all the representative bodies and take account of their views. It is fairly self-evident that that would increase the value and accuracy of those reports, therefore maximising the benefit they bring.

Senator JOHNSTON (Western Australia—Minister for Justice and Customs) (1.39 pm)—In line with what we have already said, the government does not see any necessity for this amendment. It is expected that native title representative bodies would be consulted in the course of these plans being developed.

Question negatived.

Senator BARTLETT (Queensland) (1.39 pm)—I move Democrat amendment (26) on sheet 5192:
(26) Schedule 2, item 36, page 32 (after line 33), at the end of section 94B, add:

(2) If a report is provided to the Court under subsection (1), a copy of the report must also be provided to the other party to the proceedings.

In moving this amendment I note the previous response from the minister and the government. I appreciate that he is not the minister directly responsible for this so he probably does not have scope to take into account and to agree to some of these amendments. But just to say that it is expected that this will happen and that consultation will happen is, firstly, very heroic. Also, given the feedback and evidence that we got from the inquiry itself about how things can operate when they are not working well already, it is also a bit curious to say that those things do not add anything to the legislation. To put in a requirement that such views of representative bodies must be taken into account adds a very specific thing. It moves it from an expectation that this will happen to a requirement that this will happen. To reject such a simple and straightforward amendment as that, frankly, does not, I think, reflect terribly well on whoever it is in the government who makes these decisions—and I appreciate it is probably not the minister in the chamber at the moment.

Democrat amendment (26), which is also an alternative to a previous amendment, seeks to amend item (36) of schedule 2 of the bill so that other parties to the proceedings are served and provided with an opportunity to comment on any report to which the court will have regard. It may well be that the minister again says that it is expected that this will happen. I would again simply say that, although I hope it is expected, it should be required, not just because it is a nice thing, all nice and cuddly and inclusive, but rather, more importantly, because it will maximise the chances for fully informed proceedings and justice occurring. It is a pretty complex act we have here. There are a lot of requirements and a hell of a lot of red tape and bureaucracy being put on a lot of people. The least we can do is to ensure that when that happens there is full opportunity for people to comment and have input into what gets put before the court.

Senator JOHNSTON (Western Australia—Minister for Justice and Customs) (1.42 pm)—The government has considered this amendment and all I can say with respect to the amendment and to the Democrats is that this is about the court taking into account certain reports when making orders about native title determination applications. As a matter of practice, when a judge calls for a report or seeks to use a report and takes it into account he would of course disclose it to the other parties to the proceedings and we see that that is the way the reforms should work. Therefore we cannot accept this amendment.

Question negatived.

Senator JOHNSTON (Western Australia—Minister for Justice and Customs) (1.43 pm)—I move government amendment (11) on sheet QW307:

(11) Schedule 2, item 53, page 44 (after line 15), at the end of subsection 136GE(1), insert:

However, the findings of the review are not binding on any of the participating parties.

Government amendment (11) would remove any doubt that the findings made by a member of the tribunal following a connection review are not binding on any of the parties. The government does not consider that the provisions as drafted could render the findings binding on parties and it is not intended that the findings of a connection review be binding. A connection review is intended to be upon a voluntary process. Concerns were raised with the government that these provi-
sions may, notwithstanding the government’s intention and the drafting of the provisions, render the findings of a connection review binding on the parties. This amendment will avoid any doubt about the operation of the provision by providing that the findings of a connection review are not binding on any of the parties participating in the review.

Senator LUDWIG (Queensland) (1.44 pm)—We support the government’s amendment. In this instance a ‘belt and braces’ approach is the wise course to follow and therefore it gains our support.

Senator BARTLETT (Queensland) (1.44 pm)—The Democrats will constructively engage with the government and are prepared to take on board what Senator Ludwig has called a ‘belt and braces’ approach. It is a quaint expression but it probably accurately describes what is being done here, which I think also accurately describes what the previous Democrat amendments were seeking to do. But rather than say that it does not add anything to the legislation and therefore is not necessary, which is the standard government response to such Democrat amendments, I will say that it is an appropriate safeguard that will put beyond doubt the circumstances that seek to be addressed. Therefore, it is something that we will support.

Question agreed to.

Senator LUDWIG (Queensland) (1.45 pm)—I move opposition amendment (26) on sheet 5208 revised:

(26) Schedule 2, item 62, page 49 (lines 10 to 12), omit subsection 154A(3), substitute:

(3) The Tribunal may direct that a hearing, or part of a hearing, be held in public, providing that the parties consent to this.

This amendment seeks to repeal and replace section 154A(3) to allow the tribunal to undertake a public hearing with the consent of the parties. This matter was recommended during the course of the Senate Standing Committee on Legal and Constitutional Affairs inquiry into the Native Title Amendment Bill 2006. The amendment does not need a great deal of explanation; on the face of it, it seems quite clear. Therefore, I will not delay the chamber any longer. It would seem to be a sensible amendment, and I put it to the committee that the government should also support it.

Senator JOHNSTON (Western Australia—Minister for Justice and Customs) (1.46 pm)—I am pleased to advise the committee that while the government does not accept opposition amendment (26), the government will accept Democrat amendment (35), which will have a similar effect. The bill is drafted on the premise that native title application inquiries will generally be held in private. Before the tribunal makes an order that an inquiry be held in public, cultural and customary concerns of Indigenous persons must be taken into account and canvassed. The government considers an amendment to provide that a native title application inquiry hearing can only be in public where parties’ consent would be acceptable. Accordingly, we would ask that the Democrats consider what I have just said and look to move, separately, Democrat amendment (35), with respect to amendments (32) to (36) on sheet 5192.

Question negatived.

Senator BARTLETT (Queensland) (1.47 pm)—I move Democrat amendment (35) on sheet 5192:

(35) Schedule 2, item 62, page 49 (line 11), after “so”, insert “and the consent of the parties has been obtained”.

This amendment is, clearly, infinitely preferable to the Labor amendment that has just been moved.

Question agreed to.
Senator BARTLETT (Queensland) (1.48 pm)—I think that is the first time that an amendment of mine has been agreed to in this place in about two years. I’ll just run out and have a party!

The TEMPORARY CHAIRMAN (Senator Murray)—If you’re overcome with emotion, you can take a deep breath, Senator.

Senator BARTLETT—I shall now go back to the standard operating procedure of moving a whole bunch of other amendments which the minister will no doubt cursorily dismiss as being unnecessary. I seek leave to move Democrat amendments (32), (33), (34) and (36) on sheet 5192 together.

Leave granted.

Senator BARTLETT—I move:

(32) Schedule 2, item 53, page 42 (line 7), at the end of subsection 136GC(2), add:

; and (c) the applicant has consented to the review being conducted.

(33) Schedule 2, item 53, page 44 (line 17), omit “may provide”, substitute “must obtain the consent of a party before providing”.

(34) Schedule 2, item 57, page 46 (lines 8 to 10), omit subsection 138B(3).

(36) Schedule 2, item 67, page 50 (line 18), after “must”, insert “, if the parties have consented,.”.

Amendment (32) seeks to amend item 53, schedule 2 of the bill to implement provisions providing reviews that require the consent of the applicant. Amendment (33) seeks to amend the same item, implementing provisions which provide that review reports should only be provided to the Federal Court and non-participating parties with the consent of the participating parties. Amendment (34) provides that an inquiry should not be requested prior to a general referral to mediation. Amendment (36) specifies that inquiry reports and determinations should not be provided to the Federal Court without the consent of the parties. I note for the record that amendment (35), which has just been agreed to, amends item 62, schedule 2 of the bill to implement provisions that specify that inquiry hearings should not be public unless the parties consent to it. The other amendments I have moved are equally wise and desirable but the minister might not agree.

Senator JOHNSTON (Western Australia—Minister for Justice and Customs) (1.49 pm)—The government opposes the amendments. With respect to amendment (32), we say that issues such as whether the parties are likely to participate in a review and whether they are likely to accept the assessment provided by the review are likely to be important factors influencing the decision to conduct a review. The government opposes amendments (33), (34) and (36) based upon the commentary I have already given with respect to opposition amendments (24), (25) and (27).

Question negatived.

Senator JOHNSTON (Western Australia—Minister for Justice and Customs) (1.50 pm)—by leave—I move government amendments (12) and (13) on sheet QW307 together:

(12) Schedule 2, item 73, page 51 (lines 28 and 29), omit the heading to subsection 190D(6), substitute:

Where all avenues for review of Registrar’s decision exhausted

(13) Schedule 2, item 73, page 52 (lines 6 to 13), omit paragraph 190D(6)(b), substitute:

(b) the Court is satisfied that the avenues for:

(i) the review under this section of the Registrar’s decision; and

(ii) the review of orders made in the determination of an application under this section; and

(iii) the review of the Registrar’s decision under any other law;
have all been exhausted without the registration of the claim.

Government amendment (12) is consequential to government amendment (13), which will clarify the circumstances in which the court may consider whether to dismiss an unregistered claim. The intention of the provisions in the bill is to ensure that the court may only consider whether to dismiss an unregistered claim where any review of the registrar’s decision not to register the claim has been completed. This is appropriate to ensure claimants have adequate opportunity to seek a review of the registrar’s decision. However, the provisions in the bill do not address all ways in which the registrar’s decision can be reviewed, nor do they ensure those reviews must be completed before the claim can be dismissed. The government amendment will provide that all avenues of review of the registrar’s decision under law must be exhausted before the court can consider whether to dismiss the claim on the basis that it is unregistered.

Senator LUDWIG (Queensland) (1.51 pm)—Those words find favour with the opposition and we will be supporting those amendments. I could go to the usual recourse that I have had in this debate which is that they do not go far enough. It is a pity that the government have not picked up much of the amendments moved by Labor, the Democrats and the Greens in this debate. We think that the ultimate outcome will be a lesser outcome for the claimants and the participants in the process. Saving that, these are amendments that do go some way to ameliorating the harm that the greater bill does.

Question agreed to.

Senator LUDWIG (Queensland) (1.52 pm)—The opposition opposes schedule 2 in the following terms:

(16) Schedule 2, page 25 (line 2) to page 59 (line 7), TO BE OPPOSED.

We seek to delete schedule 2 from the bill. We have indicated that if the government were not prepared to accept the sensible amendments proposed by Labor, and perhaps even the alternatives proposed by the Democrats and the Greens, we would be opposing schedule 2. We do not think it adds to the bill. We do not think schedule 2 in the form that we now have before us will provide those things that the government believe will eventuate—that is, that it would remove red tape or facilitate claimants within the Native Title Tribunal area in resolving their differences. Labor believe that this bill will, in fact, add to the woes that are already there and will not assist.

Senator JOHNSTON (Western Australia—Minister for Justice and Customs) (1.54 pm)—I am interested to know whether we can get rid of the schedule 3 question with the Democrats before we divide.

The TEMPORARY CHAIRMAN (Senator Murray)—I am at the mercy of the chamber. If the chamber wishes to move to that we can.

Senator JOHNSTON (Western Australia—Minister for Justice and Customs) (1.54 pm)—I thought it would be more convenient.

The TEMPORARY CHAIRMAN—I doubt, Minister, whether we will have time. We are probably best to go to the division. The question is that schedule 2, as amended, stand as printed.

Question put.

The committee divided. [1.58 pm]

(The Chairman—Senator JJ Hogg)

Ayes…………. 30
Noes…………. 27
Majority………. 3
AYES
Abetz, E. Adams, J.
Barnett, G. Bernardi, C.
Boswell, R.L.D. Brandis, G.H.
Calvert, P.H. Colbeck, R.
Coonan, H.L. Ferguson, A.B.
Fielding, S. Fieravanti-Wells, C.
Fifield, M.P. Heffernan, W.
Humphries, G. Johnston, D.
Joyce, B. Kemp, C.R.
Macdonald, L. Mason, B.J.
McGauran, J.J. Minchin, N.H.
Nash, F. * Parry, S.
Payne, M.A. Ronaldson, M.
Scullion, N.G. Troeth, J.M.
Treod, R.B. Watson, J.O.W.

NOES
Allison, L.F. Bartlett, A.J.J.
Bishop, T.M. Brown, C.L.
Campbell, G. * Conroy, S.M.
Crossin, P.M. Evans, C.V.
Forshaw, M.G. Hogg, J.J.
Hurley, A. Hutchins, S.P.
Ludwig, J.W. Marshall, G.
McEwen, A. McLuscas, J.E.
Moore, C. Murray, A.J.M.
Nettle, K. Polley, H.
Ray, R.F. Siewert, R.
Stephens, U. Sterle, G.
Webber, R. Wong, P.
Wortley, D.

PAIRS
Campbell, I.G. Kirk, L.
Ellison, C.M. Faulkner, J.P.
Ferris, J.M. Sherry, N.J.
Lightfoot, P.R. Lundy, K.A.
Vanstone, A.E. O’Brien, K.W.K.

At a point when they—
public servant superannuation liabilities—
are met, you might then consider what else you
might do with it.

Given the Future Fund is well ahead of its
financial targets, will the minister outline
what other uses the government is considering
for the fund? Is the minister considering
investing in the communications infrastruc-

ture Australia so desperately needs, or will
she just play politics with the Future Fund?
Hasn’t she totally undermined the govern-
ment’s wild claims that the Future Fund can-
not be used for much-needed infrastructure
investment?

Senator COONAN—I thank Senator
Conroy for the question. It really is a bit rich
to accuse this government of playing politics
with the Future Fund when the best that the
Labor Party can do is to raid the savings for
future generations, dud the bush of the
money set aside for the Communications
Fund, roll back competition, abandon prin-
ciples, promise anything—it is easy to make
promises if you abandon principles—on the
basis that Senator Conroy and Mr Rudd have
not yet had an opportunity to sit down and
work out the futility of the proposal that they
are now expecting the public and other infra-
structure providers to swallow.

The problem with the Labor Party’s ap-
proach to the Future Fund is that it has not
ruled out going back to the honey pot again
again and again for anything at all that takes its
fancy, even though the shadow Treasurer
said on 12 separate occasions that the Future
Fund should be locked up. It has come up
with some vague description of hard infra-
structure to describe what it would fund. No-
body knows what that would mean. We do
know that the Labor Party will treat this as a
slush fund to go back to again and again for
unpaid promises and for any scheme that
takes its fancy.

QUESTIONS WITHOUT NOTICE
Future Fund

Senator CONROY (2.01 pm)—My ques-
tion is to the Minister for Communications,
Information Technology and the Arts. I refer
the minister to her comments on ABC TV
today that:
There is no doubt the unions are drawing up their wish lists as we speak for spending on pie-in-the-sky proposals. Careful economic management allowed us to eliminate Labor’s $96 billion debt to create the Future Fund in the first place and the Communications Fund to future-proof regional communities. Of course, that is not something the Labor Party cares about. It is interested only in some very short-term economic gains. Now, only a few months after completing the sale of Telstra, Labor has announced not only that it would accept the privatisation of Telstra but that it would hasten the sale of the remaining shares from the Future Fund in order to raid this fund and get its hands on the money. That is an indecent haste. Labor cannot deny that taking proceeds from the Future Fund will have a negative impact on both the budget and the Future Fund. If in fact the Labor Party thinks it can then invest in something that will provide a revenue stream, it is sadly mistaken. Attempting to argue that its proposal will have a revenue stream from which to reimburse the Future Fund is just voodoo economics and everybody knows that. If you take the revenue stream from the Future Fund, it will never grow and be able to meet its liabilities.

If Labor’s broadband proposal is an economic goldmine then surely private equity markets would be funding it. Why rob the Future Fund if the banks would fund it? The Future Fund was established by the government to fully meet its unfunded superannuation liabilities by 2020 and, if the Labor Party keep their fingers out of the till, maybe we will get there.

Senator CONROY—Mr President, I ask a supplementary question. I draw the minister’s attention to the fact that she did not answer the question. What did she mean when she said, ‘you might then consider what else you might do with it’? Doesn’t Senator Minchin’s comment in today’s Financial Review reinforce her own comments that the Future Fund will be able to be used for infrastructure spending into the future? Isn’t Labor’s plan a sensible response to her failure to ensure that Australians have the communications infrastructure they need for the 21st century?

Senator COONAN—Senator Conroy, in his usual artless and graceless way, has completely and totally missed the point of comments. I know that he pores over every word and tries to draw distinctions between syllables, but the bitter truth of this is that the Labor Party’s proposal is to gut the future fundings to meet these liabilities. If they go on the way they are going, they are simply going to run not only telecommunications but the whole economy into the wall.

Broadband

Senator RONALDSON (2.07 pm)—My question is also addressed to the Minister for Communications, Information Technology and the Arts, Senator Coonan. Will the minister inform the Senate on options for establishing a broadband fibre network throughout Australia?

Senator COONAN—I am delighted that Senator Ronaldson is paying such close attention to proposals for broadband fibre networks throughout Australia, especially a fibre network to provide high-speed broadband throughout Australia. There are currently three proposals to establish a high-speed broadband network in Australia: two proposed by the private sector—Telstra and the G9 group of telecommunications companies—and a third proposed by the Australian Labor Party.

As we know, Telstra have been examining options for a rollout of fibre optic cable to provide broadband internet throughout the metropolitan and outer metropolitan areas of Australia. Telstra’s sticking point is that they want to ensure a commercial return on their
investment—and I agree with them, because such an investment does merit a commercial rate of return. The G9 is a consortium of leading telcos, including Optus, AAPT, Macquarie Telecom, Soul, Primus Telecom and others. The G9’s fibre proposal has progressed to a stage where they are close to formally submitting it to the ACCC to agree terms of access. Both of these proposals would see a multibillion-dollar investment by the private sector for a rollout to the capital cities initially, followed by major regional centres.

The third proposal is that of the Labor Party to smash and grab almost $3 billion from the Future Fund, to abolish the coalition’s $2 billion regional communications fund for the bush and to scrap the government’s $600 million investment in wireless internet infrastructure in rural and regional areas and then to construct a one-size-fits-all fibre rollout for 98 per cent of the population for $8 billion, which is financially impossible and economically irresponsible. The question has to be: why is the Labor Party so hell-bent on a wasteful and reckless handout of billions of dollars of taxpayers’ money when there are two viable, achievable private sector options on the table for commercial areas which would effectively provide the same coverage with no taxpayer expense?

While this side of the Senate is strongly committed to the rollout of true broadband across the nation, our approach is that, if private investment can do it in commercial areas, then it should do it and the burden should not be on the taxpayers’ backs. People should not be fooled into believing that Labor’s $4.7 billion raid on the Future Fund and dudding the regional communications fund are going to result in some enormous money flow. It will run at a loss like every other Labor investment does. If Labor think they are going to get such a solid commercial return on a $4 billion spend, why hasn’t the industry proposed to do it? It is a question the Labor Party have to answer. The answer is that it is not commercial to go out to 98 per cent with fibre, nor is it possible for $8 billion.

The Labor Party cannot walk both sides of the fence on this. Either it is a commercial proposition with a revenue stream or it is a case of market failure. It cannot be both. Worse still is that it will be a commercial enterprise run by a Labor government. Let us not beat around the bush here: everyone knows that Labor governments are no good at running commercial enterprises. The government is committed to providing high-speed broadband across the country, targeted investment to reach 100 per cent of the population and a new infrastructure build in rural and regional Australia. Labor on the other hand has a proposal whereby it has aban- doned its principles on Telstra, it has ditched its support for competition, it has raided the Future Fund and it has reverted to what it knows best: voodoo economics. (Time expired)

Senator RONALDSON—Mr President, I ask a supplementary question. Would the minister further explain why the government will not be adopting alternative policies to the ones she has outlined?

Senator COONAN—Thank you, Senator Ronaldson, for the supplementary question. I was just pointing out to the Senate that it is important that we do not beat about the bush here and that we actually look at what the Labor Party did when in state government. I just want to go through the abysmal record of state Labor governments running commercial enterprises. With the State Bank of Victoria and the Tricontinental group, how much did Labor lose the taxpayer? About $3 billion. Then there was the State Bank of South Australia, which lost $3.3 billion and cost taxpayers about $2.2 billion.
Senator Conroy—Oh, my goodness!

Senator COONAN—Senator Conroy does not care about costing taxpayers $2.2 billion. And who can forget the Pyramid group, which the Cain Labor government assured the Victorian public was a sound investment about two weeks before it collapsed.

Mr President, we know that the Labor Party cannot manage the economy. They have shown with this proposal that they do not have a clue and they are only good at voodoo economics.

Broadband

Senator HURLEY (2.13 pm)—My question is to Senator Coonan, the Minister for Communications, Information Technology and the Arts. I refer the minister to her comments on ABC TV yesterday that Australia’s broadband infrastructure is ‘okay at the moment but it won’t be in the future’. Does the minister believe that it is okay at the moment that Australia’s use of broadband ranks just 17th out of 30 surveyed countries in the OECD? Does the minister believe that it is okay that currently more than 100,000 Australians have their applications for broadband rejected every year? Does the minister believe that it is okay that nine per cent of the businesses in Victoria are not able to access broadband? Minister, is your government so arrogant and out of touch that you do not recognise that Australia’s broadband is not okay?

Senator COONAN—I am delighted to answer these questions so that I can correct the Labor Party’s abysmal ignorance of international comparisons. Despite claims to the contrary, there is a growing body of data which supports Australia’s position as an information economy leader. Australia’s growth in broadband take-up per 100 people grew faster than any other OECD country except Denmark in the six months to June 2006. In addition, the Economist Intelligence Unit’s 2006 e-readiness rankings placed Australia eighth out of 68 countries, up from 10th place in 2005 and 12th in 2004. Perhaps more importantly, in the same survey—this is very important—Australia was ranked first in the Asia-Pacific region. The rapid growth in broadband adoption as a result of the ongoing reform of the telecommunications market—

Senator Conroy interjecting—

Senator Sterle interjecting—

The PRESIDENT—Order! Senator Conroy and Senator Sterle, come to order. In the first 10 minutes of question time today, Senator Conroy, you interjected more than 30 times. If you continue to interject during question time, I will name you.

Senator COONAN—I know that this does not fit with the Labor Party’s script, but nevertheless they are verifiable figures and it is very important that the Labor Party stops misleading people about international rankings. The rapid growth in broadband adoption as a result of the ongoing reform of the telecommunications market, because it would not be possible unless there was broadband, was cited in 2005 as a key factor in Australia’s improved performance. These are verifiable figures.

The OECD figures are pretty old by now. The data that went into the OECD broadband league were taken in 2004-05. The thing that the Labor Party cannot get its head around is that Australia is above the OECD average. The fact is that Germany is 18th, France is 16th, the UK is 10th and the richest country in the world, which could presumably roll fibre from one end to the other three or four times, is actually ranked 12th.

The OECD comparison only considered speeds available from the major telco in each country. In this case it was Telstra, so it was not industry wide; and it certainly did not
reflect the state of the industry. At the time of the report, Telstra’s maximum ADSL broadband speed was just 1.5 megabits per second, and the OECD ranked Australia only on that fact. It certainly does not reflect the current position. It does not take into account Telstra’s decision on 10 November 2006 to remove restrictions on its speeds, which overnight meant that 91 per cent of the population could get up to eight megabits and 50 per cent of the population could get well and truly over eight megabits, more like 12 to 20, which makes Labor’s aim obsolete before it even starts. It also does not recognise, as I have said, that nearly 50 per cent of the population can access higher speeds, up to 20 megabits, from ADSL2+ and pay-TV cable networks that pass almost three million households.

The Labor Party can selectively pull out OECD figures that are not up to date, are not accurate and certainly do not reflect the position in this country. They will try and do that, but it is important that the true facts are recorded, which I have now placed on the record.

Senator HURLEY—Mr President, I ask a supplementary question. Isn’t it a fact that the only way broadband will be okay in the future is for us to invest in critical communications infrastructure now? Minister, aren’t media commentators right when they say your government has failed to deliver this necessary infrastructure?

Senator COONAN—The only thing I agree with in the proposition that was put in that supplementary question is that always with telecommunications we need the ability to scale up. And, whilst I have said and indicated that the current state of these broadband take-ups is obviously satisfactory, it will not be as the appetite for broadband grows. And so you need to invest for the future, which this government is doing, ensuring that in underserved commercial areas, where people would otherwise not be able to get metro-comparable services, they will be able to under this government. We are doing so with an infrastructure rollout—a big infrastructure build—that will be invested in such a way that 100 per cent of the population will be able to get broadband, not just 98 per cent in about five to 12 years time.

Future Fund

Senator TROETH (2.19 pm)—My question is to the Minister for Finance and Administration, Senator Minchin. Will the minister inform the Senate of the long-term economic benefits from the establishment of the Future Fund? Will the minister explain to the Senate the importance of allowing the fund to reinvest its annual earnings in order to achieve its long-term target of matching the government’s unfunded superannuation liability? Further, is the minister aware of alternative approaches?

Senator MINCHIN—I thank Senator Troeth for that pertinent question. Last week, the Labor Party announced that it will make a reckless and irresponsible raid on the Future Fund to pay for its election promises. It will indeed be a smash-and-grab raid on moneys that we have set aside prudently to meet a large and growing government liability. As many commentators have pointed out in recent days, private employers are required to provide for their employees’ superannuation entitlements on an ongoing basis, but every previous federal government of this country has failed to do that.

Honourable senators interjecting—

The PRESIDENT—Order! There is too much noise in the chamber.

Senator MINCHIN—It is the Howard government that is putting in place arrangements through the Future Fund to rectify that situation at a federal level and to provide for that unfunded liability so that future genera-
tions of Australians will be able to save some $7 billion a year rather than paying for those liabilities out of their taxes. That is the context in which we have to examine Labor’s irresponsible policy.

Last week, we saw the true extent of this irresponsibility in relation to the Future Fund. Not only are they going to take $2.7 billion out of the capital of the fund, but shadow Treasurer Wayne Swan had to admit that they are also going to spend the fund’s annual earnings on what he called hard infrastructure, which beggars a thought. In other words, the broadband policy is not just the first raid on the fund; under Labor, these raids are going to be an annual event. As the fund declares its annual earnings, the Labor Party is going to grab those earnings for its own pork barrelled projects.

Mr Swan, of course, insists that Labor are committed to ensuring that the Future Fund can match the unfunded liability by the target date, but that will simply be impossible if Labor’s policy is pursued. Under their policy of spending the annual Future Fund earnings on their pet projects, the fund’s balance will obviously by definition stay static in nominal terms, but the unfunded liability is going to continue to rise to $140 billion. It must be able to reinvest its earnings if it is going to reach that target.

It is also clear from what Labor are saying that they are going to interfere politically with the investment priorities of the fund by directing it to invest in their favourite schemes. As Senator Coonan said, they seem to have learnt nothing from the experience of state Labor governments of the late eighties and early nineties. If the fund is subject to constant political interference and is unable to reinvest its earnings, then we can ask how the fund is going to grow to meet that target under Labor’s policy. Where is the money going to come from to meet the $140 billion unfunded liability? They are against any further privatisation, so there will be no more asset sale proceeds going into it. Under Mr Rudd, Labor have already racked up so many new spending promises that it is pretty clear that Labor cannot rely on future budget surpluses as a way to meet the target fund of $140 billion.

If the Labor Party aim to deposit extra money into the fund, then why are they simultaneously raiding it to fund the promises? It is clear they have simply run out of money to fund their election commitments, so they are going to raid the fund set aside for public servant superannuation.

The contrast is stark between Labor and a government under which the Future Fund is able to reinvest its earnings and grow unhindered to meet that $140 billion liability. Under Labor’s cynical and short-sighted policy, the fund will remain static in value terms and be incapable of meeting that target, thus putting a huge tax burden on future generations.

**Broadband**

**Senator MOORE (2.24 pm)**—My question is to Senator Coonan, the Minister for Communications, Information Technology and the Arts. I refer the minister to her comments on ABC TV yesterday:

> ... prospects are reasonable that there will be an opportunity for a provider or a group of providers to … roll out a fast fibre network very soon … and that ultimately the provider will probably be Telstra. Hasn’t Telstra clearly informed the Australian Stock Exchange that it will not be proceeding with a fibre rollout without regulatory reforms, which you have ruled out before 2009? Minister, doesn’t that make your claims that ‘prospects are reasonable’ a complete nonsense?

**Senator COONAN**—What is the complete nonsense, of course, is that there is no capacity to have discussions with providers of commercial proposals about any regula-
tory underpinnings they need. What I have ruled out is a complete roll-back of the specific provisions of the Telecommunications Act. I am sad to say that the Labor Party have not ruled that out. The Labor Party have left themselves hostage to whatever request the telecommunications providers might wish to make of this ditzy plan to try to roll out to 98 per cent of the population an $8 billion proposal, which would be lucky to go beyond the major cities.

What I have said about the regulatory regime—and I can take the senator to many public statements I have made—is that my door is open and I am willing to discuss the proposal with telecommunications providers who may want to speak to me about these arrangements. I had never ruled out any minor adjustments to the telecommunications regime. I have always been interested to see where the barriers are, if they exist in the regulatory regime, to have a look at what might provide incentives for companies to invest.

The last amendment to the Telecommunications Act was specifically to allow the kind of investment we are talking about to enable the regulator to take into account the costs and risks to the investor of a risky new commercial rollout, as indeed it is appropriate to do. This is risky. Because it is very expensive, the return on such an investment is not something that is always easy to predict, and that is why no-one has done it so far.

What I have done about the regulatory regime is to say that we continue to look at it and we continue to monitor the position. In fact, I think I can recall Senator Conroy accusing me of not talking to Telstra, being incapable of talking to Telstra and being incapable of speaking to telecommunications providers. When it transpires that not only do I talk to all of the people in my portfolio but I am interested in proposals which are capable of providing a commercial rollout to the population, then, goodness me, what is wrong with that? I think the senator really has posed her question on a false premise. In due course, of course, we will know whether or not these commercial proposals that appear on the face of it to be viable will be able to do something that the Labor Party can only countenance if they throw $4.7 billion of taxpayers’ hard-earned money at it. We think that a more efficient way of doing it is to make sure that the market can work properly, that the regulatory underpinnings work and that in those circumstances the taxpayer will get the same result but not at the expense of $4.7 billion.

Senator MOORE—Mr President, I ask a supplementary question. Minister, isn’t the government now just scrambling around for a policy response to Labor’s broadband initiative, open door or not? Isn’t it a reality that there is just no plan to supply the communications infrastructure required for the 21st century?

Senator COONAN—Thank you for the supplementary question. I am sure that the senator wishes that were the case, but, sadly, it is not, because discussions between me and other providers have been going on for a number of weeks with really nothing to do with the Labor Party proposal. You cannot sensibly discuss the Labor Party’s proposal in any event because it is a daft idea to knock off $4.7 billion from the Communications Fund and raid the future to pay for the past when they cannot get their head around the economics of telecommunications and what is a commercial proposition and what is not.

National Security

Senator FERGUSON (2.29 pm)—My question is to the Minister for Justice and Customs, Senator Johnston. Will the minister inform the Senate of the progress of counter-
terrorism operations against Jemaah Islamiah in the region, especially Indonesia? I further ask: will the minister outline the high level of cooperation between our law enforcement agencies and their regional counterparts?

Senator JOHNSTON—I thank Senator Ferguson for his question. As Chair of the Joint Standing Committee on Foreign Affairs, Defence and Trade he has a longstanding interest in this matter, and I thank him for his contribution in this area. The Indonesian National Police have been successful in targeting JI terrorists and commencing criminal proceedings against individuals in that network. To date, over 250 arrests have been made by the Indonesian National Police in their fight against terrorism and terrorism groups inside Indonesia. On Tuesday and Wednesday of last week the Indonesian National Police conducted operations against Jemaah Islamiah suspects in Yogyakarta in Central Java. As a result of these police actions, five suspected JI operatives were arrested, including one who was seriously wounded during the arrest. One person, also a suspected JI operative, was fatally wounded during an exchange of gunfire with the Indonesian National Police officers.

The Indonesian National Police operation is associated with ongoing investigations into a key JI member, Abu Dujana. The Australian government congratulates the Indonesian National Police on their efforts against JI. This is the latest in a series of actions they have undertaken against this terrorist cell. JI, of course, is responsible for the Bali bombing in 2002 and other attacks in Indonesia, including the bombing of the Australian Embassy and the Marriott Hotel. I pause to say that Indonesian police are doing an outstanding job in combating this very insidious internal problem in their country. There is a very high level of cooperation between the Indonesian National Police and the very good men and women of our Australian Federal Police on transnational crime generally and, in particular, on counterterrorism activities such as the Jakarta Centre for Law Enforcement Cooperation, which was established by the Howard government in February 2004. I should mention that $36.8 million was provided to support the development of that office and for ongoing operations over the next five years to 2009. The centre is intended as a resource for the South-East Asia region in the fight against transnational crime and terrorism.

The Australian Federal Police has been resourced under a number of initiatives, including the rapid response initiative and the Fighting Terrorism at its Source initiative, to undertake this important work on the ground. A counterterrorism liaison position has been established also in Thailand. An Australian Federal Police officer commenced in that role with the Australian Embassy last month—that is, in February of this year. Assistance given by the Australian Federal Police and the Australian Bomb Data Centre will strengthen regional cooperation and provide a network for the sharing of intelligence relating to the unlawful use of explosives. A Philippines bomb data centre has been established and the establishment of bomb data centres in Malaysia and Thailand is being progressed. Australians and Australia’s national interest in the region remain the target of JI action, but it gives us great confidence that we can work together with our neighbours to bring to justice and to bring down those who would destroy our way of life.

The Australian Federal Police operations with our near neighbours are very successful. We are putting a huge resource into, in particular, Indonesia, the Philippines, Thailand and Malaysia, as I have mentioned. We have been working closely with the Indonesians with regard to investigations into JI in an effort to identify and arrest key suspects as-
associated with terrorist attacks. I pause once again to compliment the Indonesians. The relationship is as strong as it has ever been. The recent arrests are indicative of the fact that the cooperation between the Australian Federal Police and the Indonesian police is bearing good fruit.

**Climate Change**

**Senator ALLISON** (2.33 pm)—My question is to the Minister for Finance and Administration. I refer to the minister’s reported scepticism about the destructive role of carbon dioxide as a key contributor to the causes of climate change. Can the minister explain why he relies on the work of one Danish scientist to inform his views rather than on the 2,500 world-renowned scientists who contributed to the Intergovernmental Panel on Climate Change? Can the minister confirm that he is still a climate change sceptic? If so, was it his idea to stall government action for a few more decades, and how does this scepticism sit with the Prime Minister’s recent concession that greenhouse gases and climate change are linked? Why is the minister reporting what he calls practical, sensible approaches to greenhouse gas reduction if he cannot see that link?

**Senator MINCHIN**—I think Senator Allison is referring to a letter that I wrote to Mr Ian Kiernan, the very successful head of the Clean Up Australia campaign, in which I congratulated him on his campaign. But I have noted that Mr Kiernan had an interview with Mr Charles Woolley in which my name was raised and in which they both referred to ‘scientific loonies’ in the context of anyone who did not totally and unconditionally accept that climate change, to the extent that climate is changing on the warm side, is all the result of human activity. All I did was write to Mr Kiernan.

Putting my own views to one side, I would point out that there does remain a scientific debate about this matter. Those in the scientific world who remain to be convinced that anthropogenic CO₂ emissions are the complete cause of global warming are significant in number and significant in prestige in the scientific community, so it is a bit rich to call them scientific loonies. That is the background. I think, to Senator Allison’s question to me.

Of course there is still some debate in the scientific community on the extent to which anthropogenic CO₂ emissions are contributing to global warming; that is just a fact. It is certainly also true that the IPCC, the UN body, does seem to have achieved consensus in relation to its view that human induced CO₂ emissions are the primary cause of the extent of the global warming that we have seen in the late 20th century. We as a government have been conscious of that view and acting upon that view for some considerable time. Indeed, our position on this goes back 10 years. It was 1997, only a year after our election, when we actively engaged on this issue. We set up the world’s first national greenhouse office. We instituted a range of programs, with significant expenditures behind them, to seek to increase the amount of abatement of greenhouse gases, to encourage industry to reduce its emissions, to encourage Australians to reduce their emissions and to provide incentives to low-emission technologies. So we have a very proud record on that matter.

What we have always said, however, is that, while we will take prudent action to ensure that Australia makes a contribution to reducing the levels of anthropogenic CO₂ emissions, we are not going to threaten the very foundations of the Australian economy or the foundations of Australian jobs. It is not the Liberal Party that is running around threatening the jobs of workers in the coal industry; it is those on the Labor side and the Greens’ side. It is Mr Garrett who is threat-
ening the jobs in the coal industry. Mr Garrett thinks the coal industry’s time has gone and we should shut it down. We do not agree with that. We were pleased to see Mr Rudd join us in advocating investment in clean coal technology, which we see as important in ensuring that Australia retains its comparative advantage in relatively cheap power while at the same time ensuring that, as we generate that power, we reduce the level of CO₂ emissions generated as a result.

It is important for national governments to be aware of the view in relation to the contribution of anthropogenic CO₂ to global warming, and to be conscious that a scientific debate still remains about that matter; to take measures prudently and within our capacity to afford them; and to encourage the research, development and production of low-emission technologies. At the same time, we have to ensure that we do not threaten the livelihoods of Australian workers, and that will continue to be the foundation of our policy.

Senator ALLISON—I ask a supplementary question, Mr President. The minister evaded my question about whether he is a sceptic or not, so we will assume that he is. Can the minister explain his preference for nuclear power and so-called clean coal? Does he acknowledge that these are expensive options compared with renewable energy? Did the minister see the comment last week by a former BHP head, Mr Paul Anderson, that CO₂ waste storage may be as difficult to deal with as nuclear waste? Does he agree with that or does he have handy a scientist who says geosequestration is secure and cheaper than wind power?

Senator MINCHIN—What I did notice today was an interesting article as a result of a study by the well-known economist, Dr Peter Brain, which indicated that putting a price on carbon in this country is going to particularly hit unemployed and low-income Australians. They are the ones who would suffer most from any move to put a price on carbon. Again, that is something of which governments must be extremely conscious in their moves in this area.

Senator Allison—I raise a point of order, Mr President. I did not ask about a carbon price signal, though I might have done, or a carbon tax or anything of the sort. Could you remind the minister to focus his answer on the questions which I raised. That would be useful.

The PRESIDENT—Minister, you have 30 seconds to complete your answer.

Senator MINCHIN—Mr President, my response was pertinent to the question. My point is that any intervention which raises the cost of electricity and the cost of power is going to hurt poorer Australians more than others. That is a simple fact of life and this parliament must bear that in mind in any interventions it seeks to make in this matter. The fact is that anything we do in relation to encouraging alternative energy supplies or to nuclear, geosequestration et cetera is going to raise the price of generating power, and that will hurt lower income and unemployed Australians more than anybody else.

DISTINGUISHED VISITORS

The PRESIDENT—Order! I draw the attention of honourable senators to the presence in the President’s gallery of a parliamentary delegation from the Republic of Indonesia. On behalf of all senators, I wish you a warm welcome to Australia and in particular to the Senate.

Honourable senators—Hear, hear!

QUESTIONS WITHOUT NOTICE

Illegal Fishing

Senator BOSWELL (2.41 pm)—My question is to the Minister for Fisheries, Forestry and Conservation, Senator Eric Abetz,
the fishermen’s friend. Will the minister update the Senate on how the Howard government’s tough apprehend-and-destroy approach to illegal fishing is beginning to pay dividends. Is the minister aware of any alternative policy?

Senator ABETZ—Can I thank another friend of the fishermen, especially Queensland fishermen, Senator Boswell, for that interesting and very important question. Late on Thursday night in a joint operation overseen by border protection command, officials boarded a Taiwanese registered longliner. The vessel was boarded 64 nautical miles inside the Australian fishing zone, some 226 nautical miles north-north-east of Lord Howe Island, and was directed to port by AFMA officials under suspicion of having engaged in illegal fishing in Australian waters. I am advised that initial estimates put the catch at 25 to 30 tonnes of mixed fish such as marlin, swordfish, shark, tuna and mackerel species. Investigations are ongoing.

While it is indeed unusual for a boat of this type to be apprehended where it was, the apprehension does prove one thing: if you come into Australian waters to steal our fish, you risk your boat and you risk your freedom, be it in the north, far south or the east coast, as it was on this occasion.

Most significantly, the evidence is that our tough approach of apprehending and destroying illegal fishing boats is working. Last year a record 365 illegal fishing boats were seized and destroyed in our northern waters. Can I thank the Indonesian delegation in the President’s gallery for the support of the Indonesian government in this regard. Sightings of illegal fishing vessels in our northern waters are down 40 per cent compared to 2005—this, despite an increase in surveillance flights. I am pleased to report that three months into this year the trend continues. To 20 March this year, sightings are down by almost 80 per cent compared to the same period last year.

Senator Boswell would be pleased to know that in the Gulf of Carpentaria there have been just 36 sightings this year—a decline of about 90 per cent. I am sure Senator Scullion would be pleased to know that there has been just one shark boat spotted off the Northern Territory this month. And I am sure Senators Ellison, Johnston, Adams, Campbell, Eggleston and others from Western Australia would be pleased to know—

Honourable senator interjecting—

Senator ABETZ—And Senator Lightfoot. They would all be pleased to know that there have been just two sightings off Western Australia. Let me be clear: there are positive signs that the Howard government will not take its foot off the pedal. We will continue our no-nonsense approach to drive these numbers even lower. Nonetheless, the facts are clear: our policies are working. In fact, even the state Labor governments agree. Late last year they described the results of our policies as ‘very encouraging’. It seems that only federal Labor and Mr Bevis persist in the denial of the facts, carping from the sidelines when clearly they have no idea of the reality on the water. But here their actions speak louder than words. For example, at the recent estimates, Labor’s fisheries spokesman, Senator O’Brien, did not ask a single question about illegal fishing—not one. And since I have been minister, there has not been one question in this chamber from those opposite about the issue of illegal fishing. So it is time that Labor acknowledged the success of our approach and stopped carping—(Time expired)

Workplace Relations

Senator McEWEN (2.46 pm)—My question is to Senator Abetz, the Minister representing the Minister for Employment and Workplace Relations. Is the minister aware
of Australian Bureau of Statistics figures that show that women on AWAs earn less per hour than their counterparts on certified agreements? Is the minister aware of ABS figures that show women on AWAs work more hours, on average, than women on certified agreements? Can the minister explain why ABS figures show that casual workers on AWAs are paid less per hour than their counterparts on certified agreements? Haven’t AWAs seen women required to work longer hours at a lower hourly rate than they would have on a certified agreement? Minister, hasn’t Work Choices seen many women workers made worse off?

Senator ABETZ—In short, the answer is: absolutely not. The women of Australia, like all Australians, have benefited from Work Choices. Allow me to remind the honourable senator of some of the crucial facts and invite her not to swallow, hook, line and sinker, the silly and dishonest propaganda of the trade union movement. Since the government came to office, over one million jobs have been created for women—a bad result, no doubt, for the honourable senator! Since the commencement of Work Choices, employment for women has increased by 113,500. As a result of Work Choices, there are now an extra 113,500 women employed. I suppose that is a bad result for the honourable senator!

What about the participation rate of women? Under the coalition government, the female participation rate has averaged 55.2 per cent compared with 50 per cent under the Labor government. So the participation rate of women has increased under the Howard government—another statistic that those opposite do not want to know about. Since the commencement of Work Choices, the female participation rate has increased by 0.7 percentage points to 57.6 per cent. Since the government came to office, earnings for full-time, adult women have increased by 60 per cent in nominal terms and 22.6 per cent in real terms. Under the 13 years of Labor, real earnings for full-time, adult women increased by only about one-third of that rate: 8.8 per cent. So, when we look at these statistics and figures, there is no doubt that the working women of Australia are far better off as a result of the policies of the Howard government.

The Australian Bureau of Statistics data shows that the number of women on AWAs has more than doubled, from 47,700 in May 2000 to over 102,300 in May 2006. It begs the question: why are these women signing up, on a voluntary basis, to Australian workplace agreements? Because they are better for the working women of this country.

Opposition senators interjecting—

The PRESIDENT—Order! There is too much noise in the chamber. Come to order!

Senator ABETZ—As soon as you come out with the facts that hurt the Labor Party, there is this cacophony to ensure that the Australian people do not get to hear the facts. I can assure those opposite that we will continue to put out the facts for the Australian people. There are over 100,000 women—113,500 women—who have a job today because of our industrial relations reforms of only 12 months ago and, what is more, they are earning more in real terms. As at the end of February 2007, 116,184 Work Choices AWAs for women have been lodged. Over the same period, the number of women on registered collective agreements increased by 436,400 to 1,706,200, while the number of women paid award rates fell by 110,900.

Senator George Campbell—Where are you getting these figures from?

Senator ABETZ—The silly senator, George Campbell, interjects and says, ‘Where are you getting these figures from?’ It is the same ABS data that your colleague is quoting, but unlike her I am not—
Senator George Campbell interjecting—

The President—Senator George Campbell! I would remind you that shouting across the chamber is disorderly.

Senator McEwen—Mr President, I ask a supplementary question. Can the minister also explain why Australian Bureau of Statistics figures show that casual workers, who make up over 20 per cent of our workforce, are worse off by up to $3.80 per hour if they are on AWAs? Minister, hasn’t your government made life tougher for thousands of Australians?

An incident having occurred in the gallery—

Senator Abetz—There is one of the more intelligent supporters of the Labor Party in the gallery! If the honourable senator is genuinely concerned about the fate of working men and women in Australia, can she explain to the Australian people why it was acceptable to have one million of our fellow Australians on the economic scrapheap of unemployment—10 per cent of whom were contributed courtesy of Senator George Campbell’s activities as a trade unionist? You do not need my authority for that. Former Labor Party Prime Minister Paul Keating made that allegation of Senator George Campbell. Let us be in no doubt, the unemployment rate is down to 4.6 per cent because of the tough decisions we have taken, and the men and women of Australia know it.

Senator Bill Heffernan

Senator Nettle (2.53 pm)—My question is to Senator Minchin, the Minister representing the Prime Minister. It relates to behaviour of Senator Heffernan during Saturday’s election that saw the police having to intervene to return how-to-vote cards that had been stolen by Senator Heffernan. Does the Prime Minister endorse the stealing of another party’s how-to-vote cards? Does he endorse confronting voters, in the way that Senator Heffernan did, as appropriate behaviour for a Liberal Party senator?

Senator Minchin—Senator Nettle has just made an extraordinary and, I would say, outrageous allegation against a sitting senator. She has come into this place under parliamentary privilege and accused a fellow senator of the crime of theft. That is what I understood her question to be based on. That is a very serious allegation. I hope she is going to substantiate such an allegation and not hide in here and make such outrageous allegations in this place. She should now prove her complaint. If she has any complaint about any member of this Senate conducting illegal activities, she should go to the police appropriately. To come in here and use question time to make serious allegations of criminal activity by a fellow senator is outrageous.

Senator Nettle—Mr President, I ask a supplementary question. If Senator Minchin wants more information about this, he should ask the New South Wales Police, who had to intervene in this circumstance. What action is the Prime Minister going to take to ensure that behaviour from this Liberal Party senator does not continue at the upcoming federal election as it has in past state and council elections?

Senator Minchin—I know nothing of the incident. If Senator Nettle has serious allegations to make of any illegal activity, she should take them to the right authorities.

Workplace Relations

Senator Hogg (2.55 pm)—My question is to Senator Abetz, the Minister representing the Minister for Employment and Workplace Relations. Is the minister aware of a recent report by Relationships Forum Australia titled An unexpected tragedy, which shows that, amongst developed countries, Australia has the second-highest proportion of the
workforce—22 per cent—working 50 hours a week or more? Aren’t we behind only Japan in working longer hours? Can the minister also confirm that Australia has the second-highest proportion of its workforce—30 per cent—regularly working on weekends? Doesn’t the report highlight the negative impact that these long working hours and weekend work is having on Australian families, with parents concerned that they do not have the time they need to spend with their family? Hasn’t the government’s industrial relations legislation only put more pressure on parents to work longer hours and on weekends, leaving them less time with their children?

Senator ABETZ—I thank Senator Hogg for the question, because what it highlights is that there is plenty of employment going around with an historic low unemployment level of 4.6 per cent. With 30-year low—generational low—unemployment you would anticipate that people were only just filling in their day’s work, but in fact they are doing more than that. If we accept the honourable senator’s figures, what they show is that with an unemployment rate of 4.6 per cent people are working very long hours as well because of the huge amount of work that is being generated in the Australian economy.

That is juxtaposed to that which happened under the former Labor government, when untold human misery was occasioned to the families of this country when one million of our fellow Australians were on the scrapheap of unemployment. That is when mums and dads had problems making ends meet. They could not pay the mortgages. Why? There was unemployment and high inflation. Not so at the moment. There is now low inflation and ever-increasing wages above and beyond the inflation rate.

Senator Chris Evans—What about the pressure on families?

Senator ABETZ—Senator Evans foolishly interjects and says, ‘What about pressure on families?’ That is exactly the sort of pressure that we committed ourselves to taking away from the Australian people—the high unemployment rate and the high mortgage rates. It is up to people to decide, within certain limitations, as to the hours that they work. Many families are in fact aspirational. Mums and dads are willing to work those extra hours so they can afford the private health insurance that certain people would seek to abolish the government support on, or to send their children to a private school and exercise real choice and make a real investment in their kids’ future. But under the mob opposite what you would have today, courtesy of Senator Hogg’s question, is a commitment to take Australia back to high unemployment, lower wage growth and high inflation. If given a choice as a parent, would you want high unemployment and high interest rates or the capacity to earn a bit more for your family in a low inflationary environment? I know what choice I would take for the sake of my kids and for the future of my family.

This is a very foolish question, if I might say. I think Senator Hogg knows better but, unfortunately, the brains trust of the question time committee gave him the question to ask, so he did. The point is very clear: the Labor Party are complaining about the amount of work that is available in the economy and the capacity for aspirational families to earn more, buy a better house, go on another holiday if they want to or invest in their children’s education. We as a government are pleased with the sorts of choices that Australian families are getting. That choice is a lot better than the no choice they suffered under Labor—no employment prospects and high interest rates.

Senator HOGG—Mr President, I ask a supplementary question. Is the minister
aware of ABS figures which show that full-time employees work an average of 44 hours per week? Is the minister concerned about the impact excessive working hours are having on families? Why did the government, through the provisions of Work Choices, give employers even more power to demand longer working hours of their employees?

Senator ABETZ—What I do know is that out of the 200,000-plus jobs that have been created since Work Choices, 87 per cent have been full time. In the uncertainty of the work environment that existed under Labor, there was a high rate of casualisation of the workforce, and that is what was causing untold misery to the men, women and families of this country. This high rate of full-time employment is providing financial security. If there is one social statistic about families and family misery it is financial security, and that is what we are offering.

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

QUESTIONS WITHOUT NOTICE: ADDITIONAL ANSWERS
Australian Federal Police: Electoral Allowances

Senator JOHNSTON (Western Australia—Minister for Justice and Customs) (3.01 pm)—I seek leave to make a clarification of an answer I gave on 22 March.

Leave granted.

Senator JOHNSTON—On 22 March 2007 in response to a question from Senator Ludwig relating to an AFP investigation into electoral allowance fraud, I advised that the AFP had provided a copy of its ministerial briefing to the Department of Finance and Administration, DOFA, on Friday, 2 March 2007. I wish to clarify this point. DOFA was provided with advice that the warrants had been commenced to facilitate its own ministerial briefing process on the morning of Friday, 2 March 2007. The AFP provided DOFA with a draft copy of a ministerial briefing on the morning of Wednesday, 28 February to allow the department to prepare its own ministerial briefing. I also indicate that DOFA had assisted the AFP with this matter. I reiterate that the AFP had no evidence to support the assertion that a leak on a tip-off occurred in relation to this matter.

Gunns Pulp Mill

Senator MINCHIN (South Australia—Minister for Finance and Administration) (3.02 pm)—On 20 March this year in answer to a question from Senator Milne I undertook to check whether any communications had occurred between the Premier of Tasmania and the Commonwealth government in relation to the Gunns project. There was a telephone conversation initiated by the Premier of Tasmania with the Acting Prime Minister before 10 am on 15 March, in which the Premier briefed the Acting Prime Minister on the Tasmanian government’s intentions in relation to the Gunns Pulp Mill proposal. Gunns had notified the ASX that they were withdrawing from the RPDC process the previous day, that is 14 March, at 1.34 pm eastern time and a notice was placed on the public register at 1.42 pm.

QUESTION TIME: RULING ON SUPPLEMENTARY QUESTIONS

The PRESIDENT (3.03 pm)—On 22 March 2007 I undertook to examine the supplementary questions asked by Senator Fierravanti-Wells and Senator Nash. In doing so I indicated that I believed that the supplementary question asked by Senator Nash was in order.

The Hansard transcript shows that Senator Fierravanti-Wells’s supplementary question directly asked the minister to comment on the policies of the New South Wales government and Labor Party. This supplemen-
tary question was therefore out of order on the standard applied in the past. Because of the noise in the chamber at the time—and it seems to be continuing—I was unable to hear the question clearly.

The supplementary question of Senator Nash asked the minister why the government will not be adopting alternative policies. It was therefore in order in accordance with the standard applied in the past.

I think that senators are beginning to lose sight of the distinction which the chair has drawn in the past between questions which ask ministers to say why the government will not adopt alternative policies, which are in order, and questions which simply invite ministers to comment on the policies of other governments and parties, which are not in order. This distinction is based on the principle that questions must ask about the government’s intentions. Questions which simply ask for comment on alternative policies are not in order. I reinforce that distinction and ask senators to observe it.

I also ask that the chair be allowed to hear questions and answers, and that senators refrain from the kind of noise which occurred during question time last week and is continuing today.

QUESTIONS WITHOUT NOTICE:
   TAKE NOTE OF ANSWERS:
   Broadband
   Future Fund

Senator CONROY (Victoria) (3.05 pm)—I move:

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

We had an extraordinary revelation on the front page of the *Australian Financial Review* and what we saw yesterday from Senator Helen Coonan on *Insiders* was Senator Minchin and Senator Coonan cutting the Treasurer loose. Last week we saw the Treasurer’s quite hysterical performance in trying to attack Labor’s proposal to give this country a national high-speed fibre-optic network which would deliver 12 megabits minimum to 98 per cent of Australians. In a hysterical attack, the Treasurer, Mr Costello, made all sorts of allegations. We saw it all—tomb raiders, bear in the honey pot, all of the hype, colour and movement that Mr Costello displays inside the chamber but not anywhere else where it requires backbone. We saw Senator Minchin and Senator Coonan cut and abandon the Treasurer, Mr Costello.

Senator Minchin refused point-blank to guarantee that future surpluses would be going into the Future Fund. This is a complete repudiation of the Prime Minister’s position, the Treasurer’s position and his own position for the last 18 months—a complete backflip. That is what this government has been reduced to because it has been exposed as not having a plan for the future and not having any idea how to address the needs of the Australian community. It has become so arrogant and so lazy that it just dismisses voices it does not agree with.

We saw that happen today with Senator Coonan. You can always tell when the government are running on empty. You can tell when they know they have been caught out. There were insults, personal insults, from Senator Coonan. There were the two hoary old chestnuts: the ‘unions are running the Labor Party’ and ‘we are paying off Labor Party debt’. We know they are in trouble. This is a government that proudly boast that they have spent $4 billion getting broadband up to speed. They boast that they have 17 schemes—and I read them all out last week—for $4 billion. What have we got to
show for it? Rubbish broadband with half of Perth on dial-up, Adelaide struggling, and great swathes of country and regional Australia being forced to rely on second-class services. This government has spent $4 billion on nothing more than National Party photo opportunities, and Senator Macdonald and some of his ilk in the Liberal Party are very jealous about how many photo opportunities the National Party have got.

At the weekend we had Senator Coonan demonstrating again her complete lack of understanding of her portfolio. She announced last week on Lateline and again yesterday, ‘I am personally involved in the negotiations.’ People have asked her: ‘What do you mean by being personally involved? Tell us more.’ Of course there is silence from her and her office. They do not want to confess that they have no idea what they are talking about.

Today we had the claim that we are ahead of South-East Asia and the Pacific. Fantastic! Let us go home and tell our children that we are beating Niue, Nauru and the Solomon Islands. Let us beat our chests a bit more. This government is demonstrating that it really does believe that the Great Wall of China was built by the Emperor Nasi Goreng just to keep the rabbits out. That is what that mob over there believe. They just do not get it. They have lost the plot. They are so arrogant and so out of touch they do not want to get onboard with a productivity-enhancing, health services enhancing and education-enhancing $30 billion improvement in productivity in our own country. They are just economic vandals who have turned their backs on this community. They are allowing Australia to slide into a broadband backwater and we are falling further and further behind. That is why this mob just do not get it. They cannot stand up. It is a pity that Senator Nash and the National Party did not have the backbone. (Time expired)

Senator IAN MACDONALD (Queensland) (3.10 pm)—If anyone could explain to me what Senator Conroy was just rabbiting on about, I would be very grateful. Apart from a bit of rhetoric and some of the old cliches, it was just five minutes of absolute rubbish. Let us have a look at the facts and see where Labor stand on these issues. Those of us in this chamber will well remember when Labor was in charge of telecommunications. Do you remember that we had the analog phone one week and within a few weeks Labor, without any warning to anyone, without any plans for transition, simply said they were going to get rid of the analog network? That of course left everyone in country Australia without access to a mobile phone. That is typical of Labor’s approach not only to telecommunications but across the board. They do not give a damn about people in country Australia. Absolutely nobody believes the Labor Party proposal for their rollout. Sure, it might do something for the capital cities but those of us who live in regional Australia are going to get it in the eye yet again.

This is not me suggesting this. All of the serious commentators are also very critical of the Labor Party proposal. I refer you to the comment by ABN AMRO. They said about Labor’s proposal:

The Labor proposal will take industry back 20 years to Government provision, gold-plating and restricted rollout.

They further went on to label the Labor proposal as ‘inefficient’ and they said:

It does not resolve access regulation issues but entrenches them and adds new inefficiencies.

They went on to conclude that the Labor proposal:

... re-establishes a conflict between Government as owner, whose dividends rely on access prices, and as regulator of access.
Most of the serious commentators think that Labor’s proposals are quite ridiculous and unworkable. As to the proposal for the price mentioned by Senator Conroy, we do not know what the actual price is. At one time of the day he said it was $8 billion. A couple of hours later it was $9 billion. Then it was $10 billion. He is all over the ship.

Whatever the price, I think it is clear from international experience and independent costings, and indeed Telstra’s own numbers, that a network servicing 98 per cent of the Australian population with a minimum broadband speed of 12 megabits per second could not be built for $8 billion or $9 billion or $10 billion. Everyone knows that this rollout will not reach 98 per cent of Australians, and again it will be country people who Labor ignore.

The cost of the rollout depends on landmass. For Singapore, with some 660 square kilometres of landmass—about half the size of Sydney—the fibre rollout cost something like $5 billion. So for half the size of Sydney it cost $5 billion and Senator Conroy is trying to pretend that you can do the whole of Australia for $8 billion or $9 billion or $10 billion. The fibre rollout in South Korea—and, as senators will know, South Korea is approximately half the size of Victoria—cost the South Korean government some $US40 billion. Labor claim they can cover all of Australia for $7 billion, $8 billion, $9 billion or $10 billion. But in South Korea, half the size of Victoria, it cost some $40 billion.

Telstra, as I recall, was widely reported as having costed a nationwide rollout at something like $30 billion. So where are Labor going to get the other $20 billion or $30 billion from, once they embark upon their crazy scheme? Again, it will come out of the Future Fund—the fund that this government has responsibly put aside for unfunded Public Service superannuation. Labor are going to pinch it from there and put Australia back into the sort of economic and financial management regime that it was under when Labor were in charge. (Time expired)

**Senator LUNDY** (Australian Capital Territory) (3.15 pm)—It is a real pleasure to speak on this issue today and to make a point on the appalling understanding that a number of coalition senators have on this issue. Obviously, Senator Ian Macdonald does not know the difference between fibre-to-the-node and fibre-to-the-home costings, because that explains the differential between some of the figures that he has been bandying about—specifically and deliberately misleading the Senate when comparing the sort of network that Labor is proposing to build and the sorts of prices he was quoting.

**The DEPUTY PRESIDENT**—Senator Lundy, I think you should withdraw ‘deliberately misleading’.

**Senator LUNDY**—I withdraw. But I have made my point, and I would like to make another point. What we have seen today is an amazing example of coalition senators coming in here to embark on a bit of damage control. Over the weekend, Senators Coonan and Minchin both made clear statements to show that there was no flaw in Labor’s plans to use some of the Telstra holdings in the Future Fund for this proposal. In fact, Senator Minchin said that the Future Fund was well ahead of schedule and that future surpluses might not even be required to reach the target of meeting unfunded public sector superannuation liabilities by 2020. So today, what we have heard from Senator Coonan and others in this place is some kind of exercise in damage control, reverting to their original lines of late last week in this debate. But actually it does not work like that. What we have on the record is this very specific statement by Senator Coonan: ‘You might then consider what else you might do with
She was referring, of course, to funds in the Future Fund.

This government cannot have it both ways. We now have enough public statements from them to know that there is no problem, even in their view, with what Labor is doing with the Future Fund. We also know that all of this ridiculous rhetoric and the histrionics from the Treasurer and the pathetic attempt at cranking it back up today by government senators will absolutely not convince anybody that there is a problem with Labor’s plan. We have guaranteed meeting those superannuation liabilities.

This issue is all about the fact that Labor has a vision for this country and the coalition government does not. It has been over 11 years since I was first elected to the Senate, and what we do know is that for 11 years this country has been waiting for a broadband network that will service our future social and economic needs. For the first time, the Australian Labor Party has had the fortitude to put such a vision forward.

Senator Nash—Where?

Senator Lundy—It is a vision that will serve the needs of rural and regional Australia and that will also fill the appalling holes in metropolitan Australia. Without such a vision, this country has no hope of keeping pace with other comparable economies. We have been watching ourselves slide. We have watched $4 billion worth of ad hoc programs to allow Senator Nash and others a ‘smiley’ opportunity in front of the camera, but it has been piecemeal and ad hoc. We have seen $4 billion of taxpayers’ money wasted in this way, making small incremental changes in some areas but not fixing the whole problem, not raising our credentials across the overall economy. How dare this government come in here and say how outrageous it is for us to access taxpayers’ money from the Future Fund to build a proper network, when they have frittered away in such an appalling fashion $4 billion of taxpayers’ money over that time.

I would like to make one more point that shows Senator Coonan’s complete lack of understanding or deliberate attempt to mislead this debate. Labor’s plan is for an open access network. That is a regulatory feature not ever put forward by this government previously because they have chosen to try and negotiate for this type of infrastructure, allowing deals for proprietary networks—cutting a deal for Telstra because they have had an interest in the sale. They have not had the necessary vision to provide for an open access network. That is the key to Labor’s plan—it is an open network, and only Labor has the vision to bring the parties to the table and make this happen.

Senator Coonan has an inability to understand the basic difference regarding the compromised nature of their approach, and now we hear of secret deals, to have some sort of arrangement—(Time expired)

Senator Nash (New South Wales) (3.20 pm)—It is quite extraordinary to listen to the opposition today when they talk about this plan as if it is some great, new, grand plan, when all it is is a rehash of Senator Conroy’s plan, which he put out last year and which nobody took any notice of. It is quite difficult to understand why they are taking notice of it this time when they did not last time. What this is really about, as much as broadband speeds, is Labor’s credibility. That is what this is about. It is not about broadband speeds to nearly the same extent.

Let us look at why that is so, because we are talking about an opposition that for years has put forward its point of view that we should never, ever privatise Telstra—not ever. Indeed, we only have to look at what Senator Conroy, the leader of this whole
broadband charge, has said. On 9 August 2005 he said:

... the Labor Party will honour the commitment it made to the Australian public at the last election and oppose any move to privatise Telstra.

Obviously Senator Conroy has completely forgotten he said that in 2005, because he has done a complete about-face; he has turned around completely.

Senator Forshaw—It’s already been privatised.

Senator NASH—Interestingly, the ex-leader of the ALP, Mr Beazley, on 12 September 2005, also talked about not privatising Telstra.

Senator Forshaw—It’s happened.

Senator NASH—He said:

We are not going to let this go without a fight. We understand that it is in the interests of the people of this country that Telstra should not be sold and that it does its job properly in nation building. We will fight for that; we will fight for that until hell freezes over.

The opposition has interjected that it has already happened—absolutely. Of course it has. But it has been very suitable for those on the other side to say, ‘That’s okay, we’ll support the privatisation now because we can get our hands on a big bucket of money to try and win some votes.’

The opposition’s policy has been for years and years not to privatise Telstra and now apparently that was all okay to get their hands on a bucket of money. It is not good enough. On the Future Fund side of things it is also very interesting that now it is okay to apparently steal money out of the Future Fund for any projects that the ALP decide are a really good idea. This is in contrast to the member for Lilley, who said on 15 August 2005:

... we have no guarantee this will be a Future Fund which is a locked box. It will be another pork-barrelling institution. ... If you’re going to have a Future Fund it has to be a locked box.

I wonder what has happened in the last couple of years, because apparently now it does not have to be a locked box anymore. It is absolutely fine for the ALP to get their hands on it, spring the lock, get the money out and use it to buy votes for a plan that Senator Conroy put forward last year that nobody took any notice of. Apparently now, under a new leader, it is worthy of another look.

But what is really appalling about this plan from the ALP is the fact that rural and regional Australians are going to miss out. It would be very interesting to see some more digging around and to ask Senator Conroy: who has done the costings? Where have the costings come from? Who has put the price on how much this is actually going to cost to roll out? Because this is taxpayers’ money we are talking about; it is not coming from some box somewhere. Where has that costing come from? It is very important that we ask that question because again there is no credibility. If we do not know where the costings have come from, there is no credibility.

In terms of where it is going, Senator Conroy throws out 98 per cent of Australia. Once you have a look at maps, you can see how incredibly large that remaining two per cent is. I see that Senator Conroy has not provided us with a single map of where he believes that 98 per cent to be. So we have a plan where we have seen no costings, we have seen no map of where it is going to and at the same time it is ripping out $2 billion from the communications fund that this government set up to ensure that rural and regional Australian telecommunications services are up to standard in the future. That has gone.

There is going to be no money left for the bush; it is all going to the cities for a plan
that competition will deliver. It will take away all the funding that has been set aside to make sure that rural and regional communities get the services in telecommunications that they deserve. It is not good enough and it is time that Senator Conroy came up with some figures for those costings and the maps so that people around this country, particularly in rural and regional communities, know where they are going to be missing out, because they will be missing out. (*Time expired*)

**Senator FORSHAW** (New South Wales) (3.25 pm)—We have just heard from Senator Nash for the National Party—a party that had a TV series named after it. It was called *Lost*. And to prove that, she is actually asking the Labor Party to provide her with a map. I want to deal with the answers given by Senator Abetz. Today is the first anniversary of the introduction of Work Choices. I might also say that it happens to coincide with the 50th anniversary of the Treaty of Rome, which led to the establishment of the European Union. But, whereas the 50th anniversary of the Treaty of Rome is something positive to celebrate, the first anniversary of Work Choices is not.

The Prime Minister, John Howard, received his present for the anniversary of Work Choices on the weekend in New South Wales when his Liberal Party in New South Wales suffered a devastating defeat. In an election where the Labor government had been in power for 12 years—one would think that after 12 years in government you might start to be under some threat of losing power due to the simple effluxion of time—what happened in New South Wales? The Liberal Party failed to win one seat back from the Labor Party. They did not take one seat off the Labor government. The only two new seats they won in New South Wales, they won back from Independents—the seats of Pittwater and Manly. Those seats up there on the North Shore, the jewel in the crown area of the Liberal Party’s representation in Sydney, had been held by Independents for a number of years and they finally won them back, but nothing else. Not a single other seat did they win back.

They are actually struggling to retain the seat of Goulburn where they had their star candidate, Pru Goward. She is, I believe, a quality person who could represent the Liberal Party well—the person who was rejected for the safe Liberal seat of Epping. The Liberal Party made her run in Goulburn and she is struggling to retain that seat for the Liberals. Why? She herself admits industrial relations were of major concern. When she was asked about this on Radio National she said: ‘They’—naturally the constituents—‘were telling me that their shift loadings were being cut and their incomes were going down.’ That was her response to what was an issue of concern. Industrial relations, Work Choices, were clearly a major issue in the New South Wales state election held last Saturday.

No matter how much the Prime Minister, Mr Hockey, the Minister for Employment and Workplace Relations, and Senator Coonan, the Minister for Communications, Information Technology and the Arts, try to dismiss it, it is a fact. It is a major issue. The Labor government under Morris Iemma went out there and campaigned on the issue of industrial relations. They said that they would not hand over any powers to John Howard and the federal government. They supported the retention of the New South Wales industrial relations system and the Industrial Relations Commission of New South Wales. It is a commission that has protected the conditions of millions of New South Wales workers and their families for over 100 years and it continues to do so.
When Senator Abetz gets up here today and tells us all about the great results that he says have been achieved as a result of Work Choices in 12 months, it is all a fiction. In New South Wales the vast majority of workers are regulated by the state industrial relations system, not by Work Choices. They are still under the state system. Prime Minister John Howard and the minister are trying to drag them into the federal system but fortunately a large proportion of workers in New South Wales still work under the state system. They are the ones who are producing the improvements in this economy, not this ramshackle government here.

Last Saturday, you guys were smashed politically in New South Wales and you will continue to be in opposition in New South Wales as long as you continue to support the discredited Work Choices system. The minister talks about delivering jobs for women, but you could not even deliver a safe seat to one of your own stars, for one of your female candidates, Pru Goward. (Time expired)

Question agreed to.

Climate Change

Senator ALLISON (Victoria—Leader of the Australian Democrats) (3.30 pm)—I move:

That the Senate take note of the answer given by the Minister for Finance and Administration, Senator Minchin, to a question without notice asked by Senator Allison today relating to climate change.

The minister chose to neither confirm nor deny that he is a climate change sceptic, and that is something that I expected. He remains to be convinced—at least, he says that some scientists remain to be convinced. That is true but it is only a handful of scientists, compared to the 2,500 eminent, world-renowned scientists in the IPCC who tell us that climate change is connected with greenhouse emissions—that there is a clear and unequivocal link—and they can demonstrate the science behind that claim.

Unfortunately, Minister Minchin keeps falling back on the old rhetoric—his government is not going to do anything that would threaten the foundation of the economy. The problem with that assertion is that what threatens our economy most is his plan of doing nothing. Minister Minchin would sooner see us at some time in the future go down the path of nuclear power or of so-called clean coal technology. Interesting this week were the comments made by a former head of BHP, Mr Paul Anderson. He ran BHP Billiton in 2002 and still sits on its board. He says that clean coal technology will pose the same, if not worse, long-term problems as nuclear waste. As we all know, no country in the world has adequately solved the long-term problem of storing nuclear waste. He says that people cannot believe it is safe to put nuclear waste five miles underground, when it is petrified in glass, so how are they going to feel safe putting pressurised gas underground? That is the point of today’s debate about climate change. This government would have us believe that the economy will go to ruin unless we proceed down the path of nuclear power and so-called clean coal technology—that is, sequestering, concentrating and pumping underground vast quantities of CO₂.

We know how to do it; we just do not know how to do it cheaply. It is not looking like we will know any time soon, despite the huge amounts of money that governments have been pouring into this, both here and in other parts of the world, America included. Scientists—if we are going to rely on scientists—tell us that this is expensive, that it is likely to remain expensive and that it is not likely to be the solution right around the country. There are places where it is just completely unsuitable for CO₂ to be pumped underground. If we are talking about trans-
porting CO₂ over long distances then the technology itself will be outdone by the cost of transporting the gas.

Minister Minchin remains a sceptic. He has no doubt been the voice in cabinet which has said: ‘Let’s do nothing for another couple of decades. Let’s use the economy as the excuse for that and talk about coalminers losing their jobs.’ We all know that coalminers will have to go through a transition phase, and they are already used to that.

Senator Abetz—They’re weasel words.

Senator ALLISON—In my home state of Victoria, Senator Abetz, coalminers and those working in the electricity sector have been displaced already by machines, by and large. So they know what it is to lose a huge workforce in the Latrobe Valley. Employment levels in the Latrobe Valley still have not recovered. They might do so if we put in new technology like wind turbine manufacturing or if we set up solar energy applications and industries in that area. These people deserve decent jobs, and they are more likely to get them in the renewable energy sector than they are in the coal industry. We can find work for them, but long term it is not going to be in the coal industry. This government seems to think we can go on polluting the atmosphere endlessly with emissions from coal-fired power stations, but it is not the case. The minister needs to drop his scepticism. He needs to read the Stern report, which says that our economies will be worse off if we take no action, and he needs to engage in this science. In his position, as Minister for Finance and Administration, it is important that he understand this. (Time expired)

Question agreed to.

PETITIONS

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

Nuclear Energy

To the honourable the President and members of the Senate in Parliament assembled. The petition of the undersigned draws to the attention of the Senate that Australians do not need or want an expanded nuclear industry, including nuclear power in Australia.

The petitioners say there is ample evidence that:

(a) engagement in the nuclear cycle leads to growth in nuclear weapons and potentially dirty bombs;

(b) uranium mining and enrichment and nuclear waste reprocessing are energy intensive processes that contribute significantly to greenhouse gas emissions;

(c) uranium is a finite, non-renewable, energy source;

(d) the nuclear cycle creates enormous amounts of long-lived radioactive and toxic chemical waste for which there is still no long-term storage solution;

(e) nuclear power is unviable without huge public subsidies;

(f) nuclear power reactors take 10-20 yrs to build and cannot address climate change in the short-term; and

(g) nuclear power generation is not accident free.

The petitioners therefore request that the Federal Government abandon its plans to expand uranium mining, enrich uranium, and build nuclear power plants in Australia, and instead introduce a carbon levy, encouraging investment in renewable energy and energy efficiency.

by Senator Allison (from 31 citizens)

Dental Health

Petition to the Honourable President and Members of the Senate assembled in Parliament:

This petition of certain citizens of Australia draws to the attention of the Senate, the long dental waiting lists and under funding of our public dental system.

Your Petitioners therefore ask the Senate to:
• Re-introduce the Commonwealth Dental Scheme and restore funding to public dental health,
• Reduce waiting times for public dental health services, and
• Train more public dentists.

by Senator McLucas (from 175 citizens)

Mr David Hicks

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

The Petition of the undersigned draws to the attention of the Senate the continuing detention of Australian citizen David Hicks at Guantanamo Bay, despite the charges against him being dropped. The Guantanamo Bay detention centre exists in contravention of international law and has been widely condemned by the leaders of other Western nations, the United Nations, respected jurists, and religious leaders, among others.

Your petitioners believe:

a) the United States’ military detention facility at Guantanamo Bay exists in a jurisdictional void, denying detainees’ fundamental human rights;
b) those suspected of any crime, including terrorist-related offences, have a right to a fair trial, to allow them an opportunity to defend all charges against them;
c) the US Military Commissions Act 2006 will not allow detainees to receive a fair trial;
d) South Australian David Hicks has been detained at Guantanamo Bay since January 2002; and
e) Mr Hicks should immediately be granted a fair trial or repatriated to Australia.

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

by Senator Stephens (from 72 citizens)

Petitions received.

NOTICES

Presentation

Senator Allison to move on the next day of sitting:

That the Senate:

(a) notes the resolution of the European Parliament on 14 March 2007 regarding the third session of the Nuclear Non-Proliferation Treaty (NPT) Preparatory Committee for the 2010 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons from 30 April to 11 May 2007 in Vienna, Austria, in:

(i) committing the European Union (EU), by consensus, to reviving and strengthening the NPT resolution of the European Parliament on 14 March 2007,
(ii) emphasising the importance of nuclear non-proliferation and disarmament, describing the proliferation of weapons of mass destruction (WMD) and their means of delivery as one of the most important threats to international peace and security,
(iii) recalling the statement in the report of the United Nations (UN) Secretary-General’s High Level Panel on Threats, Challenges and Change, A more secure world: our shared responsibility, that ‘we are approaching a point at which the erosion of the non-proliferation regime could become irreversible and result in a cascade of proliferation’,
(iv) taking into account the growing international consensus on the urgency of nuclear disarmament, promoted by the New Agenda Coalition and in the Rome Declaration of the World Summit of Nobel Peace Prize Winners (convened by Mikhail Gorbachev and the Mayor of Rome, Walter Veltroni) of 30 November 2006,
(v) highlighting the role of parliaments and parliamentarians in promoting nuclear non-proliferation and disarmament and in this perspective welcoming the ef-
forts of the global Parliamentary Network on Nuclear Disarmament, and

(vi) re-affirming its position that the NPT is the cornerstone of the global nuclear non-proliferation regime, the essential foundation for promoting cooperation in the peaceful uses of nuclear energy and an important element in furthering the goal of achieving nuclear disarmament and general disarmament in accordance with Article VI of the Treaty;

(b) notes that the resolution:

(i) calls upon all states whose activities violate the non-proliferation regime to stop their unwise and irresponsible behaviour and to comply fully with their obligations under the NPT, and reiterates its call on all states not part of the NPT to accede to the Treaty,

(ii) urges both the Council and the Commission to actively participate in the discussions being held at the Vienna NPT Preparatory Committee (PrepCom) meeting and to make a coordinated, substantial and visible contribution towards a positive outcome of the 2010 NPT Review Conference,

(iii) invites both the Council and the Commission to clarify which steps they envisage undertaking to strengthen the Non-Proliferation Treaty and to pursue effective multilateralism as stated in the December 2003 EU Strategy against the Proliferation of Materials and Weapons of Mass Destruction,

(iv) affirms that, for multilateral efforts to be effective, they must be set within a well-developed vision of achieving a nuclear-weapon-free world at the earliest possible date,

(v) urges the [EU] Presidency to produce regularly, before the Review Conference of 2010, a progress report on the implementation of each of the 43 measures adopted in the 2005 EU Common Position of 25 April 2005 relating to the 2005 NPT Review Conference, as well as a list of new commitments the Council hopes to achieve at the 2010 NPT Review Conference,

(vi) urges the [EU] Presidency to promote at PrepCom a number of disarmament initiatives, based on the ‘Statement of Principles and Objectives’ agreed upon at the end of the 1995 NPT Review Conference and on the ‘13 Practical steps’ agreed to unanimously at the Year 2000 NPT Review Conference, which should be improved and implemented in order to make progress (to avoid regress or standstill),

(vii) urges, in particular, the [EU] Presidency to break the deadlock on establishing a verifiable Fissile Material Cut-Off Treaty, to speed up the signature and ratification of the Comprehensive Nuclear-Test-Ban Treaty (CTBT) by all countries, especially those required for it to enter into force and a full stop of all nuclear weapon testing awaiting the CTBT to enter into force, and to prioritise the importance of lowering the risk of nuclear terrorism by developing and enforcing effective export and border controls on sensitive WMD-related materials, equipment and/or technologies,

(viii) calls on the international community to promote initiatives towards an international multilateral process of uranium enrichment under the control of the International Atomic Energy Agency (IAEA),

(ix) recommends that the European Parliament send a delegation to Vienna to participate in the NPT PrepCom events and requests the [EU] Presidency to include representatives of the European Parliament in the EU delegation (in accordance with the precedent set by the delegation to the UN Program of Action Review Conference in New York in 2006), and

(x) invites its President to forward this resolution to the Council, the Commission, the UN Secretary-General, and the governments and parliaments of the
member states of the UN, the Director General of the IAEA, the Parliamentary Network on Nuclear Disarmament, Mayors for Peace, as well as to the other organisers of the international conference on nuclear disarmament at the European Parliament, scheduled on 19 April 2007; and

(c) calls on the Australian Government to:
(i) endorse the EU motion in all respects,
(ii) send a cross-party delegation of Australian federal parliamentarians to Vienna to participate in the NPT PrepCom events,
(iii) encourage federal parliamentarians to form an Australian Parliamentary Network on Nuclear Disarmament, and
(iv) encourage mayors to form an Australian Mayors for Peace organisation.

Senator Barnett to move on the next day of sitting:

That the Legal and Constitutional Affairs Committee be authorised to hold a public meeting during the sitting of the Senate on Thursday, 29 March 2007, from 5.30 pm, to take evidence for the committee’s inquiry into the provisions of the Migration Amendment (Maritime Crew) Bill 2007.

Senator CAROL BROWN (Tasmania) (3.36 pm)—I, and also on behalf of Senators O’Brien, Polley and Sherry, give notice that on the next day of sitting I shall move:

That the Senate:
(a) congratulates the Tasmanian Tigers cricket team on winning their first ever Pura Cup final at Bellerive Oval on Friday, 23 March 2007;
(b) conveys, on behalf of all Tasmanians, the state’s pride and congratulations for the performances of all the team members who have played in the team over the course of the season; and
(c) expresses its thanks to all the team’s support staff and others who have contributed to the success of the team.

Senator Hutchins to move on the next day of sitting:

That the Senate:
(a) notes:
(i) the 200th anniversary of the Slave Trade Act, passed by the British Parliament on 25 March 1807, abolishing slavery in the United Kingdom,
(ii) the efforts of abolitionist, House of Commons MP, Mr William Wilberforce in leading the campaign against slavery, and
(iii) that slavery still occurs in some parts of the world, particularly in the trafficking of children and women in the sex trade; and
(b) records its condemnation of slavery in all its forms.

Senator Siewert to move on the next day of sitting:


Senator Nettle to move on the next day of sitting:

That the Senate—
(a) notes the start of preliminary hearings of the United States of America military commission established to try Mr David Hicks; and
(b) calls on the Government to return Mr Hicks to Australia.

Senator Robert Ray to move on the next day of sitting:

That the Senate:
(a) regrets the actions of Senator Heffernan in gatecrashing the press conference of a Labor front-bencher;
(b) notes that this is the second time Senator Heffernan has committed such an offence;
(c) calls on the Prime Minister (Mr Howard) to counsel his close friend, Senator Hef- ferman, as to the courtesies extended to fellow parliamentarians; and

(d) believes that retaliation for Senator Hef- ferman’s actions will not add to the dignity of the parliamentary process.

Senator Abetz to move on the next day of sitting:

That the government business orders of the day relating to the Tax Laws Amendment (2006 Measures No. 7) Bill 2006 and the Tax Laws Amendment (2007 Measures No. 1) Bill 2007 may be taken together for their remaining stages.

Senator Stott Despoja to move on the next day of sitting:

That the Senate:

(a) notes that Monday, 26 March 2007 marks the arraignment of Mr David Hicks before a military commission on a single charge of providing material support for terrorism; and

(b) recognises that the trial process at Guan- tanamo Bay allows for conviction on evidence obtained by coercion and evidence that detainees will never be allowed to see, removal of the right to a speedy trial, and removal of the right of habeas corpus.

Senator Fielding to move on the next day of sitting:

That the following bill be introduced: A Bill for an Act to give back Australian workers their public holidays, meal breaks, penalty rates and overtime and to protect their redundancy, and for related purposes, Workplace Relations (Restoring Family Work Balance) Amendment Bill 2007.

Senator Milne to move on the next day of sitting:

That the Senate calls on the Government to ensure that both the Stockholm Convention and the Biodiversity Convention will be upheld in assessing Gunns Limited proposed pulp mill in Tasma- nia.

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

That the Senate calls on the Minister for the Environment and Water Resources to ensure that federal guidelines for assessing Gunns Limited proposed pulp mill in Tasmania include the impact, direct and indirect, on rare and endangered species.

Senator ABETZ (Tasmania—Minister for Fisheries, Forestry and Conservation) (3.37 pm)—I give notice that, on the next day of sitting, I shall move:

That the provisions of paragraphs (5) to (8) of standing order 111 not apply to the Migration Amendment (Border Integrity) Bill 2006, allowing it to be considered during this period of sittings.

I also table a statement of reasons justifying the need for this bill to be considered during these sittings and seek leave to have the statement incorporated in Hansard.

Leave granted.

The statement read as follows—

Purpose of the Bill

The bill amends the Migration Act 1958 to strengthen the integrity of Australia’s borders by improving measures to combat fraud and expediting passenger processing.

Reasons for Urgency

It is important that these amendments are made as a matter of urgency.

In October 2006 a joint media release issued by the then Minister for Immigration and Multicultural Affairs and the Minister for Justice and Customs announced the introduction of the bill to strengthen arrangements at Australia’s borders and to prepare the way for enhanced security processing using biometric identifiers.

The Minister for Immigration and Multicultural Affairs said that the amendments will allow for the introduction of an automated border process known as SmartGate that will begin operating in selected Australian international airports from early 2007. The media release also announced that SmartGate will be rolled out from early 2007 and will allow passengers with certain biometric e Passports to be processed using a specially de- signed kiosk.
In addition to allowing self-processing of large volumes of travellers at the border via SmartGate, the bill will also enable New Zealand citizens who hold an e-passport to apply for and be granted a special category visa using the automated system without the need for a clearance officer to be present. These initiatives will free Customs and Department of Immigration and Citizenship (DIAC) resources at international airports to deal with high-risk groups of arrivals. The initiatives will also lead to savings for both agencies and will strengthen inwards border security measures by enabling the use of biometric identification technologies. These technologies will not be able to be extended to enhance Australia’s border security measures until the legislation proceeds. Customs and DIAC will also be unable to deliver what is a key government strategy designed to facilitate passenger processing via SmartGate to the proposed target audience.

Postponement

The following item of business was postponed:

Business of the Senate notice of motion no. 2 standing in the name of Senator Milne for today, proposing the reference of a matter to the Environment, Communications, Information Technology and the Arts Committee, postponed till 29 March 2007.

LEAVE OF ABSENCE

Senator WEBBER (Western Australia) (3.38 pm)—by leave—I move:

That leave of absence be granted to Senator Kirk for the period 26 March to 29 March 2007, inclusive, on account of overseas parliamentary business.

Question agreed to.

FOOD SAFETY (TRANS FATS) BILL 2007

First Reading

Senator NETTLE (New South Wales) (3.39 pm)—I move:

That the following bill be introduced: A Bill for an Act to prohibit the addition of synthetic trans fatty acids to food, and for related purposes.

Question agreed to.

Senator NETTLE (New South Wales) (3.39 pm)—I move:

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

Question agreed to.

Bill read a first time.

Second Reading

Senator NETTLE (New South Wales) (3.40 pm)—I move:

That this bill be now read a second time.

I table the explanatory memorandum and seek leave to have the second reading speech incorporated in Hansard.

Leave granted.

The speech read as follows—

The Food Safety (Trans Fats) Bill 2007 aims to reduce Australian public exposure to unsafe synthetic trans fatty acids, which are known to the public as trans fats.

This bill is urgently required as the Howard Government’s response to the danger of trans fats has been completely inadequate. The gentle pace of industry driven self regulation is totally inappropriate given the serious risks to community health.

The bill prohibits the manufacturing, distributing, offering for sale, selling or otherwise trading in food containing synthetic trans fatty acids by both constitutional corporations and individuals in particular circumstances.

The bill focuses on synthetic trans fatty acids which are defined as non-naturally occurring fats formed by the hydrogenation of vegetable oils. This is to distinguish the synthetic variety from naturally occurring trans fatty acids that are found generally in relatively small quantities in some foods.

The bill prohibits the addition of synthetic trans fatty acids to food, within the bounds of Commonwealth constitutional competence. This will set a standard for the banning of dangerous synthetic trans fatty acids, which the States and Territories should follow.
Synthetic trans fatty acids are produced by the partial hydrogenation of liquid vegetable oils to make them solidify. This is added to certain foods to create enhanced physical properties that appeal to the food processing industry, such as increased shelf life and improved texture. Trans fats are typically found in fast foods such as chips, chicken nuggets and pizza, as well as packaged snacks and bakery products such as biscuits, cakes, pies, and doughnuts.

There is little argument that trans fats pose a serious health risk. Even the Department of Health and Ageing accepts the link between the consumption of trans fats and the risk factors for heart disease as conceded by the then Assistant Minister for Health and Ageing, Christopher Pyne in a media release dated the 12 March 2007.

The scientific evidence shows synthetic trans fatty acids raise levels of dangerous low-density lipoprotein cholesterol while at the same time they reduce levels of the good cholesterol called high-density lipoprotein. This has been shown to be a significant contributor to coronary heart disease which kills thousands of Australians each year. There are also evidential links that suggest trans fats contribute to the increase in diabetes.

The Australian Greens believe that community health is far more important than food industry profit, and as this issue is about food safety, immediate action is required to alleviate the danger.

This bill is designed to create a legislative ban on the use of trans fats as this is the only way to guarantee the safety of Australian consumers.

This bill is consistent with community concern about this issue. The Greens agree with the Australian Medical Association call on 24 November, 2006 for a complete ban on the addition of trans fatty acids.

Christopher Pyne responded to the AMA on ABC radio’s PM programme on 19 January 2007 by claiming:

“You can’t actually ban trans-fats in our diet. They are in meat and they’re in dairy products. So I think the AMA, I can see their good faith is towards reducing trans-fats, but you can not simply ban trans-fats”.

Clearly Mr Pyne didn’t listen, or perhaps didn’t want to listen to what the AMA were calling for.

The AMA, like the Australian Greens, are talking about eliminating the ‘addition’ of synthetic trans fats, not the banning of foods with naturally occurring trans fats such as those found in small amounts in some meat and dairy products.

The banning of synthetic trans fats is gathering momentum around the world. In December 2006, New York City banned its more than 20,000 restaurants from using trans-fats in their food. In 2006 the USA Food and Drug Administration codes also mandated the labelling of trans fat contents on all foods sold in the USA. Denmark introduced a country-wide ban in 2004, which affected both restaurants and food manufacturers. And a Canadian parliamentary task force has just recommended the legislative phase out of trans fats based on the Denmark example.

In Australia the response to this significant community health issue has been slow, with the Coalition seemingly more concerned about offending the food industry rather than protecting public health.

Last year, the Federal Government set up a working group to look at trans fats, which included representatives from Food Standards Australia and New Zealand, the National Heart Foundation, the Dieticians Association, and the Food and Grocery Council.

Food Standards Australia and New Zealand have, according to their web site, been doing some dietary modelling which has concluded that trans fats make up only 0.6 percent of the average Australian’s food intake. This has been proudly trumpeted by Christopher Pyne, who argues this is a relatively low average amount, and is well below the World Health Organisation’s recommended maximum intake of 1 percent. But the problem isn’t the average intake, the problem is individual foods. This was reinforced on ABC Radio’s PM broadcast on 19 January 2007, by respected Australian nutritionist Dr Rosemary Stanton who stated:

“trans-fats can be as high as 40 per cent in some fast foods.”

She added:

“…with this sort of stick your head in the sand attitude that it’s not a really big problem here [in Australia], there is absolutely nothing to stop a
company putting out a particular product with 40 per cent of the fat being present as trans-fats.”

The latest news from the Government was Christopher Pyne’s announcement on 12 March 2007 where a fast food industry roundtable was convened. This group agreed to rather vague notions about the setting up of a ‘plan’ by September, to work out a self-regulating way of dealing with the problem. The Greens and the community know what self-regulation is all about. To use the well worn cliché, it is like putting the fox in charge of the chicken coup.

Mr Pyne said in an article in the Age on 13 of March 2007 that he ‘expected’ most companies – that is most not all – would follow a plan adopted by McDonalds that “almost eliminated” the use of trans fats. The problem with this example is that it has taken McDonalds 3 years to make any changes after their initial announcement. Can we conclude from this that only ‘most’ Australian companies ‘may’ get onto the problem by 2010? Well the Greens think this is simply not good enough. That is why we have drafted this bill to ban outright the addition of this poison in our foods. But perhaps we shouldn’t be too surprised as this is the Government that has failed to put in place even the most basic system of labelling products with trans fat content, so consumers can be fully informed to make their own choice. So much for the free-market philosophy of being ‘free to choose’.

So the Government has failed to introduce even the most basic requirement of labelling food so consumers know what has trans fat in it and can therefore avoid such products. But more importantly the Government has also failed on the crucial step of stopping trans fats being added to our food. That is why The Greens have been required because of our concern for public health to introduce this legislation. The Greens recognise the States have their own jurisdictional capacity to improve upon the scope of this bill. That is why the bill has been drafted within the bounds of Commonwealth constitutional competence.

Unlike some recent Government legislation, this bill is intended to operate within the bounds of Commonwealth constitutional competence and is not intended to override state legislation. Consequently this bill does not abuse the recent extensions to the Corporations Power.

The bill expresses the intention of the Commonwealth Parliament that State Parliaments may adopt the provisions of this Act in their own legislation, and also in cooperation with the Commonwealth via the Australia New Zealand Food Standards Code.

In light of the knowledge that trans fats significantly increase the risk of heart disease, The Greens believe the Howard Government must act immediately to reduce Australia’s exposure. While coronary heart disease is the leading single cause of death in Australia, the Government’s failure to act to ban these substances is irresponsible.

I commend this bill to the Senate.

I seek leave to continue my remarks later.

Leave granted; debate adjourned.

PROFESSOR TANYA REINHART

Senator NETTLE (New South Wales)

(3.40 pm)—I move:

That the Senate:

(a) notes the recent death of Israeli linguist, author and peace activist Professor Tanya Reinhart;
(b) sends its condolences to her family and friends; and
(c) recognises the contribution that Professor Reinhart has made to achieving peace and justice in Palestine and Israel.

Question agreed to.

WORLD DAY FOR WATER

Senator SIEWERT (Western Australia)

(3.41 pm)—I move:

That the Senate:

(a) notes:

(i) that Thursday, 22 March 2007, has been designated World Day for Water 2007, and that this year’s theme is ‘Coping with Water Scarcity’;
(ii) that the South Australian Government has indicated that it will cut water flows to nine key lakes, wetlands and

CHAMBER
lagoons if its water allocation falls below 50 per cent or weir levels cannot be sustained, and

(iii) the comments by Murray-Darling Basin Commission Chief Executive Wendy Craik, that climate change will have significant long-term impacts on inflows into the Murray-Darling river system; and

(b) calls on the Government to ensure that:

(i) water allocations are acquired such that supplies to wetlands in South Australia, including Lake Bonney, Gurra Gurra Lakes, Horseshoe Lagoon, Ross Lagoon and Murbko South Wetland are maintained, and

(ii) water management plans in the Murray-Darling Basin are consistent with sustainable extraction levels and can take into account projections of reduced inflows into the basin due to climate change.

Question put.

The Senate divided. [3.45 pm]

(The President—Senator the Hon. Paul Calvert)

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

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

Majority........ 2

AYES

Allison, L.F.  Bartlett, A.J.J.
Bishop, T.M.  Brown, B.J.
Brown, C.L.  Campbell, G.
Carr, K.J.  Conroy, S.M.
Crossin, P.M.  Fielding, S.
Forshaw, M.G.  Hogg, J.J.
Hurley, A.  Hutchins, S.P.
Ludwig, J.W.  Lundy, K.A.
Marshall, G.  McEwen, A.
McLucas, J.E.  Milne, C.
Moore, C.  Murray, A.J.M.
Nettle, K.  O’Brien, K.W.K.
Polley, H.  Ray, R.F.
Siewert, R.  Stephens, U.
Sterle, G.  Stott Despoja, N.
Webber, R.  Wortley, D.

NOES

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

PAIRS

Evans, C.V.  Coonan, H.L.
Faulkner, J.P.  Ferris, J.M.
Kirk, L.  Brandis, G.H.
Sherry, N.J.  Lightfoot, P.R.
Wong, P.  Minchin, N.H.

* denotes teller

Question negatived.

MURRAY-DARLING BASIN

Senator SIEWERT  (Western Australia)

(3.48 pm)—I move:

That the Senate:

(a) notes:

(i) the listing of the Murray-Darling Basin in the WWF study ‘World’s top 10 rivers at risk’;

(ii) that threats such as invasive species, over-allocation and climate change are the reasons the river system has been listed as ‘at risk’, and

(iii) the report’s recommendations that returning significantly greater environmental flows to the river will have major benefits in reducing the prevalence of some invasive species and improving river health; and

(b) calls on the Government to begin purchasing water licences without further delay in
order to return environmental flows to the Murray-Darling river system.

Question put.
The Senate divided. [3.49 pm]
(The President—Senator the Hon. Paul Calvert)
Ayes…………… 32
Noes…………… 34
Majority……… 2

AYES
Allison, L.F.  Bartlett, A.J.J.
Bishop, T.M.  Brown, B.J.
Brown, C.L.  Campbell, G.
Carr, K.J.  Conroy, S.M.
Crossin, P.M.  Fielding, S.
Forshaw, M.G.  Hogg, J.J.
Hurley, A.  Hutchins, S.P.
Ludwig, J.W.  Lundy, K.A.
Marshall, G.  Milne, C.
McLucas, J.E.  Milne, A.
Moore, C.  Murray, A.J.M.
Nettle, K.  O’Brien, K.W.K.
Polley, H.  Ray, R.F.
Siewert, R.  Stephens, U.
Sterle, G.  Stott Despoja, N.
Webber, R.  Wortley, D.

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

PAIRS
Evans, C.V.  Minchin, N.H.
Faulkner, J.P.  Ferris, J.M.
Kirk, L.  Brandis, G.H.
Sherry, N.J.  Lightfoot, P.R.
Wong, P.  Coonan, H.L.

* denotes teller

Question negatived.

CLIMATE CHANGE
Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (3.52 pm)—I move:
That the Senate endorses the climate change action plan proposed by the Australian Council of Trade Unions, including its call for:
(a) government subsidies for energy efficient retrofitting of buildings;
(b) mandatory green building codes;
(c) large-scale reuse of treated effluent;
(d) improved vehicle fuel efficiency;
(e) greater use of shipping to cut greenhouse gas emissions;
(f) the right to reject work which harms the environment; and
(g) a mandatory renewable energy target of 10 per cent, as called for by the Australian Greens in 2002.

Question put.
The Senate divided. [3.53 pm]
(The Deputy President—Senator JJ Hogg)
Ayes…………… 4
Noes…………… 52
Majority……… 48

AYES
Brown, B.J.  Milne, C.
Nettle, K.  Siewert, R. *

NOES
Abetz, E.  Adams, J.
Barnett, G.  Bernardi, C.
Bishop, T.M.  Boswell, R.L.D.
Brown, C.L.  Campbell, G.
Chapman, H.G.P.  Colbeck, R.
Conroy, S.M.  Eggleston, A.
Ferguson, A.B.  Fielding, S.
Fierravanti-Wells, C.  Fifield, M.P.
Forshaw, M.G.  Heffernan, W.
Hogg, J.J. Humphries, G.
Hurley, A. Hutchins, S.P.
Johnston, D. Joyce, B.
Kemp, C.R. Ludwig, J.W.
Lundy, K.A. Macdonald, I.
Macdonald, J.A.L. Marshall, G.
Mason, B.J. McEwen, A.
McLucas, J.E. Moore, C.
Nash, F. O’Brien, K.W.K.
Parry, S. * Patterson, K.C.
Payne, M.A. Polley, H.
Ray, R.F. Ronaldson, M.
Santoro, S. Scullion, N.G.
Stephens, U.Sterle, G.
Troeth, J.M. Trood, R.B.
Vanstone, A.E. Watson, J.O.W.
Webber, R. Wortley, D.
Brown, C.L.  Campbell, G.
Chapman, H.G.P.  Colbeck, R.
Conroy, S.M.  Crossin, P.M.
Eggleston, A.  Ferguson, A.B.
Ferravanti-Wells, C.  Fifield, M.P.
Forshaw, M.G.  Heffernan, W.
Hogg, J.J.  Humphries, G.
Hurley, A.  Hutchins, S.P.
Johnston, D.  Kemp, C.R.
Ludwig, J.W.  Lundy, K.A.
Macdonald, I.  Macdonald, J.A.L.
Marshall, G.  Mason, B.J.
McEwen, A.  McLucas, J.E.
Moore, C.  Nash, F.
O’Brien, K.W.K.  Parry, S.
Patterson, K.C.  Payne, M.A.
Polley, H.  Ray, R.F.
Ronaldson, M.  Santoro, S.
Scullion, N.G.  Stephens, U.
Sterle, G.  Troeth, J.M.
Trood, R.B.  Vanstone, A.E.
Watson, J.O.W.  Webber, R. *
Wortley, D.
* denotes teller

Question negatived.

MR DAVID HICKS

Senator NETTLE (New South Wales) (3.57 pm)—I move:
That the Senate:
(a) notes the ‘Bring David Hicks Home’ campaign launched in Bennelong, Sydney, in the week beginning 18 March 2007 by GetUp; and
(b) calls on the Government to bring Mr Hicks home.

Question put.
The Senate divided.  [3.58 pm]

The Deputy President—Senator JJ Hogg

Ayes…………… 9
Noes…………. 51
Majority……… 42

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

NOES
Abetz, E.  Adams, J.
Barnett, G.  Bernardi, C.
Bishop, T.M.  Boswell, R.L.D.

IRAQ

Senator ALLISON (Victoria—Leader of the Australian Democrats) (4.01 pm)—I move:
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
(d) 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 sub-standard 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.

Question negatived.

EUTHANASIA

Senator ALLISON (Victoria—Leader of the Australian Democrats) (4.02 pm)—Mr Deputy President, before I move general business motion No. 753, standing in my name for today and relating to euthanasia, I seek leave to table a book of messages to politicians about end-of-life choices presented to me and others earlier today.

Leave granted.

Senator ALLISON—I move:

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.

Question negatived.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (4.02 pm)—by leave—Mr Deputy President, I ask you to note that the Greens supported both of the Democrat motions.

DOCUMENTS

Tabling

The ACTING DEPUTY PRESIDENT (Senator Watson)—I present a report on a visit by the President to Cambodia and Vietnam which took place in February this year.

COMMITTEES

Foreign Affairs, Defence and Trade Committee: Joint Report

Senator PARRY (Tasmania) (4.04 pm)—On behalf of the Chair of the Joint Standing Committee on Foreign Affairs, Defence and Trade, I present a report on Australia’s relationship with Malaysia. I seek leave to move a motion in relation to the report.
Leave granted.

Senator PARRY—I move:

That the Senate take note of the report.

I seek leave to incorporate a tabling statement in Hansard.

Leave granted.

The speech read as follows—

On behalf of the Foreign Affairs Sub-Committee of the Joint Standing Committee on Foreign Affairs, Defence and Trade, I wish to table the Committee’s report: Australia’s relationship with Malaysia.

It is fitting, Mr President, that in the year which marks 50 years since Malaysia achieved independence the Committee has reviewed Australia’s relationship with our near neighbour.

A theme pervading this report is that Australia’s relationship with Malaysia is changing—from one of support in the early years, to the present collaboration of important trading nations.

Australia-Malaysia relations received a significant boost when in April 2005 the Malaysian Prime Minister, Dato’ Seri Abdullah Badawi visited Australia.

In the same year another important step was the creation of the Australia-Malaysia Institute. The Institute’s aim includes increasing knowledge and promoting understanding between the people and institutions of Australia and Malaysia, and enhancing people-to-people links.

Australia’s defence relationship with Malaysia is underpinned by the Five Power Defence Agreement and the continuing presence of Australian Defence Force personnel at Malaysia’s Butterworth airbase. The stationing of ADF personnel at the base is of significant value to the Australia-Malaysia relationship. Not only does it provide useful mutual understanding at the military level, but also at the cultural level.

This defence relationship is overwhelmingly positive and provides substantial benefits for Australia. Malaysia’s strong military professionalism and capacity ensures it is able to respond effectively to military and humanitarian tasks and cooperate with the ADF to address security challenges.

An example of this was in 2004 when RMAF Butterworth operated as a forward logistics hub for ADF operations in Aceh. The ADF’s facilities at the base together with locally deployed civilians and deployed units enabled Australia to rapidly respond to the 2004 tsunami.

Australia and Malaysia enjoy a significant trading relationship with total two-way trade amounting to $11.35 billion in 2005–06. Malaysia has become Australia’s second-largest trading partner in ASEAN and ninth largest trading partner over all.

Trade between Australia and Malaysia is complementary—Australia exports to Malaysia, natural resources, dairy products and sugar, whereas Australia imports from Malaysia crude petroleum, furniture, and electronic products. Malaysia, however, enjoys a significant balance of trade in its favour especially in the merchandise sector.

A growing niche market for Australian primary producers is Halal-certified products. As a major primary produce exporter, Australia has an interest in promoting an efficient Halal market. To this end the Committee has made two recommendations directed to the Department of Agriculture, Fisheries and Forestry aimed at facilitating the process of Halal certification and export of Halal produce to Muslim countries.

The Committee has identified and discussed several challenges facing trade and investment with Malaysia. These include:

- competition for the investment dollar from China;
- intellectual property protection and the counterfeiting of goods;
- Malaysia’s foreign equity rules; and
- the accreditation of educational courses and qualifications.

The Committee is aware that these issues form part of the current free trade agreement negotiations. From the evidence provided, the Committee
believes that both Australia and Malaysia are approaching these negotiations in good faith with real progress being achieved.

A further issue raised with the Committee was the need for Malaysian authorities to test Australian wine imports. The Committee is disappointed that wine already tested by accredited laboratories in Australia needs to be retested in Malaysia, thereby significantly increasing landed costs. The Committee supports efforts by Australian officials to address the issue through the FTA negotiations.

Malaysia is the seventh most important source country for visitors to Australia. A recent innovation for these visitors has been the introduction of an Electronic Travel Authority which can be obtained over the Internet. Of concern to the Committee, however, is an increase in the numbers of Malaysian passport holders being denied entry, and the growth in the proportion of Malaysian visitors breaching their visa conditions.

The Committee has recommended that the Department of Immigration and Citizenship review the reasons for these increases and provide strategies to the Minister for addressing the problem.

Australia and Malaysia share a strong history of educational links, dating back to the 1950s and the Colombo Plan. Australia is the largest overseas provider of education services to Malaysia, and Malaysia rates as Australia’s fifth largest source for offshore student enrolments in 2005.

Education is clearly both a vital platform for the broader bilateral relationship and economically beneficial for Australia. It is estimated that there are some 250,000 Malaysians who are alumni of Australian educational institutes, who have helped develop strong ties between Australia and Malaysia across society, business and politics.

It is important that universities, business and government continue to encourage Australian students to study in Malaysia, and provide financial or professional support in doing so. Malaysia is a strategically important country for Australia and it is important that interest in and understanding of Malaysian cultures and religions be fostered amongst Australians.

The Committee considers that Australia has a very productive R&D relationship with Malaysia. There is potential for increased Australian involvement as Malaysia increases R&D spending as a proportion of gross domestic product to 1.5 per cent in 2010.

Australia’s relationship with Malaysia will continue to evolve. Doubtless there will be challenges, but the Committee is confident the good will exists to overcome them.

In closing, Mr President, I would like to thank all those who provided submissions and gave evidence at the public hearings. Finally, I thank my colleagues on the Foreign Affairs Subcommittee, and the secretariat.

Mr President, I commend the report to the Senate.

Question agreed to.

Treaties Committee Report

Senator WORTLEY (South Australia) (4.04 pm)—On behalf of the Joint Standing Committee on Treaties, I present report No. 83, Treaties tabled on 20 June (2), 17 October, 28 November (2) 2006 and CO2 sequestration in sub-seabed formations. I seek leave to move a motion in relation to the report.

Leave granted.

Senator WORTLEY—I move:

That the Senate take note of the report.

Report No. 83 contains the committee’s findings on four treaty actions. The committee found all the treaties reviewed to be in Australia’s national interest and, where a recommendation was required, recommended that binding treaty action be taken. I will comment on all the treaties reviewed in report No. 83. The agreement with Mexico on the promotion and reciprocal protection of investments and the protocol will benefit investors by offering most favoured nation status in regard to Australian investments. It will also provide guarantees for investors, including on issues such as nationalisation, and establish mechanisms for resolving investment disputes.
The committee delayed reporting on this treaty until issues raised by the Queensland government were addressed by the Department of Foreign Affairs and Trade. The Queensland government had concerns regarding the expropriation and compensation provisions of the agreement. DFAT explained that these are necessary to provide protection for Australian investors overseas, that they are common for our other investment agreements and that taxation or revoking permits was unlikely to constitute expropriation under international law. These issues were resolved in February this year. This is an example of the Treaties Committee holding up a report until all concerns have been satisfactorily answered. The committee takes its responsibility for consultation seriously and, where it can, will address issues raised during its consultation before tabling its recommendation and report.

The amendments to the schedule to the International Convention for the Regulation of Whaling continue the moratorium on commercial whaling. The committee understands the importance of whale conservation and strongly supports the treaty amendments which give effect to the ban on commercial whaling. However, the committee is concerned by recent events which jeopardise the effectiveness of the moratorium. Iceland’s decision to resume commercial whaling contravenes the convention, and Japan’s continued whaling under the scientific research provision of the treaty undermines the object and purpose of the convention. The committee was informed that Japan took 853 minke whales and 20 finwhales as part of its whaling program in the Southern Ocean in 2005.

The committee tabled its recommendations relating to the agreement with Cambodia concerning the transfer of sentenced persons in December last year, approximately three months earlier than was required. Report No. 82 was a short report which consisted mainly of the recommendation that binding treaty action be taken in relation to the agreement. It was important to the committee that any Australian who would apply for prisoner exchange under the agreement would be able to do so as soon as possible. The committee is aware that one Australian serving a prison sentence in Cambodia was arrested in 2005 when he was 16 years old.

Cambodia is not part of any multilateral convention relating to the transfer of prisoners and has not completed a bilateral transfer-of-prisoners agreement with any other country. As you see, Mr Acting Deputy President, Australia’s treaty with Cambodia is a significant achievement and one which will allow Australian prisoners currently serving sentences in Cambodia to serve their sentences in Australia. I seek leave to incorporate the remainder of the tabling statement.

Leave granted.

The statement read as follows—

The Amendment to Annex 1 to the London Protocol will allow Australia and other countries to capture and store carbon dioxide in sub-seabed geological formations. The London Protocol protects the marine environment from pollution related to sea dumping. The Amendment to the London Protocol was required to ensure that carbon dioxide could be captured and stored consistently with Australia’s international obligations under the Protocol. Chevron are currently proposing to strip CO2 from the natural gas it recovers and inject it into the Dupuy Formation 2000 metres below Barrow Island. Sub seabed geosequestration of carbon dioxide is one of a number of practical measures which can reduce atmospheric carbon emissions and consequent climate change.

Mr President, I commend the report to the Senate.

Senator BARTLETT (Queensland) (4.08 pm)—I would like to speak briefly to this report as well. As Senator Wortley has mentioned, it deals with four different treaties or agreements, none of which are related to each other. I wish to speak specifically to the
amendment to annex 1 to the 1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter.

I emphasise that I agree with the committee’s recommendation in this section. The committee supports the amendment. It is worth while noting this particular amendment nonetheless because it deals with the contentious and important issue of geosequestration. The purpose for the amendment to the London protocol was to ensure that Australia and other countries would not be in contravention of the protocol if we engaged in geosequestration of carbon dioxide beneath the ocean floor. Carbon geosequestration was not contemplated when the protocol was being developed, so carbon dioxide was not listed as being a material that was permitted to be disposed of under the seabed.

Because Australia is now exploring geosequestration as one of a range of potential climate change measures, an amendment to the protocol was required. Of course, amending the annex to the protocol to enable geosequestration of CO₂ does not automatically mean that it has been given the full go-ahead. But it is worth noting some of the detail in the relevant chapter of the report about the nature of geosequestration, and the reality that CO₂ has been injected into declining oilfields in Texas since the early 1970s as a way of enhancing oil recovery.

The issue with regard to injecting CO₂ directly into an underground sedimentary basin is ensuring that the basin is the appropriate location for it and that it will not escape, that it will remain down there for prolonged periods of time. This will require a lot of future research and exploration to determine its feasibility, both geologically and from a cost and logistical point of view. There is a need for an appropriate geological barrier to prevent the upward movement of CO₂, but it is certainly the case that there are appropriate geological barriers in some places.

I believe it is worth noting this particular aspect of the report, purely because it contains some details and points to an area that is already being debated in the public arena and will be debated further. I am one of those who are not particularly comfortable with the terminology ‘clean coal’. I think it is a bit of a misnomer. Having said that, if carbon capture and storage actually can be made technologically and commercially viable, it is obviously a measure that could be beneficial in reducing the overall amount of carbon emissions in the atmosphere. My personal view is that, rather than seeking to pick winners at the start, we should be exploring options that have any feasibility of technological and financial success in reducing the amount of carbon dioxide in the atmosphere and that do not have any other flow-on consequential negative environmental impacts. Geosequestration may be one of those.

It should be emphasised that sub-seabed geosequestration of carbon dioxide, which is what is being contemplated, is not the same as ocean sequestration, where CO₂ is pumped directly into water at depths greater than a thousand metres. At depths greater than 3,000 metres, CO₂ is denser than sea water, and there is a theory that it could be dispersed into the deep ocean or deposited to form lakes, so-called, of liquid CO₂ on the ocean floor. It is worth noting, though, that that technology is a lot more controversial and that ocean sequestration is not currently under consideration by Australia or the consultative meeting and is not permitted by this amendment to annex 1 to the London protocol. I would also say that the amendment, as is detailed in this report, seeks to ensure that the CO₂ gas stream sequestered—if that does end up happening—is overwhelmingly CO₂ and does not contain industrial wastes and other prohibited materials.
Whilst there is controversy around aspects of carbon capture and storage, and geosequestration is the storage part of the equation, I think the committee has considered adequately some of the potential tangential concerns that people have when such technology is talked about, such as it being a cloak for other substances being disposed of or approaches like ocean sequestration. Allowing this amendment to the annex to occur does not give an open slather go-ahead to geosequestration. As the report notes, such projects would still require assessment and approval in accordance with the articles of the protocol plus the Environment Protection (Sea Dumping) Act and the Environment Protection and Biodiversity Conservation Act. So there are still a range of mechanisms in place that would require the assessment of any geosequestration to occur.

The committee comes to the following conclusion in the final paragraph of the chapter, paragraph 5.22:
The Committee supports the sub-seabed geosequestration of CO$_2$ streams as one of a suite of measures to mitigate climate change and ocean acidification and recognises that the amendment to Annex 1 of the London Protocol will allow Australia and other countries to pursue this option.

As a member of the Treaties Committee and one who is happy to sign off on this report, including that chapter and that conclusion, my support for sub-seabed geosequestration of CO$_2$ is of course contingent on it being demonstrated to be technologically feasible as well as economically viable. It would not be being done if it were not economically viable. There is still a way to go with regard to that, but speaking personally I do not see any problem with pursuing research into that area.

It needs to be stated nonetheless that, whilst it is valid to pursue research in that area, there is a tendency amongst at least some on the government side to see the whole carbon capture and storage issue as the big solution alongside the laughable option of nuclear power. Whilst geosequestration may be one option, it will only ever be a part of the solution. We need to be putting a lot more energy, effort and resources into renewable energies, much more so than has occurred. It should not, however, be an either-or situation in my view. We need to pursue all options that do not have wider environmental impacts, which nuclear obviously does. I think we can do a lot more yet before we can determine what the best paths forward are and whether or not geosequestration—carbon capture and storage—would be one of them. I seek leave to continue my remarks.

Leave granted; debate adjourned.

Employment, Workplace Relations and Education Committee
Additional Information

Senator NASH (New South Wales) (4.18 pm)—On behalf of the chair of the Employment, Workplace Relations and Education Committee, Senator Troeth, I present additional information received by the committee on its inquiry into the provisions of the Commonwealth Radioactive Waste Management Legislation Amendment Bill 2006.

HEALTH INSURANCE AMENDMENT (PROVIDER NUMBER REVIEW) BILL 2007
First Reading

Bill received from the House of Representatives.

Senator COLBECK (Tasmania—Parliamentary Secretary to the Minister for Finance and Administration) (4.19 pm)—I move:

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

Question agreed to.
Bill read a first time.

Second Reading

Senator COLBECK (Tasmania—Parliamentary Secretary to the Minister for Finance and Administration) (4.19 pm)—I move:

That this bill be now read a second time.

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

Leave granted.

The speech read as follows—

HEALTH INSURANCE AMENDMENT (PROVIDER NUMBER REVIEW) BILL 2007

This Bill proposes an amendment to the Health Insurance Act 1973 (the Act) relating to the arrangements for reviewing the operation of sections 19AA, 3GA and 3GC of the Act, collectively known as the Medicare provider number legislation.

These amendments are the result of the widespread acceptance of the legislation since its introduction in 1996, and aim to change the frequency of the review from two to five years.

The Medicare provider number legislation contained within section 19AA of the Act was introduced in 1996. At the time of its introduction it was considered a contentious move as it was perceived it could harm the future employment opportunities of junior doctors.

In 1999, a review of the legislation found that these concerns were misplaced, and that the legislation was working well. In 2001, the Act was amended to require a biennial report on the operation of the legislation.

The 2003 and 2005 biennial reviews found that the legislation continued to be well accepted and was raising the quality of general practice services to the community. There was also broad agreement that the operation of section 19AA of the Act had certainly not exacerbated any medical workforce shortages.

During the 2005 biennial review the frequency of the review process was questioned with a view to extending the period between reviews.

The Bill proposes to retain the review process, but change the interval from two to five years, with the next review report to be tabled in Parliament no later than 31 December 2010.

Debate (on motion by Senator Colbeck) adjourned.

NON-PROLIFERATION LEGISLATION AMENDMENT BILL 2006 [2007]

Returned from the House of Representatives

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

COMMITTEES

Rural and Regional Affairs and Transport Committee

Reference

Senator BARTLETT (Queensland) (4.20 pm)—I move:

That the following matter be referred to the Rural and Regional Affairs and Transport Committee for inquiry and report by 9 May 2007:

(a) whether it will return sufficient water to the Murray-Darling Basin to meet the environmental needs of the Murray-Darling Basin catchment; and

(b) what mechanisms are in place to ensure farmers and the environment obtain maximum value from the funds expended.

The case for this reference is pretty straightforward, so I will not go on at great length about it. The plan to put in place a rescue package of up to $10 billion over 10 years for the Murray-Darling Basin has been widely debated in this place. There have been many questions and plenty of debate, coverage and publicity in the wider community.

I emphasise at the start that, in proposing that this matter be examined by a Senate
committee, I am not in any way attacking the intent behind the plan. Indeed, for a number of years the Democrats have called for the federal government to take a stronger lead role with regard to the Murray-Darling Basin, to, if necessary, take over control of the catchment and, if necessary, to look in the wider context at assuming greater powers in the environment area.

So the move in this direction is not something that the Democrats are critical of in principle. Indeed, one could argue that the move in this direction is somewhat overdue given how badly things have failed to date and how inadequate the various responses have been in tackling the threats to the Murray-Darling Basin. This reference to a Senate committee does not seek to score political points or to attack the general principle underlying the proposal. It is an attempt to increase the chances as much as possible so that the plan for water security actually is successful and effective.

It is widely known that the plan was put together at extremely short notice. It is also widely known that the plan was put together with minimal consultation—certainly no consultation with state governments and minimal or no consultation with affected stakeholders. As we also now know, despite the price tag of up to $10 billion, it was not even approved by cabinet. There was not even that level of consultation; there was not even that degree of adequate costing of the various measures within it. On top of that, it has also been extremely difficult to pin down exactly how the various components of the plan are going to operate, how decisions are going to be made with regard to expenditure and what criteria are going to be used.

I appreciate that not all of those things necessarily get worked out right at the start, but the simple fact is that, if you are going to have a major plan costing up to $10 billion with significant rearrangements with regard to the management of the Murray-Darling Basin and the structures that need to be put in place for the expenditure of a very large amount of public funds, it is desirable to have as many of the mechanisms relating to that as possible clearly out in the public arena. Some more have come out since the plan was first announced, but I think it is fair to say there is still a fair degree of work in progress around the whole thing.

Obviously, since the plan was first announced there have been a number of meetings and consultations with the relevant state governments, sufficiently so that three of the four state governments affected by the plan have signed on. That is all well and good, and of course they have a perfect right to do that. Although the federal government, which decided to put forward a plan and demand that everybody just fall in line, has expanded the negotiations for a few other governments to sit down in a room somewhere, decide on it and then go ahead with it, that still leaves out a fairly important part, which is the affected communities, the general public and people with wider expertise. This should not be something that is just stitched up between various governments to satisfy each of their various short-term political needs. That is part of how we got into the mess we are in now. The more public examination we have of the details and the more questioning, querrying and detailing we have of what is proposed, the better chances are that this will work effectively. I would like to think that is what all of us want here.

The other concern, which is a very reasonable concern to have given past history—particularly considering that this is an election year and large amounts of money are being promised—is that significant amounts will be channelled towards people on the basis of vote-gaining consequences rather than on the basis of maximum value from the
funds expended. That is part of the rationale behind proposing that a Senate committee examine this. A short inquiry is proposed here and it would not in any way hold up the implementation of this plan, which I would agree is urgent. What it would do is increase the chances of it being implemented in an effective way that actually gives the taxpayer value for money. Even trying to nail down the basic issue of what is being proposed with regard to amounts of water being made available for environmental flows has proven to be quite difficult. Even trying to nail down the simplest matter of whether or not there will be the potential for water rights to be bought back from irrigators where necessary has proven to be difficult. Very different messages have been coming out from different members and ministers within the Howard government with regard to that. Of course, on top of that you have the different assurances, promises and needs at state level. The more this can be nailed down at the start the better the chances of it being implemented effectively.

The other point that is worth mentioning is that it will enable clear, public, focused input from people with expertise in this area. It is one thing to have the direct stakeholders involved—and it is right that they be involved—but it is another to ensure that independent experts do have input at the start rather than after a lot of the decisions have been made. That has not happened adequately to date, in my view. This would be a simple and effective process for increasing the opportunity for that to happen.

Frankly, given all of the justifiable concern about how rapidly this proposal was put together and the completely inadequate consultation that has occurred to date, I would find it bizarre in the extreme if there were not support for this motion from the opposition. Despite agreements that have been entered into by state governments, it is a simple fact, as it always is with the federal government holding the purse strings, that they also hold the whip hand. There is plenty of opportunity for things to change down the track—for commitments to be modified and for core promises to become non-core promises as political imperatives come into play. The more things can be nailed down at the start the greater the chance of that being avoided.

This is a simple proposal from the Democrats to maximise public scrutiny of what is a major policy announcement and plan by the federal government. It is something that obviously can be scrutinised intermittently through Senate estimates—and I am sure it will be—but the appropriate time to have an examination of the adequacy and detail of this very significant and very expensive new plan is at the start. This allows for further input to occur that has not happened to date. It is a clear example of a Senate process doing what Senate processes are there for: to hold governments to account, including state governments; to enable greater transparency about the expenditure of public funds; to enable greater scrutiny of the public policy issues and the administrative procedures involved; and to allow public input from those who are directly affected, from independent experts who have knowledge of the issues involved and from those who are concerned about ensuring that the long-term environmental health of the Murray-Darling Basin gets adequately factored in.

In proposing this, I am not in any way suggesting that this is not the intention of either the federal government or the state Labor governments involved in this plan. What I am saying, though—and history has shown this to be true any number of times—is that, if you have at the start of these sorts of plans the fullest possible scrutiny and the fullest possible non-partisan, independent checks and balances through an examination of the detail, then you significantly improve
the chances of them being effective. It is very important for the future health of the Murray-Darling Basin, for the many communities that rely on the healthy river system and for the taxpaying public in general, who have $10 billion on the line here, that this proposal be effective.

As I said at the start, proposals such as this are ones that the Democrats have called for a number of times over many years, so we are not in any way attacking the principle. What we are seeking to do is to have proper public scrutiny of the implementation, and that has not occurred to date. I think it would be highly desirable that it did occur, and via a Senate committee process.

Senator SIEWERT (Western Australia) (4.32 pm)—The Greens will be supporting the Democrats’ motion to refer the National Plan for Water Security to a committee. We believe this is an extremely important issue. The government is spending a large amount of taxpayers’ money, and, as Senator Bartlett stated and as became evident in the many estimates questions that were asked, there has been no proper analysis of the costs. During estimates when we asked for an explanation of the costs and how they were arrived at, no information could be provided—not even back-of-the-envelope estimations.

When we asked for targets, none of that information was available. There has been no update on the basis of how targets have been set for the Murray-Darling Basin. In fact, the 10-point, $10 billion plan does not include any targets. Presumably we are still stuck with the 500-gigalitres target, which, as I have said on many occasions in this place, is the lowest common denominator target. This was the target all the states could agree on and it was the lowest of the low that the scientists recommended. Scientists said that 3,500 gigalitres were required to give the Murray-Darling a good chance to recover. We have no idea whether that can be achieved through this process and we do not even know if that is the target, because the government has not committed to a target. All we can assume is that we are working on the 500-gigalitres target.

We are getting more information every day. A couple of weeks ago, the State of the Darling—interim hydrology report was released. That says that basically the Darling is in a state. It is a severely degraded river that is getting worse. It is suffering from loss of volume flow, the wetlands are drying out, there is a loss of flood events, there are fish migration problems and, besides what the river is suffering from now, there are increased risks from climate change. I will go back to that in a minute. The current estimates indicate that reductions in average flows of 20 per cent or more may occur by 2030. I would say that is on the low side, if you take the example from Western Australia where a 20 per cent reduction in rainfall led to a reduction in run-off of 64 per cent. I suggest that that estimated reduction in average flows is on the conservative side.

The report also talked about the continued increase of surface water use. In other words, they have not managed to stop the increased use of that water system. It also says that they need to ensure that they do not allow increased flood plain harvesting diversions, and there is also concern about current and future groundwater use. The list goes on and on about the potential impacts for the Murray-Darling system.

No proper analysis was done of the needs of the river. This plan was not based on a considered management plan; this was based on a ‘let’s put something together real quick over Christmas, starting in November’ proposal. This was not raised at the water summit. At the water summit certain actions
were put in place. One of them was to give CSIRO just 12 months to go away and determine the sustainable, harvestable water from each of the catchments in the Murray-Darling Basin. Twelve months is a very short period, and they do not have all of the information they need to be able to do that.

They were given 12 months in November. On 25 January the Prime Minister announced a $10 billion water plan, which was not canvassed with the states. There was no consultation with communities, with landowners, with irrigators, with the states, with the broader community, with environment groups or with local groups that know their wetlands inside out and back to front. None of those groups were consulted. There are no costings and there are no targets. Victoria still has not agreed to the $10 billion plan.

Now we have South Australia very seriously canvassing the concept of cutting off the water supply to at least nine of their wetlands. Water is absolutely critical to these nine wetlands. Last week I talked about Lake Bonney, which is in a dire situation. If it does not get water within the next 12 months, they might as well not bother because salinity will have risen to such an extent. If they cut off water supply to that lake, it will have dire consequences for the broader environment because salinity will have been driven so high in that lake. It is do or die for that system. It is do or die for a number of the wetlands of the Murray-Darling system.

The government now has at its disposal an even stronger mechanism to start helping those wetlands, but it is refusing to do so. It keeps saying: ‘Yes, we know we need to be buying water allocations. We know this is urgent.’ I put up several motions on this issue very recently, but the government would not commit to urgently buying the water resources that are needed to help these wetlands. It did not support a motion on World Water Day. The motion simply acknowledged the potential decision of South Australia to cut off water to lakes. It talked about the impacts of climate change as outlined by Dr Wendy Craik of the Murray-Darling Basin Commission. It also talked about the need to supply water urgently to these wetlands and the fact that water management plans should be written to ensure that changes due to climate change are taken into account.

I question the government’s commitment to ensuring that this issue is dealt with expeditiously. When will the $12 billion start hitting the ground so real water can be returned to the system? We know that, at this stage, only about 350 gigalitres have been found from the existing programs and none of that water has been returned to the river system. While the government is spruiking its credentials that it is putting $10 billion into the Murray-Darling system, that money is not having an impact now because at least nine wetlands in South Australia are potentially going to be cut off from a water supply—their lifeblood. Not only that; the State of the environment report found that 22 of the 64 Ramsar wetlands are suffering from some form of degradation and their ecological character is being changed. It is outrageous. Why isn’t the government prepared to take more urgent action to find the water now so that we can save these wetlands?

Just last week, Dr Wendy Craik also talked about the impact of climate change and the potential for significant long-term impacts on the Murray-Darling system. These issues need to be factored into the water management plans. Are they being factored in? We do not know. Who is going to be reviewing them? We also have conflict within the coalition, with several ministers saying that the water licences will be bought back more or less as a last resort. It is too late for that. We need to be buying them ur-
gently now. We cannot leave it as a last resort. When do we get to that point where it is a last resort? I believe that we have reached that point and we need to take action now.

As a compromise with the states, the government have agreed to some independent advice. They have also committed to table in parliament where they disagree with that independent advice. However, the big issue is that they have not agreed to table anything to do with the finances. If the independent panel advises the government, presumably, on policy and the government do not take that advice, they said they will table that advice in parliament. But they will not table the advice they receive on the finances—what is being bought with public money and how they will buy back the water allocation licences. Nothing has been made public about the costing and how it has been worked out—what we will get for the $10 billion—and the government is refusing to table in parliament the advice of the independent panel on how that money will be spent. I am deeply suspicious that we will see a return to the bad old days when decisions about what licences will be purchased will be based on expediency in a particular electorate, for example. There will be fights over whether the water licence is an appropriate one to purchase but over who does or who does not want it in their electorate. We will see a return to those bad old days of pork-barrelling. It smacks so much of that. It is: ‘In which electorates can we best spend this money?’ rather than, ‘What is best for the Murray-Darling Basin?’ We have gone way past that now because this river is under the biggest threat it has faced, and it will soon reach the point where these wetlands in particular will not be recoverable. We can see that from the scientific evidence.

We also have to contend with the issue of the federal government taking control of the allocation of water and its management, and how they will undertake the natural resource management part of that process. You cannot manage water without dealing with the natural resource management issues, and then you get involved with the tricky issues of people stealing water. There is evidence that that is happening in New South Wales where environmental flows are released to wetlands and never make it to the wetlands. There are photos of where that has occurred. There are photos of where it is being syphoned off, but nobody is doing anything about it. I appreciate that these are extremely complex issues, but they are issues that need to be dealt with. The photographic evidence is there and no-one has taken any action. How those issues will be resolved through a federal management process is yet to be articulated and that is one of the things that would also come out in such a review.

As Senator Bartlett said, he has proposed a relatively short time frame for this review. It is not one that will tie up the process for a long time, but it will be the only chance for members of the community and this place to find out more detail about the plan. How is it going to be implemented? Where is the money going to be spent? Which wetlands are going to be saved? How much water is going to be returned to the river through the efficiency measures? How much water is going to be returned to the river through buying back the licences because of overallocation? What is the government going to do about the licences that have been bought through managed investment schemes which major corporations now want to offload because the MIS process has been changed? Major corporations have been left holding a number of licences that contain large amounts of water. I bet companies are looking to have them conveniently bought out. That may be appropriate; we may want some of that water back. But how do we know that the system is actually going to work effec-
tively and that that is in fact priority water that needs to be bought back?

As I said, there are major corporations that now own large amounts of water because they have bought up the licences. They have also distorted the water market because they have entered the market and bought at prices that have now pushed up the water market, which of course makes the water more expensive for the government to buy back when they try to acquire the water licences. How do we know that money is not going to be offered to farmers for water efficiency measures and that those funds will not then subsequently be bought out through over-allocation? I asked that question at estimates and I must say that I got an answer which I thought was okay. They said that they would not be doing that and that that was silly, but that has subsequently been contradicted by media reports and things that have been said in the House of Representatives. So I get one answer that I am assured by and in another place, in other fora, I hear different answers. So now I am no longer satisfied that we will in fact be doing this in an orderly way, that there is some sort of sensible plan for how these issues will be dealt with. I do not think there is.

This sort of inquiry would help us find out whether there is, in fact, a comprehensive plan to implement the plan. I do not think there is. I do not think the government have had time to put that together, and that is why they do not like this sort of inquiry. It will be like the emperor with new clothes: $10 billion is being spent but we do not know where it is going. If there is a review, that will become obvious. The government do not want this to be looked at, because there are no costings, there are no targets and they do not know where the water is coming from. Farmers have questioned the amounts that have been bandied about in the national plan. The Farmers Federation have questioned those figures. They do not think the water is in the efficiency measures. They maintain that they have made significant advances on the water efficiency measures, so they do not think it is there. What does that do to the rest of the flimsy arguments in the national water plan?

When I asked for information about the water that is going to be acquired through these various measures, no references could be given—none. We kept getting told at estimates that this information was provided by experts. When I asked for the references, they were not there. The only reference I was given was the plan itself. So in questioning the plan and the references, when I wanted the information justified, I was given the plan itself. Anybody could have pulled those figures from anywhere to put into that plan. I want actual scientific papers that show that those are the sorts of savings that we can expect from these measures.

There is $10 billion. Like Senator Bartlett, I think that we need to spend that sort of money on the river, but we need to make sure that it is properly targeted, properly allocated and that the decisions that are made are transparent, accountable and based on independent scientific advice, because we will never save the river if we continue to do more of the same, which is what this has been set up to do. It has been set up to continue more of the same, with no accountability on where money is spent. Sensible decisions are not made on a scientific basis and the money is flushed down the drain because no-one is prepared to bite the bullet and actually make the really tough decisions about where water needs to be acquired, how much needs to be acquired and where land use will have to change into the future.

Overlaying all of that is what impact climate change will have on those predictions and whether the government are tough
enough to stand up to the community. Unfortunately, they will have to stand up to the community and say, ‘We need to change these water management plans.’ Are they going to be able to do that? Will the plan deliver the sort of change that we expect if we are going to save the Murray River?

Senator O’BRIEN (Tasmania) (4.48 pm)—It is pretty plain that, at a federal level, Labor has consistently called for a national approach on the issue of water. We think that the Commonwealth has a strong responsibility to take a leadership role on water. We think a minister for water should be appointed in the federal government. We think a single Commonwealth water authority should be created. We think the commitment of more funds for water management and efficiency programs right across Australia is the right decision. We think the development of water trading and economic instruments to drive reforms is important. We want the government to maximise its purchase of overallocated water entitlements. And we want the existing $2 billion Australian water fund to be used on practical projects.

Having said that, the Prime Minister’s plan for national water security is clearly consistent with many of these objectives and therefore received federal Labor support. We welcome the government’s adoption of proposals for a minister for water, the creation of a single Commonwealth water authority and the commitment of more funds for water management and efficiency programs in rural Australia. However, we think it is reasonable for all stakeholders to have an opportunity to scrutinise the national water plan and continue to ensure that the details are correct—that the government is getting its plan right. We want those details out there for the public to scrutinise, and that is the reason that we will be supporting this motion.

It is curious that the government on the one hand has used its numbers in this place to refer an inquiry on water to the very same committee. The Senate Standing Committee on Rural and Regional Affairs and Transport has an inquiry into the options for additional water supplies for south-east Queensland. So it is right to have an inquiry into a proposal to build a relatively small, but very important, water project in south-east Queensland so that that part of Australia does not actually run out of potable water—apparently it is right because some members of the government think they can play a bit of politics in the state of Queensland—but it is not right to allow the parliament to examine, in a committee chaired by a member of the government and with a government majority, the details of a $10 billion national plan, which has attracted criticism from the National Farmers Federation, the New South Wales irrigators and a host of other organisations that normally support the actions of this government. Apparently it just is not right for the Senate to look at something like that.

I think Senator Siewert hit the nail on the head: it is not right because the more you look at it, the more you discover that the government still have not worked out exactly what they are going to do. And if we have this inquiry, then there will be more instances of the bureaucrats—the public servants employed in the Department of the Environment and Water Resources—being unable to answer questions about exactly how the scheme is going to work; how money is going to be spent; how much will be paid for water; whether it will need to be compulsorily acquired; and what will happen in the catchments where, after CSIRO determines what cap each of the 22 catchments in the Murray-Darling Basin needs to have, water was allocated beyond the cap of those catchments. It would be nice to know. It would be a very appropriate role for a com-
mittee of this parliament to have. It would certainly advise the public. It would probably advise the parliament pretty well about what the government’s intentions were. But I guess the government’s main problem is that it might embarrass the government. It might actually show that all of the issues that need to be considered have not been properly considered.

It is very clear from the evidence that more effort went into the writing of the Prime Minister’s speech than into the government’s financing and time lines of the original national water plan. The plan did not go to cabinet—the plan on which there was no economic modelling by Treasury or Finance; and the plan which, less than a week before the announcement, the department of finance was asked to ‘run an eye lightly over the costings’, I think that was the terminology used. Surprisingly, the cursory review by those key agencies was dismissed by Senator Minchin, who said that $10 billion was not really all that much money. As I recall, that was not the way the matter was announced by the Prime Minister. I thought $10 billion was a very large amount of money. But apparently for the department of finance it is small change.

On top of all that, none of the water commissioners were briefed until the morning of the speech. It is interesting, of course, that Mr Ian Sinclair has stated that the Murray-Darling Basin Commission was not asked for any advice. Indeed, the states and territories were given contrary advice at the time of that famous Melbourne Cup day water summit. So, on the first Tuesday in November, this grand scheme was not in contemplation—or enough in contemplation for the premiers of the states and territories to be given any sort of heads up on the matter.

Finally, the government had after all introduced a piece of legislation—the Murray-Darling Basin Amendment Bill 2006—in December 2006. That bill asked the parliament to assume that the existing structures at that time would remain intact. Indeed, far from proposing the changes that the Prime Minister announced in January, it was proposing minor changes to the then-existing plans. So there was no contemplation at that time about these measures. What are we faced with in this cobbled together announcement—the plan that is being made up as we go?

**Senator Johnston**—You support it!

**Senator O’BRIEN**—It is the principle which we support, that is right. Senator Johnston says we support the plan. We would like to know the details of the plan.

**Senator Marshall**—Maybe Senator Johnston will tell us—

**Senator O’BRIEN**—I suspect you ask too much of Senator Johnston. He is here to tell us why the government is not going to support the motion; I suspect he is not here to tell us the detail of the plan that we would like to know, because only the inquiry would achieve that.

We are concerned with this lack of detail and that, under pressure from the National Party, the Prime Minister’s plan to deal with water overallocation in the Murray-Darling Basin and to buy back water entitlements will be diverted or diluted. On Sunday, 28 January Mr Turnbull said:

> There might be an area where you buy out the farms, close down a channel because it’s inefficient.

Mr Turnbull is now meekly saying that buying water entitlements would only be a last resort. There is no doubt that overallocation of water licences is a primary source of the current water crisis. If we are to believe the evidence that has been given at estimates, the Department of the Environment and Water Resources is going to establish a view as to
what the appropriate cap is for each of the 22 catchments and some of those catchments will have water allocations that exceed this cap. What does one do when that occurs? If you have a cap, that implies you are not going to allow water beyond that amount to be used by those entitled to draw water from the catchment. What do we do? Clearly the government has to find some way to maximise the opportunity to deal with the overallocation of water entitlements, whether it be in some voluntary buyback scheme, entering the market or some other measure.

 Those issues certainly have not been clearly addressed by the government. There is a bit of ebbing and flowing by the government on the question of the buying back of water. There are concerns within organisations like the National Farmers Federation about just how that will work and the impact on their constituent members who have water entitlements. Some in this place have asserted views about which industries should be using water and which should not. I have made it pretty plain that from Labor’s point of view it is not a matter of picking which crop farmers grow but it is a matter of managing the water that is available. Labor will not be saying that a particular commodity cannot be irrigated. We believe that ultimately the market will decide that based on the value of water over time. But it is critical that water is returned to the Murray-Darling, and it is also critical that the $10 billion that the Prime Minister announced is used widely and in an accountable fashion.

 There is nothing unreasonable in the proposition that this matter be referred to this committee for inquiry. The government might say, ‘You can ask all the questions you like at estimates.’ Certainly, some of these questions can be asked at the estimates hearings, but estimates is not the place where organisations such as the National Farmers Federation or the New South Wales Irrigators Council, the state or territory governments or private individuals can put a view and have that tested by the parliament. An inquiry such as this would be such a vehicle.

 This attitude is in absolute contrast to the way members opposite have been keen to establish an inquiry into the building of the Traveston Dam in Queensland—in the context of this, a minor project; although very important to south-east Queensland—but, as I understand it, will not countenance an inquiry into what the government claims will be one of the most important water projects this government has seen. Frankly, by voting against this the government will be showing a great lack of faith in its own project. But we will vote for it.

 **Senator JOHNSTON** (Western Australia—Minister for Justice and Customs) (5.02 pm)—This is a classic example of the capacity of the opposition in this place to want to bask in the glory of a good initiative and yet nitpick and be dragged kicking and screaming to some policy position. That is the thing with Labor: they do not want to do any of the hard work and come up with an initiative of their own; they simply want to sit back and say, ‘Yes, we support it but, oh, we don’t like this part of it and we don’t like that part of it.’ They have done none of the hard work to get to any policy position that has any credibility.

 The government do not support this referral for the reasons set out by Senator Siewert; we want to get on with the job. We have a drought on; this water crisis is very crucial and needs to be addressed. We want to see things start to happen. Yet, Senator Siewert in the very same breath says, ‘We are happy to muddle along and send this off to a committee to review.’ I want to know what the ALP’s position really is on this. Do they want to muddle along or do they want to get on with the job and actually address wa-
ter in the Murray-Darling? Do they want to address water? I do not think they do; they just want to try to score a few cheap political points because they have not got any policy. They have been sitting on their backsides for the last 10 years and suddenly they realise that an election is coming up. They think: ‘We might get elected—gee, we’d better have some policies. Knock us down with a feather! The Prime Minister has announced a $10 billion plan to try to fix the Murray-Darling. What are we going to do? We’d better get on board. It could be embarrassing.’

The projected drought and the prospect of long-term climate change underscore the need to make dramatic improvements in water management practices. The Murray-Darling Basin is overallocated. Current levels of water use are not sustainable and future inflows to the basin are expected to reduce at a rate of around 10 to 15 per cent per decade—around 3,200 gigalitres by 2020. Governance of the Murray-Darling Basin has been poor. The cap is not complied with and voting arrangements guarantee that lowest common denominator decisions are made. This issue cannot be addressed without radical change. The National Water Initiative signed by the Commonwealth and all the state and territory governments is a gold standard framework for water management, but implementation by some of the states has been lagging in key areas. If the above realities are ignored, both the irrigation sector and the health of our waterways are at risk—hence the Prime Minister’s proactive steps.

The objective of the Prime Minister’s $10 billion National Plan for Water Security is to increase productivity with less water use while improving the health of our key river systems. The focus of the plan is on rural Australia, where more than 70 per cent of water occurs. This will give states additional capacity to address urban water storage by requiring a combination of better planning, increased investment and full cost-recovery pricing. The plan will focus on dramatically lifting water use efficiency in irrigation schemes nationally as well as addressing the serious issues of water overallocation in the Murray-Darling Basin. Improved governance arrangements will mean that more consistent decisions may be applied across the basin as well as a streamlined water-trading regime as a common template for catchment water sharing plans and a basin-wide environmental watering plan. The $10 billion National Plan for Water Security is a bold new initiative that will accelerate the National Water Initiative and build on work begun under the Living Murray initiative and the $2 billion Australian government Water Fund. With strong leadership from the Commonwealth these combined initiatives are Australia’s greatest opportunity to put water management on a sustainable footing within a decade.

I turn to the state of the Murray-Darling hydrology report. This report will assist us to better understand the hydrology of the Darling Basin and the complex water management issues faced by the region. It will provide a useful contribution into considerations on future directions for water management in the Darling Basin. The Prime Minister’s National Plan for Water Security ensures that the northern Murray-Darling Basin will be included in the work that the Australian government will be undertaking in addressing the ongoing water management issues in the Murray-Darling Basin. The Australian government is also supporting actions that will improve the health of some key environmental assets in the northern Murray-Darling Basin. For example, we are providing around $85 million to support programs in New South Wales to improve the health of important wetlands such as the Gwydir Wetlands and the Macquarie Marshes.
Turning to the World Wildlife Fund report, which says that the Murray-Darling Basin is one of the most threatened river systems in the world, I want to say that sustainable and efficient water use is a prime objective of the government’s $10 billion National Plan for Water Security. The programs in the plan to improve irrigation efficiency and deal with overallocation will make more water available for the river systems in the long run. This will include increased water to improve river health. The World Wildlife Fund’s report highlights the problems in the system. Current arrangements in the Murray-Darling Basin are hampered by parochial interests, blame shifting—and we all know about blame shifting across the chamber here—underresourcing by state governments and avoidance of difficult decisions such as implementing the cap on diversions. And of course the states have been dilatory in following through and enforcing their own rules.

The Commonwealth needs a broad referral of powers for the management of water resources in the basin to deliver the outcomes that all Australians expect to be delivered. The government is concerned about the impact of climate change on the Murray-Darling Basin. The Prime Minister and the Murray-Darling Basin state premiers at the 7 November 2006 Water Summit commissioned the CSIRO to report by the end of 2007 on sustainable yields of surface and groundwater systems within the Murray-Darling Basin, including in the light of climate change. This work is now under way and involved a considerable commitment of resources by the CSIRO.

Also the government is helping to fund the three-year $7 million South Eastern Australian Climate Initiative. The work of the South Eastern Australian Climate Initiative will be used in the CSIRO sustainable yield project. These two projects are complementary and together will contribute to our understanding and management of this important issue for the Murray-Darling Basin. And I pause to say that we did not need a committee report to get on with the job and provide these important initiatives. The Australian government expects jurisdictions to complete the Living Murray initiative water recovery commitments of up to 500 gigalitres by June 2009. There are already four projects approved by jurisdictions that will recover 240 gigalitres costing $179 million. The Australian government’s role in water recovery has primarily been as an investor while the states are committed to developing water recovery projects. We have consistently pursued the states through the Murray-Darling Basin Commission processes to bring forward projects and investment plans for the approved projects, but to this point they have not been so willing to come to the party. That is the problem. One response from government has been to request tenders for water savings through efficiency measures, which are currently being assessed.

In talking about farmers, the National Plan for Water Security will increase water security for irrigators, the community and the environment. It will do this by improving productivity of water use, reducing wastage, giving irrigators greater opportunity to trade, improving monitoring and management as well as buying water entitlements. Given the level of overallocation in the basin, achieving the objective of secure water entitlements cannot be achieved without reducing use. In addition to efficiency measures, this will require buying some water entitlements and it may require the closure of some inefficient channel systems or those at risk of salinity. Irrigation companies and industry councils will be asked to help develop measures to improve water use efficiency in particular areas. There is no intention to compulsorily acquire water entitlements. The CSIRO sus-
tainable yield project will inform the development of a new sustainable cap for the Murray-Darling Basin. There will also be socioeconomic analysis and community consultation as part of the development of the new cap. Current state water shares and water-sharing plans will be maintained as per the Murray-Darling Basin agreement. However, the new cap will need to be reflected in catchment water plans when they are revised and at the end of the current terms.

With respect to disconnecting wetlands, contingency planning to secure urban water supplies in the southern Murray-Darling Basin during 2007 and 2008 have been considered by officials at the Prime Minister’s and premiers’ request. The Acting Prime Minister and premiers recently agreed to implement some measures immediately, including disconnecting selected permanent wetlands that are artificially inundated. The wetlands proposed for disconnection are generally those that have been artificially inundated with permanent water because they are used to store water. Under natural conditions it is likely that these wetlands would be dry in the current season, and drought and disconnection may help mimic a more natural wetting and drying regime which is likely to be beneficial providing they receive flooding waters in future when required. Wetlands, where disconnection would be problematic in terms of environmental and cultural heritage impacts, will not be affected by this measure. Any action that will or is likely to have an impact on matters of national environmental significance will be the subject of the Environmental Protection and Biodiversity Conservation Act 1999.

The $10 billion National Plan for Water Security announced by the Prime Minister on 25 January this year aims to dramatically improve water use efficiency in the river systems of the Murray-Darling Basin. Implementation of the plan will restore the health of wetlands in the basin and the Australian government is helping to improve environmental flows. On World Wetlands Day over $91 million for six projects for restoring water to Australia’s wetlands was announced by our government. The Water Smart Australia program is providing $7.7 million to a project that will increase flows into the Coorong with benefits to nearby wetlands. The Living Murray initiative is also improving environmental flows to icon sites in South Australia. I can assure the Senate that the Prime Minister’s plan is a very good one. It is a bold one and it is being implemented as I speak. It is happening now. We do not need to refer matters to a Senate committee. We cannot afford to wait any longer. Let us get on with the job.

Question negatived.

(Quorum formed)

NATIVE TITLE AMENDMENT BILL 2006

In Committee

Consideration resumed.

Senator BARTLETT (Queensland) (5.16 pm)—The Democrats oppose schedule 3 in the following terms:

(38) Schedule 3, item 2, page 60 (lines 8 to 13),

TO BE OPPOSED.

We seek to oppose item 2 of schedule 3. Schedule 3 is short; it just deals with some amendments to prescribed bodies corporate. The Democrats’ view is that the issue raised in item 2 would best be deferred until the next round of amendments. My understanding is that there are further changes to the Native Title Act in the pipeline for us to all look forward to, relating to prescribed bodies corporate, and amendments to the regulations in that area. Our view is that it would be preferable to defer this item until all of the changes to the Native Title Act relevant to this area of PBCs and the amendments to the regulations can be considered together.
Senator LUDWIG (Queensland) (5.17 pm)—For continuity and so that the minister can summarise the debate, I will just say that Labor will support the Democrats in opposing schedule 3. I know we are coming to the close of this debate on the Native Title Amendment Bill 2006, but I think it is worth doing at least some recapping. I will not take up very much time. The aim of the Labor Party, the Democrats and the Greens in respect of this bill, and it has been almost the same refrain, was to improve the bill. That has not been successful in this debate. The government has resisted nearly all of the amendments that have been put forward by the Greens, the Democrats and Labor. They were about trying to improve a system which is under stress and which the government does acknowledge is tied up by red tape and requires assistance.

The direction the government is pursuing will not, in Labor’s view, assist the native title system. It will not remove the red tape. It will not create a streamlined system. It will not improve the system to the extent that the parties to claims can obtain a reasonable outcome from it. The government and the Labor Party disagree on those points that we have made throughout this debate. I am reiterating them because of the disjointed way in which we have unfortunately had to conduct this committee stage of this bill—effectively, last week and this week; and even today it was broken up by question time. Rather than speaking during the third reading debate, I want to make a brief contribution now. We will also be seeking to divide on the third reading. Labor have indicated that we do oppose this bill, so I will not take up too much more of our time.

We have now come to the position where shortly this bill will ultimately pass. By the look of things, it will have to at least be returned to the House for consideration of the amendments that have been agreed to and then come back to the Senate, as it has to be dealt with this week. It is certainly on the list of legislation to be dealt with this week. So it will come back to us with a message from the House of Representatives. If I am wrong about that, the minister can correct me. I thought there were some amendments, but the debate has come along.

The native title representative bodies do not agree with this bill and the direction in which it is going. The Federal Court has indicated it has concerns about it. The social justice commissioner does not support much of the bill. The WA state government has expressed key concerns about it. The Minerals Council of Australia, although providing some conditional support, have also indicated that there are many parts of the bill that they have not warmed to—perhaps I can use that phrase rather than verbal them on the record.

The report on the bill by the Senate Standing Committee on Legal and Constitutional Affairs summarised the positions of all of those stakeholders in the bill in its final recommendations. Labor in its minority report outlined where it believes improvements to the bill would come from. However, they have not been, as I said, agreed to by the government. That is why—without reiterating the points that I made during my speech in the second reading debate, to which I would refer people—Labor will ultimately oppose the bill: there has not been sufficient improvement to the bill, especially without the amendments that Labor proposed to schedules 1 and 2. What I can say, though, is that we did examine all of the schedules, including schedules 3 and 4. Although they were generally acceptable on the whole, when you take a look at the final form of the bill which we are now seeing, it is an unacceptable bill and it will not help the process.
Senator JOHNSTON (Western Australia—Minister for Justice and Customs) (5.22 pm)—I am obliged to all senators for their contribution. The Democrats’ opposition to schedule 3 would remove a provision intended to allow a recommendation by the prescribed body corporate report to be implemented. That provision will allow regulations to allow native title holders to decide on the types of decisions they wish to be consulted about, according to their particular circumstances. I say to Senator Bartlett, prescribed bodies corporate must presently consult about ‘native title decisions’. The definition of ‘native title decision’ is presently unclear and we seek to clarify it. However, it is often understood as requiring prescribed bodies corporate to consult with and obtain the consent of the native title holders they represent about all future acts. That is a very expensive and time-consuming process, particularly in outback Australia.

Future acts, which result in native title being surrendered, are clearly significant and existing consultation and consent obligations will be retained for these acts. Other future acts have more limited impacts and prescribed bodies corporate will not be legislatively obliged to meet consultation and consent requirements for these acts. However, prescribed body corporate members will be completely free to impose additional consultation and consent requirements on their prescribed body corporate through its rules, if they so want.

In closing I say, as I do not intend to say anything more on the upcoming division, that the measures of the Native Title Amendment Bill 2006 are part of the government’s practical reforms to improve performance of the native title system and to encourage agreement making in preference to litigation—that is, a negotiated settlement at about a fraction, probably less than five per cent, of the cost of weeks and weeks of Federal Court hearings and visitations to the designated claim areas.

The government has developed and is now implementing a coordinated and balanced package of reforms to address all significant elements of the native title system. The reforms enhance the framework within which parties can seek outcomes. The key to securing outcomes is the behaviour of the parties themselves. With the changes made by these reforms, the performance of the native title system should continue to improve and we should continue to encourage agreement making and resolution through conciliation and through negotiation and mediation as opposed to bringing in the lawyers in the court.

Senator BARTLETT (Queensland) (5.24 pm)—I want to make a concluding comment in this stage for neatness’s sake. I note the chamber will not oppose schedule 3, so I will not continue to argue on that but I have concluding comments from the Democrats. We do not dispute the aim. The minister has outlined the government’s aim of getting negotiated settlements rather than prolonged, very expensive and often not terribly constructive court battles. What we are less convinced about is whether that will be the effect of these changes. I think a lot of the debate we have had backwards and forwards during the committee stage of this debate has not been about the goal, which has broadly—in most cases anyway—been shared; it has been about what the actual effect will be and whether the government’s preferred model will achieve that. I guess we will see for ourselves in any case once this is passed into law, but it is something that does merit continual monitoring.

I also want to emphasise that, whilst negotiated settlements are desirable as a general principle and certainly minimise the expense—nobody likes to see all the resources...
going to lawyers to slug it out when the re-
sources could be going directly to the parties,
Indigenous groups in particular, and the
communities involved, the areas and regions
that are covered by the native title claims—
we do still need to make sure that there are
just outcomes. Obviously, to date there have
been, under some of the land use agreements,
agreements reached without having to go
through all the court processes but some of
them have not been terribly fair or have not
been as substantial or as beneficial as they
could have been. I am not saying that all of
the ones that have not been good have been
exploitative agreements. In many cases it is
simply that they have not been as adequate
as they could have been and therefore the
potential has not been realised. It is not al-
ways just one group managing to use its bet-
ter resources to convince the others to reach
an agreement that is not really as good as
they could have got; it is also that sometimes
it does not reach its full potential.

I am not convinced that all of the changes
in this legislation will improve that situation
although, in saying that, there are some that
should be beneficial. But there are some real
concerns about the legislation in its totality
and what it might mean with respect to the
power balance when you are having concilia-
tion and negotiations—where the resources
lie, who the greater onus is upon and where
the areas of capacity and capability lie. For
all of those things, I am not convinced the
balance has been improved by this change.

I finish, however, by returning to where I
started in the second reading stage. I believe
there still needs to be a significant improve-
ment in the attitude of governments in par-
ticular, and here I am talking as much about
state governments, to the potential native
title offers. I actually think there have been
some significant improvements, particularly
within the minerals sector, the mining sector,
in their attitudes to the potential that native
title presents—not what is embedded in na-
tive title itself but the potential that lies
within the rights attached to having native
title recognised. There is positive potential
there for the minerals industry itself. It is not
some sort of handout to Indigenous people or
some sort of benevolent bestowing of recog-
nition; it is a very positive, dynamic thing
that can be embedded in native title that can
provide benefits for all parties.

I realise that is not present in all cases and
I am not seeking to be too starry-eyed about
it, but I think that positive potential is there
much more often than people realise. There
is a growing realisation of that. I think it was
clear, as we saw even from the evidence to
the Senate committee inquiry, that some of
the representatives from the minerals indus-
try are keen to empower and strengthen the
ability of Indigenous groups to engage with
this process more effectively because that is
in the minerals industry’s interest as well.

There have been really significant ad-
vances compared to where we were 10 years
ago, but moving forward has not been uni-
versal, even in that sector, and advances are
certainly still not present in many of the state
and territory governments. If we really saw a
shift in attitude and view at the state gov-
ernment level and a determination to share
that positive vision with the wider commu-
nity to shift public attitudes, awareness and
understanding about the potential that native
title represents then that would probably do a
lot more to move things forward than any-
thing we could do here mucking around with
the legislation. If people engage with the
whole system on a more cooperative basis to
recognise the potential positives it presents
for the entire community then I think we
could get a lot further forward.

I would even use my own region in south-
east Queensland where I have lived all my
life as an example of this. I think there is
enormous potential there to shift the way we perceive our region, our own home area, if we step forward and embrace the reality—it is not just a hope or a nice pleasant feeling; it is a reality—that there is a continuing connection between traditional owners and many areas of that land that goes back tens of thousands of years to well before European settlement. It has been knocked around a fair bit, but that culture and that connection with country is still there in parts.

I have mentioned before the claim of the Githabul people in northern New South Wales. That is around Mount Barney and over into the southern rainforest area of Queensland near Quandamooka and the northern Stradbroke Island region. There is an indisputable, very clear and continuing connection with country there. It would obviously be beneficial for the traditional owners there to have that resolved, but it would be beneficial for everybody in that community and region to recognise, celebrate, promote, embrace and move forward with the recognition that our whole wider community has amongst it a continuing culture that is alive and has a connection going back tens of thousands of years. I think it would be a huge value-add, frankly, to the way people within that region perceive native title and the way we could promote it. The same applies of course to most other areas of Australia and, in some respects, doing that in urban areas would have its own special benefits as well.

I once again plea for a greater positive embrace of the potential of native title by state governments, as well as those various industry bodies, groups and individuals. It is not all simple, easy and sweet, and it presents a lot of difficulties, as I imagine all of us know, within Indigenous communities as well. It has been unfortunate to see some of the unintended consequences from the way the legislation as framed was interpreted and how that has created internal division within Indigenous groups. I am not sure whether these changes we have made today will assist with that or not. They may—and I certainly hope they do—but, again, I think it is as much about shifting attitudes as anything else. I think we can all still play a role in that whilst we continue to debate the effectiveness or otherwise of the act.

The TEMPORARY CHAIRMAN (Senator Murray)—The question is that schedule 3, item 2 stand as printed.

Question agreed to.

Bill, as amended, agreed to.

Bill reported with amendments; report adopted.

Third Reading

Senator JOHNSTON (Western Australia—Minister for Justice and Customs) (5.34 pm)—I move:

That this bill be now read a third time.

Question put.

The Senate divided. [5.38 pm]

(The President—Senator the Hon. Paul Calvert)

<table>
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<tr>
<th>Ayes</th>
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AYES


Payne, M.A.  Ronaldson, M.
Santoro, S.  Scullion, N.G.
Trood, R.B.  Vanstone, A.E.
Watson, J.O.W.

NOES
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.
Hogg, J.J.  Hurley, A.
Hutchins, S.P.  Ludwig, J.W.
Landy, K.A.  Marshall, G.
McEwen, A.  McLucas, J.E.
Milne, C.  Moore, C.
Murray, A.J.M.  Nettle, K.
O’Brien, K.W.K.  Polley, H.
Siewert, R.  Stephens, U.
Sterle, G.  Stott Despoja, N.
Webber, R.  Wong, P.
Wortley, D.

PAIRS
Coonan, H.L.  Evans, C.V.
Ferris, J.M.  Sherry, N.J.
Lightfoot, P.R.  Kirk, L.
Minchin, N.H.  Ray, R.F.
Troeth, J.M.  Faulkner, J.P.

* denotes teller

Question agreed to.
Bill read a third time.

EMPLOYMENT AND WORKPLACE
RELATIONS LEGISLATION
AMENDMENT (WELFARE TO WORK
AND VOCATIONAL REHABILITATION
SERVICES) BILL 2006

Second Reading

Debate resumed from 27 February, on motion by Senator Brandis:

That this bill be now read a second time.

Senator WONG (South Australia) (5.41 pm)—I rise to speak on the Employment and Workplace Relations Legislation Amendment (Welfare to Work and Vocational Rehabilitation Services) Bill 2006 on behalf of the Labor Party. This bill is yet another stage in the Howard government’s welfare changes, and the measures in the bill will have a range of impacts. Some measures fix old mistakes and some measures create new mistakes, but one measure that is completely unjustifiable and that has no merit is that which, while fraudulently claiming to be a welfare to work measure, restricts access to the pensioner education supplement.

This is the Howard government’s approach to moving people from welfare to work: to put people on lower payments, stop them from getting the training they need and then tell them to get a job—and then take back most of what they earn. This Howard government has never explained how reducing access to education and training helps jobless Australians get a job.

Let me be very clear about Labor’s approach to welfare reform. We support real welfare reform that helps people move from welfare to work. We are, by definition, a party of work and the party of working Australians. We believe work is in the best interests of the individual and the best interests of the community. Communities are healthier, more cohesive and more prosperous when our members are gainfully employed and socially engaged. Individuals have a greater sense of self-esteem if they are contributing to their community. Work is one of those essential things, like family and friends, which give meaning to our lives.

So Labor would have been very pleased to support an approach to welfare reform that actually tackled the reasons why people were not working and provided practical solutions for increasing participation. Real welfare reform would provide more reward for effort and support training opportunities for the jobless. After all, a person only gets a job if they have the skills an employer needs. Instead, the Howard government’s welfare changes reduced the financial rewards from
work and made it harder for people to get the education or training they need to get a job.

There is nothing wrong with applying mutual obligation to people who can work. That is what Australians expect: if you get a benefit, you should do something in return. But why not harness mutual obligation so that it serves more than a philosophical, ideological purpose? Why not help everyone to get more out of mutual obligation? For some people the best form of mutual obligation is the requirement to find a job. There are those who start further behind. Some people have an extremely limited education and correspondingly limited job prospects in today’s economy. For them, mutual obligation should require that, in exchange for income support, they get themselves in a position where they have the skills an employer needs, and then they should be required to get a job. That seems such an obvious policy, and yet this government refuses to implement it.

Labor have made it perfectly clear that we share the Australian expectation that people who can work should work and people who cannot work should be cared for. Some people, because of caring responsibilities or a disability, may not be able to work at all or may be able to work only part time, and it is part of the Australian culture of a fair go that we recognise people’s capacities.

The truth is that many people with a disability want to work but find it extraordinarily hard to find an employer who will take them on, and this government has done very little to change these negative attitudes. The truth is that many parents are not working because they cannot get child care or because child care is so expensive that after they have paid for it they end up worse off or close to worse off than if they were at home looking after their children. The truth is that many people who want to work, particularly mothers whose partners are working, face such high effective marginal tax rates that they are working more to fill John Howard’s coffers than to provide for their own families. The truth is that most people who are not employed have extremely limited education and training and lack the skills employers need, and many jobs nowadays require a post-school qualification. The truth is that despite Australia having a very low rate of official unemployment there are still vast numbers of people—over two million Australians—who want to work or want to work more hours.

With our nation in desperate need of more skilled workers and with people being so much better off working than on welfare, it is economically irresponsible and socially dangerous for the Howard government to stop jobless Australians from getting education and training. The fact is that skilled migration certainly will not be enough. Too many developed economies are competing for skilled migrants as they also tackle the diminishing labour supply resulting from the ageing of their populations.

This bill, particularly the clauses relating to the pensioner education supplement, continues the Howard government’s failed approach to workforce participation and welfare reform. Last November, Labor released a discussion paper entitled ‘Reward for effort’, which contained a comprehensive analysis of Australia’s participation challenge and canvassed a range of options to meet that challenge. It outlined Labor’s commitment to increasing participation and moving people from welfare to sustainable employment.

We on this side of the chamber would welcome this government introducing a bill that delivers real welfare reform. We know that Australia needs to increase participation and we know that people are better off working than on welfare. We would welcome a bill that delivers welfare reform, but this bill
is not it. For the reasons I will outline, Labor will oppose this bill.

I want to start with the issue of vocational rehabilitation services. As senators may well be aware, when a person receives Newstart or youth allowance they will generally have to engage in activity in return for the income support. In some cases they may be required to attend a vocational rehabilitation service. Currently this service is provided by Commonwealth Rehabilitation Service Australia, known as the CRS. The Howard government has been working towards making rehabilitation services contestable so that private providers can tender for contracts. As a matter of principle, this has not been strongly justified by the government and Labor is yet to be convinced that increasing competition is, in itself, going to improve rehabilitation services rather than just increase duplication and bureaucracy whilst reducing oversight.

The people who use these services are often very vulnerable, and our priority is to ensure that the people who need services get the best possible services, whether they are provided by the CRS or another provider. However, this bill does not provide that guarantee; quite the opposite: because many private providers are not compliant with the provisions of the Disability Services Act, the Secretary of DEWR may allow services to be provided by some providers who do not have a certificate of compliance. This has caused considerable concern amongst advocates of people with a disability and mental health advocates, who are concerned that providers may not have the necessary expertise to deal with clients with complex mental health issues.

Another, and perhaps greater, concern amongst advocates of people with a disability and mental health advocates is the removal of the requirement that individual rehabilitation programs be approved by the secretary under the Disability Services Act. Currently this approval is delegated to the CRS. Clearly it is inadequate to remove this safeguard in the context of contestability without putting equivalent alternative safeguards in place. Mr John Mendoza, then of the Mental Health Council of Australia, had this to say:

These measures take us in the opposite direction to the international evidence on what works for the employment of people with mental illness.

The Council is concerned that the Government’s proposed changes will impact on the ability of people with mental health problems to gain meaningful employment.

Similarly there is a concern that there is no guarantee that vocational rehabilitation services will be accessible to clients with a range of disabilities. There are also concerns over whether people who have to participate in rehabilitation in order to meet the requirements of their activity agreement have adequate appeal mechanisms if they believe the rehabilitation program is not appropriate for their needs.

I want to turn now to the issue of financial case management, which has previously been announced by the government and in relation to which there are some provisions contained in this bill. I say at the outset: the principle that overpayments should be recovered is a sensible one that Labor supports. If someone gets a payment to which they are not entitled, it is unfair on others and harms the integrity of our social security system. Across the spectrum of government payments, there are provisions for the government to recover overpayments that are made, so Labor supports this aspect of the bill and the principles in relation to overpayment.

However, Labor does want to emphasise this point: there is a major difference between other government payments and fi-
financial case management. Other payments tend to exist in legislation. They exist as entitlements for people in particular circumstances. Financial case management, on the other hand, is entirely discretionary. Financial case management is a by-product of the Howard government’s extreme compliance regime. It is a regime under which people who commit certain breaches will lose all their income support for eight weeks. In some cases, this can be for three breaches, even if minor. In other cases, this penalty applies for just one breach—if you turn down what the government considers a reasonable job offer, which under the government’s extreme Work Choices laws may be a job that does not have to pay award wages, or if you are sacked for what your employer calls misconduct. Under the government’s unfair industrial relations laws, it is extremely hard to demonstrate that you were sacked unfairly if your employer claims it was for misconduct. In short, you can get sacked unfairly and not be able to get income support for eight weeks. This is what happens when the Howard government’s industrial relations laws crash into the welfare changes in their race to the bottom.

If this penalty has been applied to you and you have lost your income support for eight weeks, you may be eligible for assistance through financial case management. If the Howard government considers you to be exceptionally vulnerable, which essentially boils down to whether or not you require medication, or if you have vulnerable dependants, you may be able to get some or all of your essential expenses covered. Centrelink may cover these costs, such as food, rent and utilities, or the government has suggested that a charity may do this on Centrelink’s behalf. In general these payments would be lower than the income support would have been and are capped in total at the level of income support that would otherwise have been received.

But, despite the fact that there are people who lose their payments for eight weeks under these laws, there is no provision in law for financial case management. It is entirely discretionary. And, whilst it is entirely reasonable to recover an overpayment—for example, if there was undeclared income or the income support is restored—there is a serious lack of transparency as to what the entitlement actually was and therefore the extent of any overpayment. This lack of transparency is potentially as bad for taxpayers as it is for income support recipients. There seems to be no real reason why financial case management could not exist in legislation and its entitlements and payments be subject to review and appeal. So we say the Howard government should improve the transparency and fairness of its financial case management system so that all concerned—income support recipients, taxpayers and the administrators of the system—know where they stand.

I turn to the pensioner education supplement. Pensioners who study or train in an approved course can access the pensioner education supplement, or PES; recipients of allowances such as Newstart or youth allowance cannot. Under the Welfare to Work changes, people who moved from the disability support pension or parenting payment to Newstart or youth allowance were supposed to be able to retain their PES until they completed their current course of study. This bill breaks that promise. The explanatory memorandum of the original Welfare to Work bill says:

This Schedule gives effect to this by providing that people who receive Newstart Allowance or Youth Allowance and who have been undertaking a course whilst receiving a disability support pension ... will continue to receive the same study assistance ... until they complete their course.
The Minister for Workforce Participation, Dr Stone, claims that this bill is a clarification, but clearly the minister either is not telling the truth or is not across her brief. This bill is not a clarification; it is a broken promise. The bill changes the arrangements that were previously outlined for the 'transitional group' of DSP recipients—that is, those who were granted the disability support pension after the May 2005 announcements and the July 2006 implementation date. If they are transferred from the disability support pension to Newstart or youth allowance after a second or subsequent post-1 July 2006 review, they will lose their eligibility for the pensioner education supplement and they will effectively no longer be considered part of the transitional group. That is, they will only be able to continue to access the PES if they no longer qualified for DSP as a result of their first DSP review after 1 July 2006.

Why is the government doing this? We are yet to understand why the government is changing its position. Part of the rationale for a compliance system, which I discussed a moment ago, is to limit welfare fraud. But what limits are there on the fraud of the Howard government, which talks of the need to move people from welfare to work and then lays roadblocks along that very path?

Labor has consistently argued that restricting the pensioner education supplement to stop welfare to work candidates from getting it is short-sighted and, frankly, is against the national interest of meeting skills shortages and building the capacity of people on social security to create a more secure life and career for themselves and their families. The minister tried to criticise Labor, stating in the other place, when debate of this bill was on foot, that Labor has:

... a focus on putting people into mickey mouse courses—certificates II, III and IV ...

Once again it seems that the minister is not across her brief. First, her own government’s Skills for the Future package puts a big emphasis on supporting people into certificate II courses. Perhaps the minister does not support the Howard government’s policy, or perhaps she sees it as mickey mouse. Second, Labor are not about churning people through courses; we believe that, if a course will help someone get a job, they should do the course. That course must have a work focus. Unlike the Howard government, which is obsessed with headlines and stale ideology, we are practical in our approach and focused on long-term solutions.

We take a different approach to the government. We believe that those who are jobless and lack skills should be encouraged and supported to gain the skills they need to get a job. I will be moving an amendment in relation to this aspect of the bill that highlights our opposition to this absurd measure. As the Leader of the Opposition has said, Australia needs an education revolution. We need to increase participation, and all the evidence shows that if you invest in education and training you build increased participation. It is with these concerns and with a genuine commitment to increasing workforce participation that Labor oppose this bill.

Senator SIEWERT (Western Australia) (5.58 pm)—The Australian Greens also will be opposing this bill. In speaking to the legislative changes proposed by the Employment and Workplace Relations Legislation Amendment (Welfare to Work and Vocational Rehabilitation Services) Bill 2006, I intend to address three main issues. Firstly, the bill proposes to change the way vocational rehabilitation services are delivered under the Disability Services Act by outsourcing rehabilitation services to private providers. However, it does so without ensuring that clients of the new private providers have access to the same provisions for
oversight and appeal that currently exist for clients of the Commonwealth Rehabilitation Service, or CRS. I also wish to speak to the manner in which the government has jumped the gun by putting these rehabilitation services out to tender before the legislation governing their operation has passed through this parliament, therefore effectively signalling that the democratic role of both houses of parliament in assessing and amending legislation is now totally irrelevant.

Secondly, I intend to address is the proposed changes to the manner in which the pensioner education supplement, or PES, is carried over for income support recipients moved onto lower payments under the Social Security Act. Thirdly, I wish to discuss the proposed changes to the Social Security Act enshrined in the legislation provisions that allow debts to be raised for the recovery of what are deemed to be overpayments of the discretionary payments made under financial case management to people on an eight-week suspension. It proposes to enshrine the raising of these debts in legislation despite the fact that these discretionary payments are not themselves defined in the statutes.

Finally, after dealing with those issues, I wish to use the opportunity provided by this bill that is implementing some of the Welfare to Work provisions to address another huge inconsistency in legislation, which is the inconsistency that has now arisen between the Social Security Act and the changes to the Family Law Act introduced last year relating to equal shared parenting and principal carers.

Turning first to vocational rehabilitation services, this legislation proposes to open the provision of rehabilitation services currently provided by the Commonwealth Rehabilitation Service to the private sector. While I am not opposed to the provision of rehabilitation services by private practitioners in principle, I am deeply concerned by the manner in which it is being done. The main concerns of the Australian Greens are that private sector service providers will not be bound by the same set of regulatory and safe practice mechanisms as the government sector or the CRS; the departmental secretary does not have to approve private sector rehabilitation programs, potentially allowing providers to prescribe hundreds of hours of unnecessary rehab from which they will profit; and there is no appeal mechanism for private sector rehabilitation programs, despite the fact that participation will be compulsory under Welfare to Work.

To begin with, the bill will allow the new private sector providers a 12-month grace period to attain certification of compliance with the rehabilitation standards which the CRS currently complies with. These are standards which have long been regarded as important to quality service provision for people who are accessing assistance at a time of significant personal and emotional need. With a potential 12-month delay in the certification of providers, clients could have been exposed to a year of unsatisfactory or inappropriate rehabilitation before an agency is asked to account for itself.

I am also concerned about the level of oversight, particularly of the process by which a rehabilitation program is determined. In the case of the rehabilitation services provided by the CRS, the departmental secretary was required to sign off on the appropriateness of each rehabilitation program. Under the new arrangements for private sector providers there is no clear oversight mechanism. Where we have private sector providers delivering taxpayer funded rehabilitation programs, I would think that there would need to be a greater level of scrutiny; otherwise what is to stop private providers from prescribing hundreds of hours of expensive, inappropriate or unnecessary reha-
bilitation services from which they obtain a direct material benefit? In the absence of a legislative mechanism of oversight and no statutory right of appeal, what is there to stop rorting of the system? We need to have processes in place to protect the best interests of the people requiring rehabilitation, as well as taxpayers, from the potential for exploitation by unscrupulous operators. This is particularly important where, under Welfare to Work, participation in vocational rehabilitation programs will be compulsory, yet the legislation does not provide an appeal mechanism to those people compelled to attend; in other words, they are being compelled to attend a program of rehabilitation that they have no say in and no appeal rights over.

I am also concerned about the future of the CRS and its employees in that they could be placed at risk if it is made to compete in a market where the standards of service delivery applying to a government agency are not the same as those applying to a private agency because this might put them at a market disadvantage. We need to ensure that a level playing field is provided. This is another example of the government’s naive approach to privatisation of service delivery. It highlights an ideological belief that simply opening up taxpayer funded services to competition will result in more efficient and effective service delivery. It is essential to get the legislation and the regulations covering the performance of the market right in the first place, otherwise there is the risk of overservicing on the one hand where providers prescribe unnecessary services as a way of gouging the public purse, or of underservicing on the other where providers scrimp on the quality of services and facilities as a way to compete on price.

Before this legislation was introduced to the parliament, the government had already opened up the rehabilitation market for tender, with no ability to take into account any of the outcomes, discussions or recommendations from either the committee inquiry or the parliamentary process. This demonstrates the government’s intention to ignore the input of colleagues on both sides of the chamber and in both houses as well as the input of the sector and the public obtained through the committee process and simply use their numbers to ram this hasty piece of legislation through this place.

Item 17 of the bill provides a limited override of the right of both houses to amend the Disability Services (Rehabilitation Services) Guidelines 2006. The government claimed that it needed to do this because section 5 of the Disability Services Act allows both houses 15 days in which to amend guidelines, and this could delay their approval to beyond the implementation date of 1 July 2007. The government is putting this arbitrarily decided implementation date before the democratic institutions of this nation, which I believe is extreme hubris on the part of the government.

Let me turn to the pensioner education supplement. Yet again we are seeing quite draconian amendments being foisted on to some of the most disadvantaged in our community—those people living with disabilities. Recently the government changed their approach to those in the transition group or the grandfathered group whereby if people apply to do voluntary training or work they are being assessed and moved on to the Newstart allowance, NSA, from their disability support pension, DSP. And here we have yet another change impacting on people with disabilities. The amendment removing the entitlement to the pensioner education supplement is perhaps the most insidious aspect of this bill. Currently, sole parents and people with disabilities who move from the parenting payment or the disability support pension to the Newstart allowance as a result of
the Welfare to Work changes are still entitled to keep their pensioner education supplement. This supplement allows them to continue an ongoing course of study, which they are undertaking to improve their employment prospects. This bill changes this arrangement so that DSP recipients who are moved to Newstart or youth allowance after a review will only retain their pensioner education supplement if this is their first review since 1 July 2006. This appears to mean that, as soon as they have a second review, they will automatically lose their PES entitlement. This is a very significant change which will see people with disabilities who are part of the way through a course of study financially disadvantaged to such an extent that they may not be able to complete it. There has been a lot of criticism of this move by the community sector, which is of course not unexpected.

In their submission to the inquiry, ACOSS gave the example of a person on a disability support pension who has just commenced a three-year, full-time course and their payment is first reviewed in, say, 2007. If they lose the pension on this first review, they would ordinarily continue to receive their PES until the course is completed three years later. This would be worth $31.20 per week or around $4,900 over three years. However, if they retain the pension in this review but lose it in a subsequent review 12 months later, their PES would then be cancelled. They would miss out on $31.20 per week for the remaining two years of the course—a total of $3,200.

These changes are even more ridiculous in light of the information DEWR revealed to the inquiry by the Senate Standing Committee on Employment, Workplace Relations and Education into the provisions of the bill. The department stated that it expects no financial savings to be made from these changes and that they would apparently affect about 100 people. I see no credible reason for imposing greater hardship on some of the most vulnerable and disadvantaged people in our society. The proposed changes are plainly unfair and are of no benefit to anyone. They will substantially disadvantage the people still benefiting from PES who are working hard to improve their credentials and their ability to gain meaningful employment and do nothing for the nation, which is already facing a skills crisis and needs a more educated and better qualified workforce to improve productivity and build our future economy. These changes make no sense.

Let us move to the financial case management system. The bill also proposes other changes to the Social Security Act, including changes to allow for the recovery of what are deemed to be overpayments under financial case management. Changes introduced as part of the Welfare to Work legislation last year allowed for people subject to an eight-week, non-payment order—that is, they are breached—to receive financial case management. The amendments to this bill will change the legislation to make it possible for debts to be raised from overpayments under financial case management and payment of these debts to be made from income support benefits. In the case of overpayments made by Centrelink of ordinary income support payments such as PPS, DSP, NSA or youth allowance, where the payments are statutory and are clearly defined, such a regime makes sense. Under these changes, the recipients of the allowance know exactly what to expect by way of payment and have access to clear review and appeal mechanisms on these decisions. However, because the financial case management payments are discretionary, recipients do not have this certainty, and the process lacks the transparency and the opportunities and mechanisms for appeal and review.
As it stands, the amendments this bill makes to the act are inconsistent. The proposed changes would see the right to recover overpayments outlined in legislation under circumstances where the making of these payments under financial case management are not outlined in the legislation. If the government is intent on the proper, transparent implementation of financial case management then it should take the time to properly develop the legal framework for the practice and to put that legislation before this parliament. To address this problem, I am proposing an amendment to this legislation to allow for an overpayment only to be collected in the following circumstances: where the primary income support payment is restored part of the way through the eight-week, non-payment period and where the client has undeclared income at least to the level of their normal income support entitlement. I think this amendment addresses some of the inconsistency and I ask the Senate to support it. This amendment was also recommended by ACOSS in their submission.

I would now like to move to an area of inconsistency under the act. This inconsistency is the result of various pieces of legislation introduced in this place. Whether the consequences were intended or not, it is having an unfair impact on members of our community. I would like to focus on the inconsistency between the newly implemented equal shared parenting provisions of the Family Law Act and the Social Security Act. Under the Social Security Act, in the case of divorced or separated parents with equal shared care, only one parent will be determined to be the principal carer. Being the principal carer, a recipient of income support will not be subject to some of the Welfare to Work provisions such as work participation requirements. They will be entitled to a range of exemptions and benefits that only apply to principal carers, such as the continuation of pharmaceutical benefits, a concession card, a telephone allowance, an education entry payment, a limited activity test and protections from taking a job with less than $25 net earnings per week, not having access to suitable child care or not requiring travel more than 60 minutes to work.

As far as I can determine, the other parent with the responsibility for the care of the child or children will have no access to the parenting protections offered within the income support system and no recognition of or support for their parental responsibilities. This one-sided set of arrangements is now situated within the context of major changes to family law, which represent a significant shift in societal expectations of how parenting roles and responsibilities will be shared when relationships between parents break down and families divide.

As this chamber knows, from 1 July the Family Law Act requires mediators and judicial officers to consider equal time for each parent or, failing that, substantial or significant time—shared equal parenting. The implication of this is that there will be a steady increase in equal time arrangements and the current principal carer rules will increasingly create structured inequalities for parents and children in the income support system. This will predictably create conflict between parents, placing additional stress on the parent not selected as the principal carer and increased risks on the child of either loss of care and/or a reduced standard of living as a consequence of loss of parental income.

This is clearly inconsistent with legislative reforms to both family law and child support. Both these promote an ideal of shared parenting, yet social security law recognises only one parent. If we are to commit to and apply the concept of equal shared parenting in family law then we must also commit to and apply it to social security laws. Other-
wise we are creating a two-tiered system that actively discriminates against children of broken families who have one or both parents on income support.

The NCSMC has already documented reports from mothers of infants who have been ordered by the courts to share care 50-50 and who have not been determined to be the principal carer, and who therefore face the same job search requirements as a single job seeker with no children to support and, of course, receive none of the other supplementary income support mechanisms.

I am very concerned that this policy has the potential to be very harmful for children during their half-time life in the household where their parent faces an eight-week loss of income if they cannot balance their work and childcare commitments and are forced to look after their children instead of taking an unsuitable job. Research by the Ministerial Taskforce on Child Support found that childcare costs for zero- to 5-year-olds was something like $11,000 to 12,000 per annum. How is a parent meant to afford childcare when they are forced to work full time when their children are below school age? This policy is another example of policy-disconnect and where the Welfare to Work system inappropriately and unfairly impacts on sections of our community.

I propose an amendment to the Social Security Act to address the plight of principal carers by changing the definition of principal carer in the act. This will bring some consistency between the government’s new policy direction on shared parenting and the Social Security Act. This is a very important issue and one I hope the government will fully consider. The implications of shared parenting are very serious and, now that it is law, the system that supports parents raising children should be consistent.

I will move a series of amendments to this bill that will address the issues around the 12-month allowance for certification of private practitioners and the time limit on pensioner education supplement eligibility and place in the legislation an appeals mechanism for the clients of private practitioners, similar to the one already available to clients of CRS. I believe that these amendments are essential if this legislation is to be fair to the people affected by this legislation. Without these amendments the Greens will not support this legislation because we think it is unfair. It is another attack by the government on the most unfortunate and vulnerable people in our society who, in many cases, are not able to defend themselves. They will not have appeal rights to the decisions that are made about their rehabilitation. Surely any fair system would provide the recipients of care with the right to appeal and have a say in their rehabilitation management program. For the life of me, I cannot work out why the government has failed to include this important mechanism in this legislation.

Senator STEPHENS (New South Wales—Parliamentary Secretary to the Leader of the Opposition) (6.17 pm)—I too welcome the opportunity to speak about the implications of the Employment and Workplace Relations Legislation Amendment (Welfare to Work and Vocational Rehabilitation Services) Bill 2006. Senator Wong has outlined Labor’s position on this bill—the concerns that we have about the bill and the inequities that are built into it. I listened with interest to the debate in the House of Representatives last month. I was intrigued that the focus of so many government members seemed to be on the people who are undeserved recipients of disability services. I will give just one example: Mr Johnson, the member for Ryan, spoke on 15 February about ‘strapping young blokes living in Byron Bay and going surfing’. It seemed to
me that that was an extraordinary way to think about the people who are going to be most affected by this legislation.

Tonight I want to talk about the disadvantage that will be suffered by the deserving recipients of disability services under this legislation. These are the people who will be affected. I need to say at the outset that Labor do not encourage or in any way condone people who are exploiting the system. We recognise that such an element exists in every society, and Australia is no different in this regard from anywhere else. That is why the Keating government took such a strict approach to people defrauding the Commonwealth by claiming benefits to which they were not entitled. But the focus of this bill is not at all the opportunistic element which exists at every level of society; it is deliberately narrow in its focus, targeted at those people receiving disability benefits.

The government has made two assumptions which need to be questioned in the interest of every person living with a disability and labouring to have a fulfilling life in this country. The first of those mistaken assumptions is that they do not want to work, do not want to be a full and contributing member of society and do not want to lead a life as close to the norm as their unfortunate personal circumstances allow. The second is that these people exaggerate or distort the degree of their disability. For disabled people suffering social and financial limitations, these assumptions are not only offensive but also proof positive that the Howard government is out of touch with reality, prepared to make hard lives even harder by the application of stringent and inflexible laws which keep the have-nots firmly in their place so that the haves can flourish and prosper. If we as a society can help those living with a disability to participate and make a useful contribution, that is a positive step. Welfare to Work is a great idea, provided that the passage from one mode of life to the other is carefully designed and monitored along the way—that support is always available for those who find the going tough and that those who embark on it are not handicapped financially.

I repeat: I have no truck for people who rort the system, but what about all those Australians in receipt of disability benefits who are justly entitled to our support to lead a fulfilling life and whose future is threatened—and, yes, I use the word ‘threatened’ advisedly—by this legislation? I need to speak out for those people because, in pursuit of exploiters, the government is in danger of throwing the baby out with the bathwater. In particular, tonight I want to speak on behalf of the mentally ill—those whose disability is already a stigma and whose suffering under the proposed legislation can almost be guaranteed.

In my role as co-convener of the Parliamentary Friends of Schizophrenia, I have certainly learnt a lot about mental illness. I have met a range of carers, employers, doctors, counsellors, case managers and of course people living with various forms and degrees of this disability. Overwhelmingly, they would prefer to be working than sitting at home receiving welfare, but we cannot ignore the emerging evidence about the obstacles that mental illness poses to productive employment. First, there is the issue of time. People with mental health difficulties are more likely than others to receive public assistance, and unless they respond well to treatment they are likely to continue to need assistance for long periods of time. These are people who are least likely to respond to the pressures of time limits. Timeliness and other such inflexible rules place them in real jeopardy of facing severe and long-term poverty. All welfare to work programs must determine how best to assess these clients’ needs and design services in ways that will both facilitate steps towards employment and al-
It is essential to understand and appreciate the relationship mental health issues have to welfare dependency and employment. This relationship is very complex, to put it mildly. First, there is that long-established problem of definition. Mental health issues are defined in a variety of ways which result in different assessments of the severity of the mental illness. Narrowly defined, serious mental health issues are psychiatric disabilities that seriously interfere with one or more aspect of a person’s daily life. Such disabilities or illnesses meet diagnostic criteria for effective disorders, including major depressive disorders. More broadly defined with less rigorous assessment criteria, mental health issues may also include symptomatic problems or indicators for risk of mental illness. Although diagnosable mental illness may exist in these cases, these broadly defined mental health issues may actually be merely symptoms of other difficulties in a welfare recipient’s life.

Definition is not just splitting hairs; it affects perception of what people can do. Mental health issues defined narrowly, such as meeting the diagnostic criteria above, tend to be estimated as less prevalent than those defined broadly as merely symptomatic of depression. The barrier that a disability presents to employment can be similarly assessed differently according to who makes the assessment or where the information on which the assessment is made is derived. I am talking about the familiar problem of bias. We are all aware of how using different techniques to collect data can cause variations in the estimates. For example, when sensitive data is collected in person or when data for an entire family unit is collected from a single household member, rates of mental illness can be distorted.

So we cannot simply bundle all people on disability pensions for mental health reasons together. The first step to help people move from welfare to work must be accurate identification and proper diagnosis of clients with mental health needs. Again, this is not a simple matter. The Commonwealth Rehabilitation Service, which currently provides this service, is aware of just how complex it is. I am very worried about the introduction of contestability for vocational rehabilitation services and the reduction of parliamentary oversight of the guidelines. The difficult business of identifying and diagnosing people with mental health needs involves two main processes: screening and assessing. Screening refers to determining the probability that a mental health need exists, often by identifying symptoms of mental illness or other mental health needs; and assessment refers to a formal psychiatric diagnosis of the type and severity of mental illness. Both steps must be done properly.

Under this legislation, private providers would be able to tender for contracts for vocational rehabilitation services, but there is nothing in this legislation to guarantee that the requisite care be taken with people with mental health needs. The fact is that few private agencies use formal instruments to identify clients with mental health needs. Rather, welfare agency staff generally identify clients in need of mental health services simply by observing symptoms, such as anxiety or behaviour problems and depression.

The other main means of identifying the nature and extent of these people’s disability and estimating the effect it would have on their employment is to ask questions in the course of initial and follow-up interviews—questions that are designed to illicit information on symptoms. I guess I do not need to
labour the point here. Mental health advocates are understandably very concerned that removing the Commonwealth Rehabilitation Service’s right to approve individual rehabilitation services will be a very retrograde step. We want to create a society which strengthens rather than weakens people’s rights, which helps people rather than hinders people with disabilities to lead as full a life as possible, and which solves rather than creates problems for them. Many private providers are not compliant with the provision of the Disability Services Act. The development of effective mental health screening instruments for use by providers is much needed before we can authorise them to oversee a client’s participation in the workforce.

I said this issue of moving a person with mental health issues was complex. Let me explain. After a client is screened for mental health illness, mental health professionals conduct psychiatric evaluations to arrive at a comprehensive assessment. These assessments do not just allow diagnosis of a client’s mental illness; they also cover understanding of how that illness interacts with other possible personal difficulties, such as substance abuse, homelessness or domestic violence. This is clearly a delicate area where practitioners need training and expertise.

To approve legislative amendments which remove safeguards to this effect rather than strengthen them would be completely irresponsible. The responsible way to move mental health clients from welfare to work would of course be to offer them enhanced services that are directly linked to preparing them for employment, usually combining mental health care and counselling with employment related services, such as vocational assessment and training, job preparation and placement, work experience, on the job training and accommodations and adaptations, post employment support, and interpersonal and life skill training. Depending on the degree of disability, there might actually be a need for more intensive support, such as home visits, case staffing, interactive service plans and the involvement of specialised mental health treatment workers. These kinds of programs are typically operated not by vocational rehabilitation services but rather by mental health agencies. It is abundantly clear that enabling people with mental health disabilities to make the transition from welfare to work successfully will require an enormous effort in coordination.

Sitting suspended from 6.29 pm to 7.30 pm

Senator STEPHENS—Before the dinner suspension I was speaking about the Employment and Workplace Relations Legislation Amendment (Welfare to Work and Vocational Rehabilitation Services) Bill 2006 and the importance of more intensive support for those people who have mental health issues. I am concerned that the legislation does not acknowledge the need for improved coordination of services and support and it certainly does not allow for the necessary coordinated efforts between welfare agencies and mental health agencies, as well as between mental health agencies and supported employment providers. The kind of coordination offered could range from structured referral mechanisms to shared funding arrangements and beyond.

In my research into the evaluation of welfare to work programs, I could find very little empirical evidence that isolated the role of mental health strategies in their evaluation designs and analyses. But an examination of programs that integrate mental health treatment with employment related services showed that this combination of services, when properly implemented, can help clients with mental health needs prepare for employment and stay employed successfully,
providing that ongoing support and accommodations in the workplace are provided.

I reiterate: to be successful, the programs need to encompass both treatment and employment services, and cannot be short term. That is the problem with this legislation—it simply does not recognise the importance of such a coordinated approach, or the degree of foresight, detailed planning and follow through that are essential. I have known many people with disabilities, particularly with mental health issues, who want nothing more than to move from welfare to work, and I would be happy to support legislation that would help them do that successfully. But the legislation in its current form does not meet these criteria.

A very common feature of mental illness is its volatility: it is usually not a stable state, even when medical treatment is working ‘successfully’. This raises the issue of not only the difficulty at the screening and assessing stages, and the need for ongoing support, but also the need for flexibility and accommodation of change to be built into the legislation. A good example was given by Ms Annette Ellis in the House of Representatives. In her speech on this legislation in the other place, she related the experience of a client who bit off more than he could chew in trying to get off his disability pension and into work and then was locked out of returning to his disability pension. That is what we are going to see as a consequence of the bill before us.

So while I share the desire that people with a disability engage more fully in the workplace, and I can see it is for the benefit of society in many ways to encourage and support them in vocational rehabilitation, I cannot believe that the current legislation will do so successfully. Instead of a long-term, integrated plan to enhance our society, it appears to be a short-term, hastily drafted plan motivated by a belief in the value of increased competition.

We cannot say nothing while the lives of the most vulnerable members of our society are being used in an attempt to win votes—for instance, as a chance for the member for Ryan to appeal to hardworking mums and dads about being taken for a ride while their taxes are funding a lifestyle of ease for surfers and other rorters. The fact is that those mums and dads, all too often, have someone in their family or amongst their friends who suffers from a disability—someone they want to see helped to participate in society. These mums and dads know that welfare to work transition for these people will not be a single, easy step. They know it will require coordinated efforts. And they know that the legislation needs to be carefully drafted and redrafted to ensure that our social policies in Australia are first class. On behalf of these people, I express my reservations with the bill.

I have one final point. There are, of course, people whose disabilities severely limit their ability to participate in the workforce, even on a part-time basis. What I said about screening and assessment applies to these people. I fear that they could easily become victims of the kind of thinking demonstrated by the member for Ryan, again, when he said of people on welfare: It is not in their interest to stay on welfare and it is not in the national interest of this country.

Well, sometimes it is. What sort of society would we be if we could not look after those incapable of looking after themselves? Is that what the government considers in the national interest?

Senator Wong has forecast Labor’s position on this bill: we will not support it. I am pleased to support the comments made by Senator Siewert in her contribution to the debate, on the lack of coordination between
this legislation and other social security legislation. I believe it is poorly conceived and poorly targeted legislation that does not deserve Labor’s support.

Senator Barnett (Tasmania) (7.36 pm)—I am pleased to stand in support of the Employment and Workplace Relations Legislation Amendment (Welfare to Work and Vocational Rehabilitation Services) Bill 2006. I empathise with some of the principles and themes that have been espoused by Senator Stephens and other members on the other side, in terms of their concerns for people with disabilities. No party—the Labor Party or the Liberal Party—has a monopoly on compassion. We all share a desire and an objective in life to care for, and show compassion, empathy and sympathy towards, the disadvantaged, and to do everything in our power to assist and help those who have disabilities and who are less fortunate than ourselves.

The thrust behind this legislation is to encourage those on welfare to get into work. Some $3.6 billion in extra services and expenditure is being spent by this Howard government to make that happen and to encourage those on welfare to get into work. In terms of empathising with Senator Stephens, she has indicated that she is the co-convener of the Parliamentary Friends of Schizophrenia. I commend her and her colleagues involved in the group. It is very important that we in this parliament stand here to express our concern and support for people with mental illness and for people with disabilities generally.

I was very involved with the Motor Neurone Association in Tasmania and nationally before I was in the Senate as my father had motor neurone disease and died from motor neurone disease. I have an empathy with those who have diabetes, both type 1 and type 2. I have type 1 but I empathise with those with type 2. In many instances they certainly have disabilities through, and as a result of the consequences of, their living with diabetes. So there are people in this Senate, in every chair I would suspect, who have contact either personally with a family member or perhaps through an extended family situation or through close friends who know people with disabilities and want to express their support and concern for those people. The heartfelt expressions of concern and support in this chamber from all sides are acknowledged.

However, in my view the position that has been taken by Labor for many years now is the wrong way to go. The bill before us builds on the Welfare to Work reforms and makes amendments to the Social Security Act 1991, the Social Security (Administration) Act 1999 and the Disability Services Act 1986. These amendments ensure the continued support and assistance for job seekers to build capacity and find work through employment and related services. In 2002 this government brought forward a disability related bill, the Family and Community Services Legislation Amendment (Disability Reform) Bill 2002 that aimed at reforming the legacy of Labor and their outdated welfare arrangements that had consigned disadvantaged Australians to a life on welfare rather than assisting them into work.

Senator Stephens has quoted in her address to the Senate and I want to inform the Senate of a quote that I have here from the shadow minister for family and community services and now the shadow Treasurer, the member for Lilley. He said at the time that our disability pension reforms were ‘an unprecedented attack on the 3.1 million Australians who have a disability’. He then went on to say in the same speech:

This country and this society desperately need real welfare reform. We need a community, a
whole of government and a political commitment to welfare reform.

You cannot have it both ways. You cannot stand on both sides of the fence. This is what Labor have been attempting to do. Labor have opposed the reforms that our government has put forward and on each occasion they have voted them down. We wanted to assist disabled Australians to be rehabilitated and, if necessary, upskilled so that they could return to work if they had part-time capacity. But on each occasion the opposition said no, they did not support that approach. They wanted to keep all disabled people on pensions until they reached old age, irrespective of their capacity and willingness to work.

That is history. That approach is exactly what we do not want in this country, Australia. Labor have opposed every major employment and welfare reform undertaken by the government including—and I just want to advise the Senate of the initiatives that they have opposed—the introduction of the Job Network and Work for the Dole. I know that in my state of Tasmania Work for the Dole is a tremendously successful government program. It is supported not just by the participants, a large percentage of whom end up in a job as a result, but also in large part by the community, by the people in the communities where the Work for the Dole program actually operates. But Labor opposed that as well.

They have opposed tackling Indigenous welfare dependency, and I want to pay a compliment to the Hon. Mal Brough, who has used his earnest and best endeavours and is forging ahead in a remarkable fashion with zeal to address this issue. I think that most Australians are with him in his endeavours on behalf of the government to remove that welfare dependency in the Indigenous community. He is certainly tackling that issue with gusto, and I congratulate him on that.

Labor have opposed key parts of Australians Working Together. They have opposed Welfare to Work. They have opposed the introduction of mutual obligation. What could be more sensible, more right and proper, than this concept of mutual obligation? Australian people have now embraced this concept whereby, if funding support is provided to you via the government from the taxpayer, then there is a mutual obligation for you as the recipient to say thank you and to say, ‘Yes, I do have a responsibility to this government and to the Australian taxpayers and to my community to demonstrate my responsibility and to be accountable for that.’ Those key concepts of responsibility and accountability—being responsible for your decisions and accountable for your actions—have in my view been embraced by the Australian community. Yet Labor, again, have said, ‘No, we don’t support it.’ That is disappointing to me and, I believe, most of the community.

Of course, the community have supported the disability support pension reforms that this government has embraced and initiated. Why would they do this? Here we have an unemployment rate of 4.5 per cent, a booming economy and an ageing population, and there has never been a better time for people on welfare to get a job. The opportunities are out there for those on welfare to actually get a job. That is what we are trying to do. That is why we are investing over $3 billion to make it happen—to encourage those on welfare to get work. In the last year we have seen a rise in the number of people getting jobs. The Job Network made a difference to almost 650,000 people through placing them in a job. Fifty thousand of this group were parents; 47,000 were Indigenous Australians; and 81,700 were from culturally and linguistically diverse backgrounds.

The bill before us tonight will provide choice for people who want and need help to
return to work. And it is appropriate to be talking about the importance of choice on the anniversary of Work Choices, which has provided the flexibility to allow for more jobs.

Senator George Campbell—Keep revving it up; keep talking about it.

Senator Barnett—We have seen 260,000 new jobs created across Australia over the last 12 months since Work Choices. Senator Campbell, those are the facts. This is the anniversary, so it is appropriate to mention Work Choices because it is linked in with this Welfare to Work reform. We have seen over a ½ per cent increase in real wages in the last 12 months as a result of the Work Choices reforms, not to mention the 17 to 18 per cent increase in real wages since the Howard government came to power. More jobs, higher wages, fewer industrial disputes: the facts are on the table for the public to decide between Labor and the coalition.

In terms of the bill, the Commonwealth Rehabilitation Service currently assists this group of people. The bill will open up the vocational rehabilitation market to a range of organisations who specialise in preparing people to get back into work, as well as develop relationships with employers who are prepared to give these people a go. In short, the bill will introduce contestability for those vocational rehabilitation services from 1 July this year. The concept of contestability is something that Senator Stephens does not support, nor do the Labor Party.

Senator Stephens—Not when it comes to mental health services.

Senator Barnett—Not in health services or in welfare services? Mental health services.

The Acting Deputy President (Senator Hutchins)—Through the chair, please, Senator Barnett.

Senator Barnett—Through you, Mr Acting Deputy President. I am happy to take that interjection and say that it is important to have contestability when it comes to Welfare to Work services such as the vocational rehabilitation services.

I am proud to be a member of the Senate Standing Committee on Employment, Workplace Relations and Education that inquired into these bills. I want to thank on the record Senator Judith Troeth, our chair, for the work that she did in leading the committee through that inquiry, and John Carter and the committee secretariat for the work they undertook and the services they provided to our committee.

Senator Marshall interjecting—

Senator Barnett—There were a range of submissions to that committee—and I am looking at Senator Marshall as I say this. We received a range of submissions, including submissions from the Department of Employment and Workplace Relations, mental health advocates and others. We received those and took the witnesses’ evidence on board. We responded in our report on 28 February 2007, just last month. As the report says:

The Welfare to Work legislation, which commenced on 1 July 2006, aimed to reduce this welfare dependency and increase workforce participation.

As I indicated earlier, it was supported by a $3.6 billion investment in getting people off welfare and into work. That expenditure was, as the report says:

… on extra services, including employment services and other assistance to support people to re-enter the workforce and find a suitable job. This package specifically included an additional—

I repeat, ‘an additional’—

$192 million over three years for vocational rehabilitation services …
This is something that those on the other side have neglected to say. This is an investment of nearly $200 million over those few years. That will provide support for those services to help people with disabilities and perhaps people in the mental health arena or elsewhere to get work if at all possible. It will ensure access for all those eligible people with new part-time activity tests or participation requirements—and of course there are those requirements. Those are the criteria that have been set and, if they cannot meet them, of course they stay where they are. As the report says:

In summary, the committee majority sees these amendments as improving the Welfare to Work legislation. It notes that the amendments are the latest measures to increase workforce participation and improve employment rates.

The committee majority turned its attention ‘to three specific matters of concern raised during the inquiry’. I am happy to advise that they included changes to the provision of vocational rehabilitation services, as I have already indicated, the pensioner education supplement changes and ‘the raising of debts through the financial case management system’. In conclusion, as noted by the majority of the committee, we recommend support for the bill. As noted in the report:

A key objective of the government is to maximise the ability of people to find work, particularly those who face the most severe barriers to work, and to reducing welfare dependency.

In considering the evidence given during the inquiry, the committee concluded:

... the provisions of the bill are consistent with the intent of the existing Welfare to Work package. Amendments to the provision of vocational rehabilitation services will pave the way for increased choice as well as encouraging innovation in the provision of services.

I want to conclude with the message that is sometimes advertised on our televisions and on other media which says, ‘Support those who support you.’ I think it is a key concept which distinctly underpins the legislation before the Senate today.

Senator GEORGE CAMPBELL (New South Wales) (7.52 pm)—I do not want to spend the time of the Senate this evening responding to some of the issues that Senator Barnett has raised in his contribution, although I could use up my whole 20 minutes on one or two of those issues that he raised. Given that we are not on broadcast and we are basically talking to ourselves, there is no point in wasting the time of the Senate.

Senator Brandis—I’m listening.

Senator GEORGE CAMPBELL—I am sure you are, Senator Brandis, you always listen carefully to what we have to say. This evening I want to focus on what I see as the main policy issues dealt with by the proposed amendments to the Disability Services Act 1986, the Social Security Act 1991 and the Social Security (Administration) Act 1999. These issues include contestability for vocational rehabilitation services, disabled access, restrictions to the pensioner education supplement and financial case management, the key issues that were addressed by the Senate Standing Committee on Employment, Workplace Relations and Education in its hearing on the Employment and Workplace Relations Legislation Amendment (Welfare to Work and Vocational Rehabilitation Services) Bill 2006. I want to make clear at the outset that the ALP supports welfare reform. It, in fact, encourages people to engage in further training through the use of positive incentives. I say through the use of positive incentives because many—

Senator Barnett—You never voted for it.

Senator GEORGE CAMPBELL—Senator Barnett, because we do not vote for your legislation or your hardline ideological agenda does not mean that we do not support welfare reform. We have a different view
from yours as to what is meant by the words ‘welfare reform’ and it is not about beating up on people to force them into sets of circumstances for which they are poorly equipped and do not have the ability to actually deal with. It is about providing them with those resources before you force them into a set of circumstances where they have to use them. We do not support these so-called reforms because they do not encourage those on welfare to find work. Instead, they actually punish those attempting to undertake further training and undermine safeguards that have been put in place to protect vulnerable people attempting to re-enter the workforce.

One of the purposes of the bill is to introduce contestability for vocational rehabilitation services. Vocational rehabilitation services assist people with a disability, injury or health condition to get and keep a job. These services are crucial in assisting people from welfare to work. In fact, this bill and its approach to vocational rehabilitation is less about good help for people who need it than about ideology. What we see in this bill is the ideology of the market holding sway in spite of the obvious problems that it will create.

The government is planning to rely on the market to provide in circumstances where that cannot work. A market may be able to operate in some circumstances but not in others. The government cannot explain how they will get around the basic flaws that are in this approach in this bill. What happens for example in small markets where there is only one provider? What is going to happen where the market will not create contestability? Who is going to provide the circumstances in those instances? We know what the result of that is going to be. How is there a competitive force driving the vocational rehabilitation services to provide a good service to the clients? Worse, what about markets where the vocational rehabilitation services do not make any money—what is going to happen in those circumstances? Will the Commonwealth be left to pick up the scraps after the lucrative contracts are filled?

We are offering an opportunity to private providers to set themselves up in good little markets, some of which will be monopoly markets. We will leave the Commonwealth to pick up the slack. That is what is proposed by this bill. That is the structure that this bill will create in respect of these rehabilitation services. We know that there will be small towns where there is simply no way of making a private vocational rehabilitation service turn over enough money to be a viable operation. We are still going to have the Commonwealth in those circumstances doing the work in those areas. What we will be doing is subsidising the lumpy cases while the private sector makes off with the cream, or as our colleagues from the National Party would say, ‘We are socialising the losses and privatising the gains.’ I am not too sure just how good an idea that is.

I do not know whether that type of structure is going to provide better rehabilitation services than those currently provided by the Commonwealth. I suspect neither does the government. I do not think they have thought through this legislation with any degree of detail or looked at all of the circumstances within which it will apply. We have seen the Job Network and the problems that have come from that. It could be that we are going to have exactly the same problems created in respect of the rehabilitation services. There is nothing in here to show how tough cases and tough markets will be best served by letting the market do it. In fact, what is going to occur here is not letting the market do the work but letting the market cherry-pick the locations and clients while the hard cases and those areas that will not make money will simply be left behind.
There is concern from the National Association of Community Based Children’s Services and the CPSU that the lack of safeguards in the new system may lead to reduction of service, poorer rehabilitation outcomes and fewer specialist services. Where it is not an easy or cheap fix, the service may in fact not be provided. The profit motive in these circumstances will simply override the motive to service the needs of the people who need those services. Where money is tight, the otherwise essential elements of the service will be trimmed. Hours of service, staffing numbers and quality of service will be squeezed in the process. The essential problem of for-profit service providers is that, when the squeeze is on, services can suffer. This could be especially problematic in regional areas. The market may not provide sufficient demand to sustain economically viable services. There is the unavoidable potential for market failure.

Lynne Wannan from the National Association of Community Based Children’s Services told the inquiry, when responding to a question from Senator Barnett, that:

In most human services areas it is very difficult to get sufficient demand in rural and remote areas for service providers to be there, basically. Unless they are subsidised by government in one way or another, you are very unlikely to get much. That is certainly the history in children’s services, with the very small numbers of children.

In fact, that raises a very serious question about the equality of the services that will be provided. For example, will the services in Kyogle match the services in Kogarah? Will the same money be available to perform necessary upgrades to facilities for accessibility in Lismore as will be provided in Liverpool? I am concerned that where it is not worth it for the for-profit operation, services may not be up to scratch. Particularly concerning is how this will affect those in rural and regional areas, as many are already marginalised due to lack of available services.

There are also potential issues with the vocational rehabilitation services for clients with a disability. Many private vocational rehabilitation service providers are not compliant with the Disability Services Act. Nevertheless, in order to get the system rolling, the secretary of DEWR may allow services to be provided by providers who do not have a compliance certificate. I simply do not think that is good enough in this day and age. The current compliance guidelines are there for a reason. They ensure that organisations responsible for providing the rehabilitation services understand the needs of their clients.

Those who work in health and community services will be able to tell you that it is responsible and necessary for both the staff and the organisation to understand the needs of the people they are working with—for example, those who suffer from a mental illness. The Mental Health Council of Australia argued in their submission to the inquiry that this will not ensure: an initial high standard of service; an appropriate consideration for people with mental health conditions; and confidence in the accessibility of the site for people with disabilities. Ignoring the concerns of a peak body such as the Mental Health Council will no doubt have significant ramifications.

The ALP understands that there is a priority on getting new providers into the marketplace. However, there is no point putting the cart before the horse. But this, in our view, is exactly what these amendments do. They prioritise service delivery above care and responsibility for those who will be using the service, discounting the safeguards, such as those which are there to ensure that organisations understand the needs of a variety of people and can provide access to people experiencing disabilities, that are vital. If the
needs of people cannot be met, the effectiveness of the rehabilitation that is being provided will be substantially diminished.

Changes to the pensioner education supplement are also cause for concern. The pensioner education supplement is currently worth $31 per week for the duration of a course. That is around $4,000 per year. It is paid to people who are undertaking studies while in receipt of either Newstart or the disability support pension. Disability support pension recipients were reviewed after July 2006 as part of the Welfare to Work scheme. If at this review Centrelink found that they were not eligible for a disability support pension anymore, they still kept the pensioner education supplement. If a recipient keeps the disability support pension at the first review but they are reviewed again and lose it, they lose the pensioner education supplement as well. This is in spite of a commitment to allow people currently undertaking a course to complete their course with a pensioner education supplement. There will now be some people who lose their pensioner education supplement part of the way through a course.

It does not seem to make a lot of sense in terms of the way in which this system should be working. Does the person who loses the disability support pension at the second or later review not need the pensioner education supplement anymore? I would suggest it is the opposite. Do they somehow need it less than the people who are still grandfathered? It seems to not make a lot of sense and, although it is a small group, for the individuals concerned this could pose a serious problem. It seems less prudent than mean. It makes even less sense when the department states that it expects to make no savings from the measure.

Many workers who are on the margins of the disability support pension and who are being shifted back into the workplace need to update their skills. The reality is that they will not get back into the workforce unless they do have the capacity to update their skills. They need to undertake education and freshen up their skills before they can even think about being employed back in the workforce. I for one am concerned that this measure will remove the incentives for many of those workers to undertake to update their skills base. This proposal, in my view, in fact takes away support. It removes the help for those individuals. It actually makes it harder for people to study and improve their skills. It makes it harder for them to move from welfare to work.

Labor does support the changes proposed to allow Centrelink to recover financial case management overpayments. The proposed system will permit the recovery of financial case management payments made to people whose payments have been restored. It is basically to recover what is essentially a double payment. These changes need to occur, as the current provisions around financial case management payments are inadequate. There is no clear process and no guidelines, and mistakes happen.

We note the inconsistency, however, in that a process to recover overpayments is being codified while the payments themselves are not. There is no legislative basis for the financial case management system—it is a process that is essentially discretionary. In determining overpayments, this can lead to some undesirable outcomes, as we heard from the National Welfare Rights Network. Michael Raper told the inquiry that his objections revolved around:

… the lack of clarity and the lack of a legislative base for this system, which means that it is virtually impossible to correctly determine what is an overpayment …
People might have payments clawed back when there is no legislatively based reason to—not declaring income while receiving payments under the financial case management system, for example. Because there are no rules written into the act, there is no clarity as to the basis upon which this recovery can take place. Also, people might have payments clawed back after their initial penalty has been overturned, and the case management money may have been spent on urgent medical expenses. As we were asked in the hearings, what if it were to cover pharmacy bills that had been mounting up? What if it were to cover psychiatry costs?

There needs to be a better way of codifying how this system should work. And those who face having their private finances scrutinised deserve to know what criteria need to be met in order to receive money for ‘essentials’. Consequently, Labor urges the government to put the whole financial case management system into law. It is a scheme that has its uses, but it makes no sense to have it operating without any legislative backing.

In conclusion, let me say that Labor have always been sceptical of the government’s Welfare to Work package, and I think with justifiable reason. We do not agree with the government’s carrot-and-stick approach. We do not agree that the best way of helping people to work is with a ‘Welfare to Less Welfare’ scheme. Labor believe in building proper incentives into the system. We think that there should be efforts made to address the causes of long-term unemployment. We should be looking at helping people develop skills and putting a greater focus on resources in that area. We should be offering real training opportunities to people with disabilities. We should be helping people who want to study, not taking their benefits away. Only with a constructive approach, based on investing in people and helping people, can we really get people from welfare into work.

Senator BARTLETT (Queensland) (8.11 pm)—The Employment and Workplace Relations Legislation Amendment (Welfare to Work and Vocational Rehabilitation Services) Bill 2006 is a follow-on bill to try and tidy up some of the mistakes made with the initial so-called Welfare to Work legislation. I have to start out by saying the whole phrase ‘welfare to work’ is one of the great cons of this government’s current term of office—and that is probably saying something, because there are a few there.

I can well remember when the so-called Welfare to Work package was initially being put forward by the government and was being justified with all their rhetoric. It was examined by Senate committees and question after question was asked in question time of relevant government ministers. I remember counting about 12 different questions, I think, over a number of months, to various government ministers, all asking simply: how does reducing people’s welfare payments get them into work? The only response we got from government ministers was a parroting of the cheap propaganda line that anybody who is opposed to this measure somehow wants to keep people on welfare. That is how dishonest, how shallow and how bankrupt the government’s approach is in this whole area. That simple label of Welfare to Work is a dishonest label that completely misrepresents what the government has done and is used to smear anybody who disagrees with them—and the government is persisting with it.

It is disappointing, frankly, that the government majority on the Senate committee simply saw their role as to parrot that propaganda line further. We had the nonsensical
so-called finding that the committee majority saw these amendments as the latest measures to improve workforce participation and improve employment rates. What a farce! The source they quoted for this finding was the second reading speech of the Minister for Workplace Participation. Just parroting propaganda and then repeating it as fact does not make it true. It just makes it repeated propaganda. That is all the committee members from the government side did with regard to their assessment of this piece of legislation.

The government members of the committee made the conclusion that a key objective of the government is to maximise the ability of people to find work, particularly those who face the most severe barriers to work, and to reduce welfare dependency. That is nice to know. Unfortunately, it has nothing to do with the legislation and it has nothing to do with the parent act either. I fully acknowledge and note that there have been a range of measures put forward by this government, at some cost, aimed at extra services—employment services and other support—to assist people to re-enter the workforce. I fully acknowledge that and I welcome that in as far as it is appropriately applied, and I think there are some questions about aspects of that. But spending extra money to assist people into the workforce and providing employment programs is good, as long as the programs are appropriately operating and they are not just circular training programs with no jobs at the end of them. But that has nothing to do with reducing the income of those people who remain on welfare.

Where does this notion come from that reducing people’s income is going to help them into the workforce? It is an age-old fallacy that to help welfare recipients find jobs you give them a bit of ginger, you give them a bit of spice, by reducing their income and making them scratch around in the dirt; whereas you give the people who are well off more incentive to work harder by giving them tax cuts and more money. That is the total double standard that we have here, and it is being reinforced by some of the changes in this legislation.

The legislation itself goes only to some parts of the totality of the dishonestly named Welfare to Work measures. I will run through those now. It does what is euphemistically called clarifying the definition of the transitional group of disability support recipients and their entitlement to keep the pensioner education supplement if moving to Newstart or youth allowance. It clarifies it by removing it. This will only apply to a small number of people, but it is part of the time-honoured jargon that we have seen since way back before Centrelink days in the social security arena. I can well remember that any time you saw a piece of social security legislation that said ‘clarifying the definition’ or ‘improving the efficiency of’ then you could be pretty sure that somebody’s income was being cut along the way—and that is what we have here. Nowhere is it explained how clarifying the definition and removing the eligibility of a small number of people to the pensioner education supplement actually meets the so-called goal of the government to get people into work. How does reducing their income and cutting the pensioner education supplement, reducing their income even further, help them get into work? That is not answered.

The legislation also allows for financial case management debts to be deducted from social security payments. I will go to the principle involved in that in a moment, but, regardless of whether or not you think it is an appropriate mechanism, how does getting back an overpayment help someone get into work? It has nothing to do with getting into work. But if you raise that point all you will get is the blanket, universal smear from the
government: ‘You want people to stay on welfare. You’re against people getting off welfare and into work.’ The government simply refuse to acknowledge the core reality of what they are doing to some of the poorest people in Australia.

Let us not forget that the financial case management system was implemented as a last-gasp attempt to put a disguise over the reality of what was being done to some of the poorest people—people who have breached or seem to have not met their obligations and have their income removed. To try and cover up the fact that they were putting people basically into destitution, the government give people who are in absolutely impossible situations case management to help them manage not having any money. It is an interesting concept. The way they would help them would be with food vouchers, paying the rent or paying the electricity. It is people at that level of poverty who need help, and the government want to regain their overpayments. I am disappointed, frankly, that Labor have seen fit to support that measure. I will be moving an amendment relating to it in the committee stage, and I hope they change their mind. I note that there are some criticisms made about the inadequacy of the financial case management system, but how supporting the recovery of so-called overpayments from a non-transparent system is a good idea is beyond me. But, again, it has nothing to do with getting people into work.

The other measures in the legislation just clarify or reflect changes in terminology—for example, replacing the term ‘pension period’ with ‘instalment period’ and removing references to the redundant payment of rehabilitation allowances. The legislation makes changes to the income test arrangements for the Community Development Employment Projects scheme to reflect the new higher rates. It clarifies the intended treatment of indexation decisions. How those amendments are ‘the latest measures to increase workforce participation and improve employment rates’ is a total non sequitur. What is being put forward and what is being argued is just repeating and parroting propaganda lines. It is quite extraordinary.

We see that in the section of the government members’ report that talks about the pensioner education supplement. The report notes the concerns expressed in a number of submissions about the proposed amendments that will remove the eligibility of a small number of people to the pensioner education supplement, which is $31.20 a week to assist people with the costs of study whilst they are on the disability support pension. The clarification of the definition has the consequence of a small number of people not continuing to receive that supplement. It is one thing to say that that is necessary, it clarifies the definition and it improves consistency—all those sorts of things that get used as justification—but at the end of the report, in paragraph 1.22, the committee majority ‘commends the government’s ongoing commitment to supporting people to undertake study in preparation for work’. I am speechless at the gall and the barefaced cheek in making a statement like that straight after a section dealing with the fact that some people are going to lose the pensioner education supplement. And yet the committee majority ‘commends the government’s ongoing commitment to supporting people to undertake study’. It is just ludicrous.

We hear statements from all sides of politics, quite welcome statements, about the importance of improving people’s skills to get new jobs, to get into the workforce, to get better paid jobs and to fill gaps in the workforce. We all talk about those things, as we should, but the rhetoric does not match the reality as far as the government’s legislative approach is concerned. The simple fact is...
that, because of the government’s dishonestly named Welfare to Work changes, there will be, according to the Australian Council of Social Services, over 80,000 people with disabilities who will be put on lower payments and will have their income quite substantially reduced. I might add that if they do happen to get some part-time work occasionally then they will have their effective marginal tax rates dramatically increased and they will keep less of that money. Those people will predominantly be put on the Newstart allowance because the disability support pension is now available only to those who are unable to work at least 15 hours a week, instead of the previous 30 hours.

People on Newstart allowance can only undertake short courses of study or training, whereas people on the disability support pension can be supported through the pensioner education supplement to undertake a university or TAFE course. We have this double standard where people who can benefit just as much from a university or TAFE course are not getting that significant assistance of up to $31 per week. At least 80,000 of them are people with disabilities, yet government members still want to commend ‘the government’s ongoing commitment to supporting people to undertake study in preparation for work’. It just does not quite match the reality here, I am afraid.

The simple fact is that there is no evidence to demonstrate that reducing people’s income support payments will increase their rate of workforce participation. These so-called statistics that have been trotted out from time to time by this government to demonstrate that it does are being fraudulently presented. The statistics of people entering the workforce may be accurate, but, as to saying that those people are getting jobs because their potential income support has been reduced, no such connection has been made at all and, beyond just a rhetorical flourish, there has been no such attempt to make such a connection.

I want to turn to the financial case management system, because I find this quite concerning. I can fully understand the rationale that, if somebody is entitled to an income support payment, they get paid and it turns out they are not entitled to it—leaving aside issues of fraud, departmental error or those sorts of things and just assuming that they were not entitled to that overpayment—they should pay it back. I fully accept that, but it is worth emphasising the reality of financial case management payments. As I said before, they are payments made to people who are in extremely difficult circumstances. They are not a legislated entitlement in the sense that the Newstart allowance, the disability support pension, the age pension and family payments are. It is a discretionary decision made by a Centrelink officer that this person needs financial case management, which is a nice euphemism for ‘this person is going to be in real strife unless we give them at least some degree of financial support given that we have just made a decision to breach them and take away all their income’.

That is the circumstance. As is pointed out in both the majority government report and the minority report, it is a discretionary payment. Therefore there is no scope for appeal and there is no transparency. If people think they should be getting more support or people think they should have gotten support and did not get it, there is no scope for appeal at all. What the government is seeking to do here is to put in place a legislated requirement and entitlement for the department or the government to take the money back. I assume this circumstance would arise if somebody is breached, loses their payments, is therefore assessed to be in need of financial case management and perhaps their elec-
tricity bill is paid, their rent is paid or they receive a food voucher. Meanwhile they are appealing that breach, perhaps with the support of a welfare rights centre or some other community legal centre or a helpful local member of parliament, and they manage to get that decision overturned and their payments are restored. What does the government want to do? It wants to reach in and grab the food voucher or the rent payment back.

At a time when we have a $15 billion surplus, I think that is pretty miserable, frankly. If you are at such a level of poverty that you need to get assistance with those sorts of basic living costs to get through the week, I really do not think it is that much to ask that people are able to retain that money. When St Vincent de Paul give out food vouchers one week and the person gets a job the next week, St Vincent de Paul do not come running after them and say, ‘Give us it back.’ As far as I know they do not. I might say I know that when many people get a job they do donate money back to St Vincent de Paul and say thank you for that support when they feel they are in a circumstance to do so. This is pretty miserable of the government.

You can call it an overpayment if you like, but it is a discretionary payment made in the assessment of the fact that the person is in extreme difficulty; it is not a legislated entitlement. Frankly, it is pretty damn miserable to go running after them and grabbing that payment back again. If they have only just got their payments restored and they were that badly off, I expect most people could benefit from just having that little bit of breathing space to build up a few spare dollars in the kitty for emergencies for a week or a few weeks or a month or two rather than immediately having deductions taken out of the payments that are restored. It shows no recognition of the reality of just how difficult it is on what is already an incredibly small amount of money. I would love to see any of us here try and get by on the basic pension rate or, in many of these cases, the Newstart allowance rate—people who would have been on the pension rate and are now are on an even lower rate. I would like to see how many of us could manage it.

I do not think there is any recognition of just how difficult it is. The last thing you need when you are in that low a circumstance is to have people coming around and grabbing back the money for your food vouchers straight away. I would add again that there is that extra problem of the inconsistency where the right to recover the overpayments is outlined in a legislative way but the making of payments is not and the right to receive those payments is not. It is purely discretionary. That is a real problem. It is an ongoing problem with that system and one that really does need to be fixed.

Apart from the specifics of the concern I have mentioned, it is a precedent. If we get precedents where payments are made in a discretionary manner and that starts building, then we will be moving away from a tradition and from a very sound practice of legislative entitlements, transparent decision making and grounds for appeal. The rationale given for recovering these debts, which the department finally figured out after double-checking its answers, is that these so-called debts incurred under the financial case management system—and I am not sure why you would call them debts but that is what they are called—can be recovered under statute or common law according to legal principles of equity. I am not sure, but it seems to me that ‘legal principles’ in this case sounds like a bit of an oxymoron. It does not sound very equitable when you are looking at the wealth disparity. The government says this is making it easier and simpler for all concerned—well, simpler for the government to get money back from somebody who is not well off but
I am not sure it makes it easier for the person who is going to have less money. *(Time expired)*

**Senator MARSHALL** (Victoria) (8.31 pm)—Senator Bartlett is quite right to be critical of the government members’ report of the Senate Standing Committee on Employment, Workplace Relations and Education inquiry into the Employment and Workplace Relations Legislation Amendment (Welfare to Work and Vocational Rehabilitation Services) Bill 2006. He is correct when he says the government merely parroted the propaganda from the minister’s second reading speech. I suppose the government members had little choice but to do much else because they were not able to provide any argument as to how these amendments would assist people from welfare to work, which has been the problem with the whole Welfare to Work package.

The second reading speech of the Minister for Workforce Participation, Dr Stone, consisted of a whole four paragraphs. The first paragraph described the technical approach of the bill and where it fitted in to other pieces of legislation. The second paragraph indicated that the government was going to introduce some contestability and therefore provide choice to people with disabilities or injuries. The third paragraph generally talked about Welfare to Work changes in a very global sense. And the fourth paragraph—with no supporting evidence, no data, no documentation, no argument—simply said:

The amendments will enhance the smooth operation of the legislation so that job seekers among the targeted disadvantage groups of the Welfare to Work reforms—long-term unemployed people, parents of school age children, mature age Australians and people with disabilities—can continue to be supported and assisted to build their capacity and find work through employment and related services.

Strangely enough, that is the same conclusion the government members came to in their committee report and, again, with no argument, no demonstration. Senator Bartlett was correct in reminding the Senate that time and time again during the Welfare to Work debate that went on in this chamber the government was asked the question: how does simply cutting payments to people with disabilities or people on welfare provide any plan, progress or incentive for people to go into work? That question remains unanswered today. This legislation certainly does not assist in that process. In fact, we believe it will probably make it worse in many respects.

Senator Barnett came into the chamber—also a member of the committee and, as I understand, the only government member who is going to speak in this debate in support of this bill—and did somewhat better than the minister’s second reading speech, which consisted of four paragraphs. However, for the first 11 minutes of his speech he tried to politicise this whole debate by accusing Labor of not being genuine about welfare and work. He said some things which are simply dishonest, such as that we, the members of the opposition, wanted all people with disabilities to stay on welfare until they were eligible for the old age pension. How he could ever come to that conclusion given the debate that has gone on in this chamber over the last couple of years really beggars belief because that has never been, and will never ever be, the ALP position. We want to treat the most vulnerable people in our community with respect and we want to give them dignity in the workplace. We want to help people with disabilities to get the skills in order to help them obtain appropriate employment to give them dignity in the workplace as well as dignity in life.

But the approach of this government is to force people into work which may be unsuit-
able and not cost effective by lowering the threshold of the hours of work required, otherwise they will lose their disability payments. While Senator Barnett talked about how the government want to help people with disabilities get work, at the same time this legislation cuts the pensioner education supplement to a lot of people. On the one hand the government say, ‘We want to help people get the skills and vocational training to get genuine work,’ but they simply mouth those words. There is nothing to back them up, because their actions demonstrate that they seek to do the opposite: they seek to remove the education supplement from people in many of these disadvantaged categories.

So for the first 11 minutes Senator Barnett went on this trip rewriting history and he was completely inaccurate. While he did attend the committee inquiry into this bill, I am amazed at how he could come to the conclusions contained in the government members’ report or that reflected the contribution he made tonight.

After 11 minutes, he then went on to say that people have to be accountable for their actions and they have to be able to say thank you to the community. Again, this seems to be the view that everyone who cannot find work—people with disabilities, whether they be mental or physical disabilities; slackers or bludgers; or people who want a free ride on the welfare system—should get up, show some initiative and they would all get work. I think that demonstrates a complete lack of understanding of what actually happens in the welfare system. We are talking about some of the most vulnerable people in the community who need assistance, help, education, training and support to get them back into the workforce. To simply come along with a stick and say, ‘We are going to cut your payments,’ does none of the things which need to be done in order to treat people with respect and dignity.

In his last couple of minutes I thought he was actually going to address the contents of the bill, but I was sadly disappointed because the closest he came to that was to say that this bill will provide people with the choice to get back into work and that it provides people with the same choice that Work Choices provides. If that is true, that this provides the same choice that Work Choices provides, that is a sad indictment on this legislation. I am not going to talk much about Work Choices, but I will say that everybody understands the choice that Work Choices provides—that is, take it or leave it. In some respects, I suppose Senator Barnett was right: the choice that this provides in terms of the contestability of rehabilitation services, ultimately, will also be a take it or leave it choice. I will talk more about that later.

Then, to my disappointment, Senator Barnett sat down. He did not provide any evidence or any argument as to how these amendments are going to assist people to get back into work. It was simply hollow rhetoric on the belief that because the general bill and the policy position is called ‘Welfare to Work’ that means that if we have concerns about its practical application—and, of course, vote against elements of that reform—we are not genuine about reform. He ought to look past the name of the bill and look at the effect of the bill, and then he may begin to understand the difficulties that we have with this bill and that people with disabilities will have with it.

We say that this bill is yet another misguided piece of welfare legislation introduced by the Howard government. It represents a continuation of the most significant downgrading of the income support system since the Social Security Act was introduced.
in 1947. ACOSS has estimated that over the next three years approximately 81,000 people with disabilities will be put onto lower payments courtesy of the government’s previous so-called Welfare to Work legislation. Previously, the DSP was made available to those who were deemed to be unable to work at least 30 hours a week. The benchmark has been shifted to 15 hours. This has forced many people onto lower payments, most commonly Newstart, which in turn limits their access to education support. I have already mentioned the hypocrisy of this government when it says that it wants to provide people with better vocational training and better access to education, when the effect of its legislation will be to deny many people who have an existing entitlement access to the pensioner education supplement in the future.

These changes are based on the government’s misguided philosophy that reducing income support will increase workplace participation. This is despite ample evidence to the contrary which shows that countries that have invested heavily in employment assistance have been the most successful in reducing unemployment and welfare dependency. The current changes with regard to the pensioner education supplement would see a person lose their access to the PES who came onto the DSP during the transition period between the introduction and the implementation.

So we already have measures that reduce people’s access to income support, and now this bill seeks to further limit access to training for welfare recipients. This government’s approach is quite clear: place people on lower payments, deny them access to training and education, and simply tell them to go and get a job. Genuine welfare reform should be about boosting investment in employment assistance and providing people with the capacity and skills to find a job and to keep a job. It should not be about penalising some of the most vulnerable people in our society by reducing their payments and denying them access to education. This is occurring at a time when the country is experiencing significant skills shortages.

This bill also deals with the opening up of contestability for vocational rehabilitation services. In principle, Labor does not oppose a form of benchmarking to ensure that services provided by the Commonwealth are actually working efficiently and effectively. We support that type of benchmarking approach. Labor does not oppose competitive tendering of vocational rehabilitation services provided appropriate safeguards and quality control mechanisms are in place. However, this bill does not provide such protections.

Rehabilitation services with the aim of promoting transition into the workforce are currently exclusively provided by the Commonwealth Rehabilitation Service—a service which currently provides vocational rehabilitation for nearly 44,000 clients. This bill opens up a tendering process so that private providers can tender for the contracts. Community organisations and disability advocates who made submissions to the inquiry have indicated a number of concerns with this process.

CRS, a service which is generally well regarded amongst allied health professionals, currently provides services such as the assessment of an individual’s capacity to work, specialist counselling, workplace assessments and supervised on-the-job training with the aim of assisting clients with a disability to return or join the workforce. It is a specialist service which provides access to allied health professionals such as occupational therapists, psychologists and rehabilitation counsellors. These are professionals who have skills in the rehabilitation sector.
and an understanding of the unique issues faced by people with disabilities who want to return to work.

The bill removes the requirement that individual rehabilitation programs are approved by the secretary under the Disabilities Services Act. It is of great concern to me that this legislation does not provide appropriate guarantees that the quality and standards of this service will be retained under the tendering process. The National Association of Community Based Children’s Services is concerned that the lack of safeguards could lead to a reduction in services, poorer rehabilitation outcomes and fewer specialist services.

In my state of Victoria there are a number of CRS services that have a specialist focus in dealing with specific areas, such as mental health or acquired brain injuries. These facilities provide the same services as other CRS services, such as neuropsychology, social work and occupational therapy. These health professionals have specialised skills in working with people from these cohorts. It is my concern, and a concern reflected in a number of submissions received by our committee during the inquiry, that under this piece of legislation these specialised services may no longer exist.

This legislation simply fails to enshrine regulatory mechanisms which focus on achieving the best outcomes for people. It also fails to ensure a consistent national service quality. Market forces alone will not ensure accessibility of services, appropriateness of services, quality of services or even positive rehabilitation outcomes for consumers. There is a genuine concern that opening vocational rehabilitation services to the for-profit sector will shift the focus from rehabilitation outcomes to profit making; it will draw services away from less profitable regional centres and specialist units. By moving away from a centralised service, we risk a reduction in the consistency of services, the capacity of the health professionals to share knowledge and information and a decrease in accessibility for some consumers—a key issue for many people with disabilities.

The statutory right to appeal the content of individual rehab programs has been removed without an alternative safeguard. The right to a review is especially important when an activity agreement comprises a compulsory rehabilitation program, as a failure to comply can result in a possible eight-week non-payment period. The extent of the safeguard the government have provided rests with the independent Complaints Resolution and Referral Service. It is a service that helps people talk about their issues and find a resolution, yet this is nothing more than a counseling service and is totally unsatisfactory. People with disabilities have enough barriers to participation. When there is a problem with the system, there needs to be an appropriate failsafe mechanism for dealing with complaints. It is a concern that the inadequacy of this mechanism will make people reluctant to access these services.

The government has shown scant regard for the concerns of those community groups who have appeared before the Senate inquiry and has once again shown its utter contempt for the legislative process. As we are debating this issue in the Senate today, the government has already opened up the rehabilitation market for tender. In fact, the entire tendering process was commenced and completed, with the exception of the awarding of the actual contracts, a month before the bill was even introduced into the parliament. The minister responsible released an industry alert as far back as June 2006, with applications for tender closing on 8 November 2006. This really shows the complete arrogance of the government in dealing with this issue. The government demonstrates an in-
tent to do these things, opens up a tender process and finalises it, but does not award the contracts. The whole system is finalised before this bill is even introduced into the parliament, before the committee has had a chance to inquire into the bill and report back to the Senate and before the Senate has had a chance to actually debate the bill—in fact, before the House of Representatives has had an opportunity to debate the bill. The government has already determined where it will go, and I think that shows a complete disregard for the concerns of the people that this bill affects. As I mentioned earlier, there was a four-paragraph second reading speech by the minister. One government member is on the speakers list so far to actually speak to this bill. It is a bill that is contentious and into which the Senate inquired in the form of its committee system.

Labor supports welfare reform that genuinely seeks to help people move from the welfare system into the workplace. This is achieved by investing in people—providing them with the mechanisms, the education, the skills and the confidence needed to participate in the workforce. This piece of legislation does not address any of these issues. In fact, it further penalises those who receive social security payments. It is a poor attempt by the government to rectify some of the many oversights in the so-called Welfare to Work legislation; instead, it has succeeded in only compounding existing mistakes as well as creating new ones.

Senator HUTCHINS (New South Wales) (8.50 pm)—It is certainly a pleasure to follow Senator Marshall—someone who has an abiding interest in these areas and has demonstrated that time and again in his contributions in the Senate. Let me restate again at the outset that Labor unreservedly support the concept of encouraging people to make the move from welfare to work. Contrary to the coalition’s demonising of these people, welfare recipients do want to change their situations for the better, and this usually starts with a job. We on this side place a great deal of emphasis on work. Importantly, Labor recognise that this process does not happen without the appropriate level of support.

Despite what the government would have you believe, there are still a great many Australians who are failing to see the fruits of the prosperity our economy is said to be reaping. The boom is bypassing tracts of people who are in no position to take advantage of it. I speak of course of the 2.3 million Australians who are looking for work or want or possibly need to work more hours. The government makes much of the unemployment rate, but a significant number of Australians who fall into the category I have just outlined would indicate that they have not been invited to the economic prosperity party.

It is reasonable to assume that a proportion of these 2.3 million people are making the transition from welfare to work. Some of them may also be in danger of reverting back to welfare. I say they are in danger because, firstly, the gradual casualisation of the workforce is removing job stability. Workers who once would have been full-time workers are now employed as casuals and now have no guarantee of receiving a shift. Secondly, these same people are at the mercy of the government’s Work Choices regime under which they may not be reimbursed for overtime or for shift loadings and, more disturbingly, can be summarily sacked with no recourse if they are employed by a business with fewer than 100 employees. Because their tenure is extremely precarious, they are also the least likely to maximise their wages and conditions in an AWA by bargaining with their employers. They have little or no bargaining power and they take what they are given or they get their marching orders.
We have seen these trends emerging over the first 12-month period of Work Choices in sectors like retail and hospitality. Those faring worst are women, who are traditionally at a disadvantage in balancing their family and work commitments, particularly because this government has let the childcare sector degenerate into a shambles in which there are either not enough places for children or it is prohibitively expensive.

These most vulnerable people, an estimated 2.3 million people, are caught in a nexus whereby they are transitioning from welfare to employment and are arguably deserving of the assistance of the government in making the transition and making it a lasting one. A case in point is a woman in Manilla, New South Wales, who has been in contact with my office. She is a sole parent in receipt of Centrelink payments with three children aged between nine and 19. She wanted to return to work but in a capacity in which she could fulfil her duty as her children’s primary care giver. She took the initiative to set up a modest before- and after-school family day care service in her home. She has been doing this for the last seven months and has nine children in her care. She very diligently meets all the standards set out by the Family Day Care Association and the relevant health and safety legislation. She has attended courses at her own expense to make sure she is abreast of things in order to run a day care service. The parents of the nine children she cares for are largely able to work because, thanks to her, there is someone to care for their children. After 11 years of neglect of the childcare sector, regional areas like Manilla have no formal care services available to school-age children. Until my constituent began her day care service, parents had to choose between work and caring for their children.

It appears, however, they may be forced to make that choice again, because my constituent was contacted by her local Centrelink office in Tamworth. They told her that under the new rules to come in after 1 July this year her payments would be stopped if she is not earning more than $202 a week. She would have to become a full-time student or actively look for more work, including filling out an activity statement and attending the fortnightly interviews at Centrelink, a 40-minute drive away, in order to continue to receive support.

The absolute mindlessness of the system is such that it would force a woman who has taken the initiative to establish her own business—and in the process supporting seven other families in their endeavours to remain employed—to essentially forego that business and look for another job so she can meet the $202 a week income test. She in fact earns that each week, working 25 hours during school term and up to 40 hours a week during school holidays. She does have significant outlays while meeting regulatory costs, but she is getting by and having a go. She is working towards being able to make her day care service self-sufficient so that she will not have to rely on benefits to supplement her income. But the heavy hand of this government’s spiteful approach to workforce participation is threatening to force her out of business. I believe her case has been referred to the national office as a test of how the new regulations stand up, and I hope the minister and his department have the sense to realise the pettiness of the government’s approach. Incidentally, I also believe that Centrelink staff are privately dreading the introduction of the post-July regulations, because clients will have to be interviewed every fortnight, meaning the queues at the counters will grow longer and no doubt patience and tempers will be tested.

Hearing stories like this, I find it inexplicable that the government would continue its miserly pursuit of job seekers and as part of
this bill deny them a key piece of assistance in the pensioner education supplement. Currently, people moving from parenting payments or disability support pensions to Newstart or youth allowance as a result of last year’s Welfare to Work legislation remain eligible to receive the PES until they have completed their courses, which is a very reasonable proposition. Those people in receipt of the PES are studying or retraining to enable them to better transition to the workforce. But that entitlement now disappears if those same people had applied for the pension payment between May 2005 and June 2006 and, after having been reviewed under the new legislation, they were assessed as having a partial capacity to work, which I believe is currently set at 15 hours a week. This does not apply to people moved onto Newstart or youth allowance if it is their first review following the 2006 changes, but it does if they are transferred upon subsequent reviews.

This may result in a scenario in which people, part way through a course of study, will now lose their entitlement to the financial support contained in the PES. More than likely they embarked on that study under the fair assumption that the support they were receiving through the PES would not be ripped out from under them. I can see no benefit in this move for the government other than as a further expression of its spite and total disregard for the genuine Australians who are just looking for a fair go but are falling through the cracks.

I am not alone in my criticism of this provision. Catholic Social Services Australia shared these sentiments in their submission to the Senate inquiry into this bill. They said:

Many individuals in difficult circumstances who have invested considerable time and effort in furthering their employment prospects are likely to be forced to jettison half-completed courses—courses commenced and continued in good faith in the expectation that the Commonwealth’s Pensioner Education Supplement would be available for the duration of the course. A person so affected could be forgiven for some scepticism, disillusionment and even bitterness during their next phase of complying with participation requirements. Employment prospects would be impeded, educational resources wasted, and motivation far from enhanced—thereby undermining the Government’s objective of increasing paid labour force participation by people with a disability.

In other words, we have a government willing to take away the opportunity to retrain and re-enter the workforce from those who most want to. We are talking here of people who have suffered from a legitimate disability for an extended period of time, long enough that they have received a DSP and been reviewed at least once post 2006, and have still been in receipt of that pension. These are people who are making overt efforts to get back into work by skilling themselves so they can make the transition.

That is the ultimate irony of the Employment and Workplace Relations Legislation Amendment (Welfare to Work and Vocational Rehabilitation Services) Bill 2006 and the government’s approach to welfare to work. On the one hand they say they want more people to get back to work, particularly disabled people, and on the other hand they rip away an important subsidy that was helping them do just that. The conclusion of Catholic Social Services Australia is, I think, extremely accurate: you will have people in the middle of study suddenly unable to support that study and losing an opportunity they had to be an attractive potential employee.

The rhetoric and the action do not match up. The government keep shifting the goal posts for job seekers—‘Get off welfare, get into the workforce,’ they say, ‘but don’t look to us for help. In fact, we will make it harder for you to achieve the standards we set.’ If
only job seekers got as much leeway and as many second chances as government ministers!

I think another disturbing provision in this bill is that people who have been breached and subject to an eight-week non-payment period can be liable to pay back the money it cost for their financial case management. This case management may include receiving funds to pay for bills and other essential items like food. The government has already, by putting in place the case management system, acknowledged that its breaching policy is sending families to the wall. A two-month non-payment period for a family can mean they cannot pay rent, they cannot pay for food and they cannot clothe their children. They then have to go to charity for assistance, charities like the Exodus Foundation, which I have spoken about before in the Senate.

Very few organisations actually volunteered to sign up to the government’s case management system. Major charities like St Vincent de Paul, the Brotherhood of Saint Laurence and the Uniting Church all refused to take part in the scheme because they opposed the principle underpinning it. One of those groups that did agree to take part was Hillsong Emerge. They receive $650 for each person referred to them by the government. It says much about them that no other major charity would sign up because they detest the policy. Hillsong Emerge have a history with government grants and their use of them, so I am not surprised they were quick to sign on the dotted line.

But now the government wants people who have been breached and referred to organisations like Hillsong Emerge for financial help to pay them back. This adds insult to injury. Breaching a benefit recipient places that person in a situation where they have no means of surviving, where they can no longer pay for accommodation or medication. If they receive assistance via case management, they must then be subjected to the indignity of repaying those costs.

I challenge senators from the government to stand in this chamber and argue the merits of this system. As we know from Senator Marshall’s contribution, only you, Mr Acting Deputy President Barnett, have had the courage to at least stand up for your convictions. What do I say to people like my constituent from Manilla, who could be left high and dry by a cruel system or to the dozens of families trekking in, some by foot and over long distances, to the Exodus Foundation at Ashfield just to give their children a hot meal?

Senators on the other side, and their colleagues in the other place, will come to their day of reckoning later this year, and I predict the cruel spite they have visited on Australian families will come back around. I conclude by relating the sentiment expressed by my constituent in Manilla, New South Wales. She said that she had voted for John Howard three times but neither she nor any member of her family will be voting for him again. In her own words, ‘I voted for John Howard, and look what he’s done for me.’ This government should have a close look indeed at what it is doing to Australian families.

Senator McEWEN (South Australia)
(9.05 pm)—Labor oppose the Employment and Workplace Relations Legislation Amendment (Welfare to Work and Vocational Rehabilitation Services) Bill 2006 for very good reasons. It is another example of this government making life harder for those in our community who are already doing it tough. It is another example of the government’s complete failure to accept that investment in, and equitable access to, education, which is the key to both national and personal economic prosperity. It is yet another example of a government that encour-
ages private provision of public services without any substantiated justification for doing so. It is also an admission by an inept government that the welfare legislation it ran through the Senate last year is full of holes that need fixing.

Instead of using its majority in both houses of parliament to pass positive, forward-looking legislation which would genuinely help our most disadvantaged Australians to get out of the cycle of welfare dependence, this government wastes its majority, abuses its majority, and continues to demonstrate its lack of vision, lack of innovation and blind adherence to old-fashioned ideas of a tired Prime Minister whose time is nearly up but who wants to kick a few more disadvantaged Australians on his way out.

The main provisions of this bill will amend existing welfare legislation. If it is passed, the bill will remove the entitlement to the pensioner education supplement from some people who most need it; introduce contestability for the provision of vocational rehabilitation services for eligible welfare recipients, thereby enabling private providers to tender for the provision of services currently provided by the Commonwealth Rehabilitation Service; and enable recovery of debt that may be incurred by persons who have received financial case management during the time they are enduring the eight-week non-payment punishment that this government introduced as part of last year’s changes to the welfare system. There are also amendments to income test arrangements for CDEP recipients and other measures which the Labor Party could, in other circumstances, have supported.

Labor does not oppose in principle either contestability or recovery of genuinely incurred debt caused by overpayment of welfare benefits and of course we support measures that really do assist Australians to move from dependency on welfare benefits to participation in the workforce. But this bill does not do that. This bill is more of the ‘if you are struggling, if you are poor, if you are vulnerable, we are going to punish you for it’ mentality that we saw in the previous raft of so-called Welfare to Work legislation and in the Work Choices legislation.

Labor believe that those people who can work should work, but we also know that some people are so far behind in job fitness that they need special assistance to get anywhere near the job market. We are a wealthy nation and we can afford the compassion and the time and the money to genuinely assist people to extract themselves from welfare dependency. We can also afford to accept that some people will, unfortunately, always be dependent on government welfare benefits and that is something that the nation can also cope with and absorb. Labor knows that the best way out of dependency on welfare is to have a job because with an appropriate job comes not just money but engagement with the community and access to opportunity. The best way to get a job that suits your particular circumstances is to have access to the education and training to give you the skills to do a job and then to get on the job support that helps you stay in work.

The Labor Party knows that the future of our nation lies in a better education system and more investment in education for all Australians from early childhood onwards. For this reason the federal Labor leader, Mr Kevin Rudd, has recently released a discussion paper about the critical link between long-term prosperity, productivity growth and human capital and has called for an education revolution to secure the nation’s well-being far into the future. Labor has also started the debate about new directions for our schools, a progressive education initiative that highlights how puerile is this government’s contribution to education which is
basically about slashing funding, criticising teachers and decimating funding for universities and tying funding for universities to implementation of Work Choices. Labor has a vision for the future of education in our country, a vision that builds on our long tradition of investment in education for all Australians. Unlike this government, we are not content just to sit back and hope that the resources boom—and the accompanying low unemployment—continue. It will not and we need to be prepared for that. Unlike this government, which has cut funding to universities by seven per cent in the last decade, unlike this government that has turned away 300,000 young people from TAFE colleges, unlike this government that has allowed HECS debts to rise by 430 per cent and introduced university degrees that cost more than $100,000, Labor will invest in education because it is the basis of our economic future.

Given the history of the Howard government’s abysmal record on education, we should not be surprised that one of the things that this bill will do is change the entitlement to the pensioner education supplement. The PES is a weekly allowance of some $31.20 intended to assist people with the cost of study while on the disability support pension. As we know, the best way to help people off welfare is to help them get the education and the skills they need to get a job. That was the intent of the PES and it was understood that under the Welfare to Work legislation those people on DSP who moved onto Newstart or youth allowance would keep the PES until they finished their course of study.

Under this legislation now those persons who started receiving the DSP during the period from May 2005 to July 2006 will lose the PES if they are reviewed off the DSP after 1 July 2006. Not only do they get dumped onto the dole—and a lower rate of income—they also lose their education supplement. While $31.20 might not seem a lot to some senators, to someone on welfare it is a significant assistance and could well be the difference between completing a course and not completing it. Being able to purchase essential study tools, including books, photocopying and internet access, and pay for travel and other costs is essential to successful completion of a course of study. In its submission to the inquiry into this bill ACOSS calculated that a person who was reviewed off their pension with two years of a three-year course to complete would miss out on receiving $3,200 for the remainder of their course. This is not a huge amount of money and, as we know from the government’s own figures, the number of persons involved would not be particularly significant. Catholic Social Services Australia, also in a submission to the inquiry into this bill, said on the matter of denying people the PES:

... outcomes ... of the Bill are a negligible financial saving for the Commonwealth accompanied by a high cost in economic, productivity, social and human terms. It is not just the opposition that is opposed to this element of the bill. Advocacy groups such as Catholic Social Services Australia and ACOSS can also see the hypocrisy of the government’s argument and the failure of this proposed legislation to deliver what it is supposed to deliver.

A report that is useful to this debate entitled Dropping off the edge was recently launched here at Parliament House. The report, prepared for Jesuit Social Services and Catholic Social Services Australia, highlights the particularly strong link between intergenerational poverty and low educational attainment. The report goes on to say that by detaching individuals, families and whole communities from the modern economy in this way disadvantages holding back the nation’s economic potential. Labor couldn’t
agree more that perpetuating the link between access to education and poverty is detrimental to the nation’s future wellbeing. But of course this government does not get it at all.

The government senators’ comments about this provision of the bill in the Senate committee report offer no good explanation for taking the PES from people who need it most. The government senators say that it is not about cost saving as the number of people potentially affected is not great. The government senators even say that it is a valuable support for people. You have to ask: why take it away? When the government senators say in the report that this is not about persecuting people on welfare, you have to wonder whether this is in fact an example of the government crying wolf. For the very good reason that education is the key to work and work is the key to getting off welfare, Labor does not support removal of the PES and we will move an amendment to this effect.

As I said, another provision of this bill is to enable contestability in the provision of rehabilitation services which are currently provided by the well-regarded Commonwealth Rehabilitation Service. Even the government senators on the Senate committee that inquired into this bill made mention of the CRS and commended the efforts of that organisation. While the government senators were complimentary of the CRS, there is little in the government senators’ report of the inquiry to justify the move to contestability. It is not, we are told, a cost-saving measure, nor is there any criticism of the CRS’s services. Instead, there are unsubstantiated and wishful comments along the lines of ‘contestability will increase choice and encourage innovation’. Well, where is the evidence for that? There was none presented to the inquiry, and the government senators did not present any such evidence either.

What we do know about contestability and privatisation without safeguards is that it always has the potential to put the provision of services outside the purview of government accountability and public scrutiny. The Scrutiny of Bills Committee, of which I am a member, has had some correspondence with the minister about the committee’s concerns that the bill would give the secretary of her department the ability to delegate all or any of his or her powers to any employee of any company to which the department has outsourced the provision of services. The committee was also concerned that there was no requirement in the legislation to take into account the capabilities or qualifications of private providers of services. The minister’s initial response to the Scrutiny of Bills Committee was that there would be a range of legislative and contractual safeguards to limit the delegation of powers and to ensure appropriate service delivery and monitoring of that delivery.

The committee then asked the minister for more information, because, as the Scrutiny of Bills Committee observed, contractual safeguards may well be included in contracts between private providers and the government department, but such safeguards are not known to, and probably would not be made known to, the Senate as a whole—because of the commercial confidentiality of such contracts—and such safeguards would not necessarily be subject to disallowance by the Senate in the manner of legislative instruments. The minister’s eventual response included the fact that VRS providers must comply with the disability service standards; that those standards are a legislative instrument and subject to disallowance; that the requirements to comply with the standards will be in the contract that VRS providers enter into with the government; and that compliance is independently assessed. Further, the minister advised that the section 5
guidelines will be developed at some point, in consultation with community organisations and people with disabilities and their advocates and will be subject to disallowance.

While the Scrutiny of Bills Committee’s inquiry was eventually answered to the satisfaction of its members and its limited terms of reference, what the committee’s inquiry did reveal was a very complicated trail of accountability and as yet incomplete process. But here we are being asked to vote on this legislation prior to all the necessary checks and balances being in place. It is indicative of this government’s attitude to public scrutiny, it is indicative of this government’s haste and ineptitude, that the Scrutiny of Bills Committee detected much about this legislation that needed to be questioned and followed up, not once but twice.

Clearly, representative groups in our community are not satisfied that the bill offers the necessary protections for clients of VRS. The Senate committee inquiry into this bill heard from a number of organisations that are particularly worried about the future of provision of rehabilitation services, particularly for groups that have special needs. The Mental Health Council of Australia stated in its submission:

… the most effective rehabilitation programs are those tailored to meet the individual needs of consumers. By moving to a contestable rehabilitation services market, there must be assurances that specific rehabilitation programs are developed with the needs of mental health consumers as the primary motivation.

The Mental Health Council went on to say:

… the current move to more generalist employment agencies … does not create a favourable environment for mental health specialist rehabilitation services.

It is Labor’s view that contestability for rehabilitation services should not be introduced unless there are guarantees that all persons who need rehabilitation services receive the services they need and that the services are delivered in a way that is cognisant of their special needs.

It is galling, and indicative of this government’s extraordinary arrogance and contemptuous attitude to the parliament, that the tender process for rehabilitation services has commenced before this bill has even been passed by the parliament. There are, of course, parallels with the government’s reckless attempt to push through legislation creating the access card: despite nervousness in its own ranks about that—subsequently borne out by the Senate committee report on the so-called Human Services (Enhanced Service Delivery) Bill—the government started the tender process for the card and its system without waiting for the parliament to pass the legislation. Now it has had to pull that legislation, but the department has a tender process to manage. It is another example of the government’s abject failure in accountability and responsibility.

As other senators have said, this bill also goes to the issue of recovery of overpayments that Centrelink claims have been incurred by persons in receipt of financial case management. The bill, if passed, will allow Centrelink to recover what it declares to be debt from a person’s income support payments. No-one in this parliament supports welfare fraud, and Labor understands the need for any government payment system to be accompanied by legislation that enables recovery of overpayment or debt. It is appropriate that legislation should be provided for that and that the legislation be accompanied by proper guidelines and transparent appeal mechanisms. Our concern with this legislation is that the financial case management system is a discretionary program and not prescribed in social security law in a way that would make the program fully account-
able and accompanied by proper appeal mechanisms.

We should not forget that the people who are in receipt of financial case management are without any financial support from the government because they have been breached. These are Australians who are really doing it tough, and financial case management was only introduced because the government’s harsh breaching regime was unpalatable to most Australians, who expect a modicum of respect and care for those who, for whatever reason, fall foul of our welfare laws. I am sure that every senator in this place would have been approached by some Australians who have been breached and who are desperately trying to survive and provide for their families in that difficult situation. Labor did not support the breaching regime in the so-called Welfare to Work package—we did not support the package at all—but if we are going to have a breaching regime, if the people of Australia are stuck with it, then let it be part of a legislative package and subject to accountability and appeal and to the checks and balances that this government hates but that responsible governance of the nation demands.

In conclusion, Labor would support legislation that genuinely helped people to end their dependence on welfare payments and assisted them into paid work when that is appropriate and possible. This bill does not help people most in need to end their dependence on welfare. This bill is another example of the government’s impoverished and stale policy making. Instead of creating a visionary and sustainable welfare and education system that is a stepping stone to financial and social independence, this bill will lead to further uncertainty and disadvantage for those Australians who most need our help.

Senator HOGG (Queensland) (9.22 pm)—I have been waiting for this opportunity for a while, primarily due to a matter that has been before my office in Brisbane over a substantial period of time which highlights the harshness and the blind stupidity of the Welfare to Work legislation. I listened to Senator Bartlett and I think it is fitting to open with a quote from the report of the Senate Standing Committee on Employment, Workplace Relations and Education which looked at the Employment and Workplace Relations Legislation Amendment (Welfare to Work and Vocational Rehabilitation Services) Bill 2006. At point 1.8 on page 2, it said:

In summary, the committee majority sees these amendments as improving the Welfare to Work legislation. It notes that the amendments are the latest measures to increase workforce participation and improve employment rates. This is a highly sterile approach to the humanity, the welfare, the wellbeing and the dignity of individuals. I think that sums up the attitude of this government—no heart, no compassion. I think it is worth while that I place on the record of this chamber the difficulties experienced by one family in particular.

This bill seeks the staged introduction of contestability for vocational rehabilitation services. Contestability of itself is not going to improve the plight necessarily of some welfare recipients. Bearing witness to a person on whose behalf I have made representations as a result of Welfare to Work legislation, I think you will see that there is a lot to be desired in this legislation of itself and in the broadest sense. I am going to quote from a letter that this person’s parents wrote to me but I will not mention any names nor identify any of the key players. I want to look at the heart of the issue. In some places, the particular statements that I will make may seem
a bit staccato and may seem a little bit diffi-
cult.

These parents were very much at the end
of their tether in dealing with the plight and
the difficulties of a young member of their
family. They wanted to bring to my attention
the further problems which they have en-
countered with Centrelink. The person in
question has had ongoing problems with de-
pression and drug addiction. After I for-
warded their complaints to the minister—so
the minister has been aware of this matter
and I must say that there has been good cor-
respondence between the minister and me—
they were interviewed. The result of the in-
terview was that they were told that the per-
son was exempt from having to attend ap-
pointments with the Job Network. So they
felt some sort of relief out of the process at
that stage.

Remember, they are now accounting their
frustrations following on from that. They go
on to say that prior to the expiry of the per-
son's medical certificate, the person was in-
structed to attend a job capacity assessment.
The person lodged a further medical certifi-
cate written by a person who is one of the
country's leading psychiatrists in drug addic-
tion. This certificate stated that the person
was unfit for work but the person who car-
ried out the job capacity assessment decided
that the specialist in this field did not know
what was best for the person in question.

The young person then received a letter
stating that they had been passed fit to par-
ticipate in a program for 15 to 22 hours per
week. This was to be overseen by a provider
and it was stated clearly in the letter that no
further certificates would be accepted. So
this was the end of the line for this person
who has severe depression and drug addic-
tion problems. The person in question had
been attending sessions with the psychiatrist
for all of the year in question and the ses-
sions continued even after the letter from
Centrelink stating that the person was fit for
work. The person in question had not used
hard drugs for two years and was receiving
therapy for prescription drug abuse and can-
nabis use. Considerable progress was being
made in these areas, as the parents write say-
ing that the person had not been misusing
prescription drugs for the whole year. Can-
nabis however was still an issue and the fort-
nightly sessions were to reinforce the absti-
ence from hard drugs and work towards
detoxing from cannabis.

The parents went on to say that they were
not opposed to their child going to a provider
as they believed that they would help to find
some part-time work or work experience for
their child if the child were well enough to
go. They went on to say that they were very
shocked to find that the program that their
child was put into was one for hard drug us-
ers. When the child came home and told
them that that person was to attend a coun-
selling and group therapy session with ex-
drug users and others who were still using,
they were horrified. They have been working
for years with the help of the psychiatrist,
whom they name, to move their child away
from the drug scene and to have their child
dissociate from drug users.

The letter went on to say that their child
had told them that the program would in-
clude sessions on how to inject safely and on
home detox. They became very alarmed.
Their first action was to ring the psychiatrist
to see about them writing a letter to stop it
from happening. Unfortunately, the psychia-
trist was away and so their child decided to
attend the interview with Centrelink to tell
them that neither they nor their parents were
happy about them being around drug users
and attending group therapy sessions with
them. The counsellor who saw the person in
question agreed that it was not an appropriate
placement for the young person, but then
proceeded to tell the person that they knew that this person had been in jail for cooking speed. They apparently talked for half an hour about speed, and the consequence of this interview was that the young person in question went straight out and obtained some speed and went on a binge. So much for getting people from welfare to work—the complete opposite was achieved by this process.

The parents went on to complain to me that they could not understand why their child had to attend the program when their child’s medical certificate was current at that stage. They said that their child would be very ill for a number of weeks and that this was particularly infuriating because they were able to secure some work experience at another site for him or her and, of course, he or she could not turn up because of the experience that they had just undergone. They say that not only did the Job Network not find their child some meaningful employment but their actions put the work experience program which they arranged in jeopardy.

Here was a family who were completely frustrated by the process and whose young child, who has some quite severe disabilities, was being pushed down a path quite inappropriate for the difficulties they were facing in life. The parents went on to say in their letter to me that the system of mutual obligation seems to be one which the employees of Centrelink and the Job Network take to mean ‘make things so difficult that the sick person will not make further applications for money.’ To say that these people were frustrated, disappointed and at their wits’ end is an understatement indeed. Bear in mind that this letter I am quoting from now was probably written some six months after they had first sought my intervention to bring some sanity into the processes in respect of their child. Their letter went on to say that the consequences of this refusal by Centrelink to accept the new certificate ‘are now devastating for our family and we would like you to follow-up on these issues.’

I have tried not to quote selectively from the letter but to give the Senate a reasonably broad understanding of the frustration of these parents caused by the system imposed by this government. It was interesting to then read the response of the then acting minister to one of my items of correspondence where the then acting minister acknowledged the correspondence that I had forwarded on behalf of my constituents and acknowledged the concerns about their child’s participation requirements. It went on:

Centrelink staff are required to make decisions about welfare entitlements based on legislation. They have no authority to make decisions contrary to social security law nor discretion to make exceptions in individual cases. Similarly, I have no such authority.

That to me is a tragic statement of what this legislation is really about. It is really about taking to task those people who are least able, capable and likely to defend themselves. In this particular case, this particular young person had been to hell and back, in many senses of the expression. The system placed this person highly at risk once again.

We then had that opening statement that I read from the committee majority where they said:

... the committee majority sees these amendments as improving the Welfare to Work legislation. I would say that those senators need to go back and take a very close look at what the Welfare to Work legislation does. It is a one-size-fits-all piece of legislation with no exemptions or exceptions. The frustration that this family, who are constituents of mine from Queensland, have suffered, in my mind, bears that out well. It seems that there is an attempt to use a sledgehammer to crack a nut, and to try to vary the make-up of the...
sledgehammer is not going to change things as this legislation seeks to do. Changes cannot be made by the government agencies, as I understand it, nor the minister. Heaven forbid what it will be like with private providers empowered to make the decisions.

I now turn to paragraphs 1.27 and 1.28 on page 8 of the majority report of the Senate Standing Committee on Employment, Workplace Relations and Education. This is the view of the government senators, under the heading 'Conclusions and recommendation'. Paragraph 1.27 says:

A key objective of the government is to maximise the ability of people to find work, particularly those who face the most severe barriers to work, and to reducing welfare dependency.

That is very high and mighty, and may be laudable in some senses, but for the young person whom I have talked about in this debate this evening it is a diabolical challenge indeed, because all it means is frustration, not only for that young person but for that young person's family, who are equally sharing in the frustrations and challenges of that young person. This is a terribly mechanical approach and it says nothing about the welfare, wellbeing and dignity of the individual. It does nothing for the welfare and wellbeing of the individual whatsoever. It delivers an ideological outcome for this government rather than looking at the welfare, wellbeing and dignity of the individual.

Paragraph 1.28 says:

In considering the evidence to this inquiry, the committee concludes that the provisions of the bill are consistent with the intent of the existing Welfare to Work package. Amendments to the provision of vocational rehabilitation services will pave the way for increased choice as well as encouraging innovation in the provision of services.

If that is the case, all I can say is: heaven help us. One might say that the case I have cited tonight is the extreme. It may well be, but there is no room to cater for the extremes in this legislation. If this legislation is about encouraging innovation, heaven knows what is going to happen to the likes of this young person. I fear for young people such as the person I have talked about in this debate this evening, as well as for their parents. There is no sense of empathy, no sense of understanding of the dilemma that these people face in trying to come to grips with the mechanical realities of a piece of legislation that has been designed by this government to deliver some rah-rah lines out there which resonate with some sectors of the community but which fall on deaf ears with many who see that people like that young person I spoke about are just kept out of sight and out of mind.

The person that I spoke about this evening is a real person. The family are real people. They have real values in life. They are not trying to rip the system off. They are not trying to take the system down. From my discussions with the parents, I know they would love their child to be an eligible, real and great contributor to society. The facts of life are that that is not happening. They want their child to be a good citizen, but of course that child has suffered as a result of certain disabilities over the years—depression and drug addiction. Seeing that child put back into a situation where her or his life is put at risk by being exposed to the same difficulties that they are trying to avoid makes a lie of this legislation indeed. The sentiments come from the spin doctors. I would ask them to look realistically at the need to cater for those people who are least able to defend themselves in our society. Look at those people not through the prism of economic expediency but as individuals with a dignity that deserves to be relished, cherished and identified by our society.

**Senator Wortley (South Australia)**

(9.42 pm)—I rise to speak on the Employ-
ment and Workplace Relations Legislation Amendment (Welfare to Work and Vocational Rehabilitation Services) Bill 2006. While Labor oppose this bill, we are committed to welfare reform; but our commitment is to real welfare reform—welfare reform that addresses the reasons someone is not working and delivers practical solutions, welfare reform that provides opportunities for people to get the skills that an employer needs, welfare reform that encourages employers to give people with a disability the opportunity to demonstrate their ability, welfare reform that acknowledges that being a parent is an important job in itself and that work helps to make families more secure, and welfare reform that ensures people receive a fair reward for their effort.

Labor believe that those in the community capable of working should do so, but unlike the government we believe in a system that properly assists people make the transition from welfare assistance to active and ongoing employment. What concerns us about the legislation before us today is that this legislation fails to do this. What concerns us is the way the Howard government has approached welfare reform through its Welfare to Work changes. It is that to which I intend to speak tonight.

This bill amends the Disability Services Act 1986, the Social Security Act 1991 and the Social Security (Administration) Act 1999. Under this legislation, those who receive Newstart allowance or youth allowance will generally have to engage in activity in return for income support, and in some cases it will be necessary for them to attend a vocational rehabilitation service.

As it stands today, vocational rehabilitation services are provided by the Commonwealth Rehabilitation Service. The government wants the rehabilitation services to be contestable to enable private providers to tender for contracts. Labor does not oppose, in principle, competitive tendering in the vocational rehabilitation services market, provided that it can be consistently proven that services are not diminished. Unfortunately, the government seems to hold the principle that competition alone will ensure quality of service. This conviction is evident in this bill, as it fails to introduce adequate safeguards and regulations, as Labor senators reflected in their Employment, Workplace Relations and Education Committee inquiry report. The welfare sector demonstrated similar apprehensions in their submissions to the bill’s inquiry.

Herein is the problem: many private providers are not compliant with the provisions of the Disability Services Act, but if this legislation goes through it will mean that the Department of Employment and Workplace Relations will be in a position to allow services to be provided by some providers who do not hold a certificate of compliance. Concerns were raised by advocates of people with a disability that this could be problematic, particularly when dealing in the area of mental health. It opens the door for providers who do not hold a certificate of compliance and therefore may not have the necessary expertise to be dealing with clients with complex mental health issues. This is not acceptable.

Labor senators were in agreement with the Mental Health Council of Australia that this will not assist in any way to ensure an initial high standard of service, appropriate consideration for people with mental health conditions or confidence in the accessibility of the site for people with disabilities. This is just one example of where this legislation fails. It fails also to provide a guarantee that vocational rehabilitation services will be accessible to clients with a range of disabilities. It fails to guarantee that expertise through a
vocational rehabilitation provider will be available to all clients.

The National Association of Community Based Children’s Services and the Community and Public Sector Union highlighted concerns that the lack of safeguards could lead to a reduction in services, poorer rehabilitation outcomes and fewer specialist services. The concerns raised are numerous and serious in their impact. There is a lack of adequate appeal mechanisms, through the removal of the statutory right, to appeal the content of individual rehabilitation programs through an internal review process or the Administrative Appeals Tribunal. That has been removed without an alternative safeguard being put in its place. This could have a significant impact on individual cases where an activity agreement comprises a compulsory rehabilitation program. A failure to meet the requirements could result in a significant non-payment period.

There is a failure to guarantee that vocational rehabilitation services will be accessible to clients with a range of disabilities. There is the possibility of so-called difficult cases being passed over by rehabilitation providers in favour of less complex ones. There is the probability that rural and regional areas or small regional centres will not benefit from the increased choice of providers. The bill will only give choice to people in areas wealthy enough to sustain the profitability of a private provider. Further to this, the Department of Employment and Workplace Relations has also not ruled out private providers replacing CRS Australia altogether in some areas. This, in effect, is merely a change of providers as opposed to a choice.

Labor remain concerned about the lack of assurance that people with a disability who are in genuine need of vocational rehabilitation services will get the help they need. But the concerns do not end there. We have concerns about the restriction of access to the pensioner education supplement. Over the next three years, through the Howard government’s Welfare to Work changes, approximately 81,000 people with disabilities will be put onto lower payments, mainly Newstart allowance. We are still waiting for an explanation on how reducing access to education and training and income support payments can help someone to get a job or increase rates of participation in the workforce.

Labor senators made it clear in the opposition senators’ report on the inquiry that any restriction to the PES will discourage people trying to move from welfare to work and that, instead of further restricting access to the PES, there should be a concerted effort to better support people to move from welfare to work through education. A person who is seeking to improve their skills base should be encouraged and provided with assistance in trying to achieve their goals. A person doing this in an attempt to move from welfare into the workforce should be encouraged and supported where possible. They should be rewarded for their effort and for taking positive steps towards workforce engagement. People on the edge of discarding welfare dependency should be given a level of assistance that ensures they make that final leap, not be cut off before they reach the other side, not have the last few hurdles raised to the point where they are impossible to jump over and not be disadvantaged to a point where they give up. This government’s welfare changes reduce the financial rewards from work and make it even more difficult for people to get the education or training they need to move into the workforce.

Debate interrupted.
ADJOURNMENT

The ACTING DEPUTY PRESIDENT
(Senator Hutchins)—Order! It being 9.50 pm, I propose the question:

That the Senate do now adjourn.

Defence: Seasprite Helicopters

Senator MARK BISHOP (Western Australia) (9.50 pm)—Speculation is mounting that the government is about to bin the $1 billion Seasprite project. It is said that a decision will be made tomorrow or perhaps later this week. In reality, such a decision has been a fait accompli since May of last year. That is when Defence Minister Nelson grounded Australia’s fleet of Seasprites. He did so after years of project delays, so any decision by cabinet sometime this week will merely rubber-stamp the inevitable.

But how could the government get it so wrong? This is, again, another defence procurement project that has ended in failure. And taxpayers foot the bill of $1 billion, which could have been spent more profitably elsewhere. Again Minister Nelson’s threat to sue for failing to deliver on the project proves hollow, for the government itself negotiated away liquidated damages virtually upfront in this contract. Again the government failed to indemnify the taxpayer on a major defence procurement project—this time against a $1 billion loss. Now we are going to be asked to pay the tab on an extra $2 billion spend to replace the sprites. How did it come to this?

The government signed up for 11 Seasprite helicopters back in 1997. They are supposed to act as the eyes of our warships, the Anzac class frigates. Initial delivery was scheduled for 2001. After five years of delays, the Minister for Defence had finally had enough. In May last year he announced a review of the entire project. He grounded the Seasprites until further notice. That decision just delayed the inevitable, as we will probably find out tomorrow or later this week. It has also led to 11 months of wrangling between the government and the manufacturers. Again, the government came up with unrealistic demands for these ageing craft. It wanted a two-pilot craft that could fire two Penguin missiles. No other country has made that request and, indeed, such a configuration has not been tried before. But the manufacturers complied. Unsurprisingly, they ran into problems. There were difficulties with the critical integration of the electronics and the radar system, ITAS. This coordinates radar, navigation, communications and weapons. Since this was expected to be a shared platform, it is difficult to know whether the RAN or the RAAF had a final sign-off on the craft’s airworthiness certificate. Either way it has not happened.

Warning bells started tolling in February 2006. Senators were informed at estimates that the Seasprites were unable to fulfil the role for which they were acquired. They had failed certification testing. They did not meet Navy requirements. Alarmingly, senators were told that the Seasprites would not be fully operational until 2009, which means they are at least five years behind schedule. The CEO of the Defence Materiel Organisation, Dr Gumley, admitted that Defence would not buy equipment that way ever again. He admitted liquidated damages for the project were negotiated away for other benefits, but of course these other benefits have failed to materialise.

Finally the government appears on the verge of coming clean on this project and scrapping it altogether. Let us look at the consequences of that likely decision. It leaves Australia with millions of dollars worth of redundant Penguin missiles. These were bought especially for the Seasprites. They are not suited to operating helicopters such as the Seahawks. A touted replacement is said to be the MRH90—the all-round heli-
copter. These, by the way, cannot fire the Penguin missile. But there is another problem in the making here. Australia already has on order 12 MRH90s from French company Eurocopter. The first of these is supposed to be delivered later this year. I will be watching closely to see whether this is the case, because European orders for the MRH90’s sister craft, the NH90, are experiencing significant delays.

By the way, Eurocopter is also the company behind the controversial Tiger helicopter procurement purchase. That company is currently attempting to hold the government to ransom over its through-life support contract for the Tigers. It has put in an ambit claim for an extra $650 million for costs. We will have to wait and see whether the government chooses to pay up. Then there is the problem with training pilots. A knock-on effect of the extensive delays in the Seasprite project has been the inability to properly train junior aircrew at Nowra. The Seasprites were meant to be used to train pilots, but the government has had to spend another $24 million on a four-year lease on three other helicopters to do this job. It is yet another hidden cost of the government’s failed Seasprite procurement project.

But perhaps of greatest concern to the public with the binning of this key defence project is not the financial waste, as massive as that might be but the gap the government has admitted such a decision will leave in our defence capability. I quote from a question on notice supplied to the Senate last year.

... Defence remains cognisant that the alternative to termination or failure of this project will be a significant and enduring capability gap ...

In other words, this financial disaster could conceivably cost lives. It was supposedly purchased to provide our warships with surface surveillance, surface attack, an antisubmarine weapons carrier and winching and load-lifting operations. Our sturdy fleet of eight frigates provide air defence, antisubmarine warfare, surveillance, reconnaissance and interdiction. I quote from the government’s own website:

... Seasprite helicopters will be embarked to enhance anti-surface and surveillance capabilities.

We now know that is looking increasingly unlikely. This is the result of bad government policy—a government that spends a billion dollars on an ageing helicopter, fails to get the procurement process right and then leaves its Defence Force in the lurch, along with hapless taxpayers, of course.

I hope the government decides the fate of the Seasprites tomorrow. A decision is long overdue. It should act swiftly to end this mess, then turn its attention to truly servicing defence personnel with the best possible equipment, not using ageing craft such as the Seasprites, some of the frames of which date back to the Vietnam War, and trying to convert the carcasses into a state-of-the-art craft. It was never going to happen. It should never have been considered. I hope that tomorrow the government has the decency to decide the fate of the Seasprite, apologise to the nation for wasting $1 billion of taxpayers’ money and then set about finding a suitable craft for the Anzac frigates.

Voiceless Awards

Senator BARTLETT (Queensland) (9.59 am)—Tonight I would like to pay tribute to the organisation Voiceless, an Australian based animal rights organisation that seeks to increase awareness about reducing unnecessary cruelty to animals. Recently I was fortunate to attend an event at the Sherman Galleries in Sydney where Voiceless announced the awards recipients for their 2006 grants program. Some $145,000 is provided annually by the Voiceless organisation to a whole range of groups and individuals in the com-
munity who have put forward proposals for
grants of up to $20,000 each—each of which
having a common theme of trying to promote
greater respect and compassion for animals.
It was particularly rewarding to attend the
awards ceremony because it gave a reminder
of just how many groups of people there are
in the community doing all sorts of different
things to raise awareness about animal cru-
elty, to encourage greater compassion and
respect towards animals and to make people
aware of the easy ways we can improve our
behaviour to improve the lot of the non-
human animals that we share the planet with.

The range of organisations that received
grants was many and varied. Many of them
were public education type campaigns, pro-
ducing and printing booklets and other mate-
rials for communicating to the community
particular practices that were unnecessarily
cruel to animals. Some grants were also for
organising conferences to further promote
improving the effectiveness of animal wel-
fare legislation in Australia. The whole event
was a reminder of just how many people
there are working through organisations such
as Compassion in World Farming, the World
Society for the Protection of Animals, the
Vegetarian Society, various animal liberation
groups, including the RSPCA of course, a
range of academics and many others that are
all working in different areas and in different
ways trying to reduce animal cruelty.

In the political arena whenever animal
welfare issues are raised everybody says that
they do not support cruelty to animals and
they want to do everything they can to re-
duce it. It is easy to get nice-sounding words
but getting genuine action in that area is a
different matter. In the time I have been in
this place, which is now close to 10 years,
I think the level of interest and commitment
in a political sense towards animal welfare
issues, if anything, has gone backwards. If
you compare the almost total lack of interest
and engagement with animal welfare and
animal rights issues in any systematic sense
in the federal parliament today with the
1980s when we had the Senate Select Com-
mittee on Animal Welfare that operated for a
number of years—a committee that was es-
established by the Democrats and produced
some very valuable and ground-breaking
reports for their time—it is a disappointment.
However, this does not in any way match the
views of the wider community where there is
a growing level of support for a whole range
of different animal welfare organisations.

It was quite ironic that, on the same day
that these awards were being announced by
the Voiceless organisation, the Treasurer
chose to announce a measure purportedly
aiming to make it easier for the Australian
Competition and Consumer Commission to
take legal action against people who sought
to promote boycotts against Australian farm-
ing produce, which is particularly modelled
and focused on concern about the impact of
the boycott that has been promoted for some
time towards Australian wool as a protest
against the continual mulesing of sheep.

Senator Abetz—That is a disgraceful
campaign.

Senator BARTLETT—We hear from the
minister in the chamber that it is a disgrace-
ful campaign. The Treasurer himself strongly
criticised one of the organisations PETA,
People for the Ethical Treatment of Animals,
calling their campaign ‘ignorant’ and saying
that farmers should have the right to pursue
compensation for any losses. Australian
Wool Innovation, AWI, has not only been
pursuing PETA, which is the organisation
that everybody focuses on because it is easy
to attack them—it is an American organisa-
tion, and in this case the government and
industry are happy to attack American or-
ganisations—but attacking Australians as
well. It is dragging ordinary Australian activ-
ists through the courts, using the legal process to try to intimidate and silence them from expressing their view.

It is concerning enough that an industry body should seek to attack and silence Australians who simply seek to express their own personal view about opposition to a particular practice. Some people may want to keep pursuing and promoting that practice; other people believe it is unnecessary and it is cruel. I think they are entitled to express their opinion. But apparently not in Mr Costello’s brave new world. Not only is it okay for the industry to use its taxpayer supplied so-called research funds to try to silence people but also the Treasurer now wants to use—or misuse, I would say—the Australian Competition and Consumer Commission to have fully taxpayer funded legal action to try to silence anybody that seeks that put forward their view about a practice that they believe is unnecessarily cruel.

Mr Costello, in what is becoming a fairly common practice for this government, engages in the completely misleading sophistry of saying, ‘This is not an attack on freedom of speech. People can still say what they like.’ They can be as so-called ignorant as they like. But, of course, after having said what they like, they run the risk of the taxpayer funded Australian Competition and Consumer Commission being sooled on to them to try to silence them and to try to have the industry hitting them up for economic damages. This might be understandable if people were going in and stealing product, breaking machinery or anything like that—there may then be grounds for court action—but when consumers simply say, ‘I don’t support this particular practice; I think it is unethical and, if you agree with me, don’t buy the product of that practice,’ they run the risk of having a body that is supposedly set up to protect consumers, the Australian Competition and Consumer Commission, attempt to silence them. The Treasurer wants to use that body that is meant to protect consumers against unethical conduct by businesses to silence those people. That is what the Treasurer wants to do.

The simple fact is that mulesing is cruel and there is any amount of evidence that demonstrates that. I know some argue that it is necessary, but it is clearly cruel. There are alternatives to mulesing that exist already, but they are more expensive. So, understandably, from purely an economic point of view, some in the industry do not wish to use them. The irony is that the industry is still committed to phasing out mulesing by 2010—a clear indication that they acknowledge that it is a practice we would be better off without. The only reason that they adopted that commitment to phase out mulesing by 2010 is the very campaign that people like Senator Abetz want to say is disgraceful. If these people had not spoken out and said, ‘We think this is unacceptable,’ the industry would not have acted at all. Yet somehow or other, because they have done so, Australians are being dragged through the courts and now the Treasurer wants to come in and display this grotesque abuse of power by trying to use a consumer protection organisation that is taxpayer funded to drag them through the courts. There is no difference between this campaign and campaigns from the past.

Senator Abetz—it’s the way they do it.

Senator BARTLETT—you can stand up in favour of using taxpayers’ money to silence people’s right of free speech as much as you like, Senator Abetz. Frankly, if the wool industry genuinely supports this sort of activity—antidemocratic measures which use the power of the state to muzzle free speech and protect businesses against people voicing their concerns about particular practices—
they deserve to be boycotted, not for animal cruelty but for supporting the misuse of power by the state and antidemocratic powers. This sort of campaign is no different from the dolphin-free tuna campaign or campaigns against battery eggs or ivory products or even campaigns for GE-free food. *(Time expired)*

**Senate adjourned at 10.09 pm**

**DOCUMENTS**

**Indexed List of Files**

The following documents were tabled pursuant to the order of the Senate of 30 May 1996, as amended, on 3 December 1998:

Indexed lists of departmental and agency files for the period 1 July to 31 December 2006—Statements of compliance—Australian Public Service Commission.

Environment and Heritage portfolio agencies.

**Tabling**

The following documents were tabled by the Clerk:

*Legislative instruments are identified by a Federal Register of Legislative Instruments (FRLI) number*

Civil Aviation Act—

Civil Aviation Regulations—Instruments Nos—

CASA EX11/07—Exemption – navigation and anti-collision lights [F2007L00714]*.

CASA EX12/07—Exemption – night acrobatic flight [F2007L00756]*.

Civil Aviation Safety Regulations—Airworthiness Directives—Part—

105—

AD/A109/55—Hydraulic Pipe Interference [F2007L00701]*.

AD/A109/56—Exhaust Duct Clamps [F2007L00700]*.

AD/AMD 50/40—Software Integrity Check and Enhanced Avionics System Upgrade [F2007L00699]*.

AD/B767/229—Main Tank Fuel Boost Pump Flame Arrestor [F2007L00698]*.

AD/ECUREUIL/120 Amdt 1—Engine Controls – Twist Grip Assembly [F2007L00725]*.

AD/LEARJET 35/40—Standby Fuel Pump Annunciators [F2007L00697]*.

AD/SA 315/14—Main Gearbox – Pinion Splines [F2007L00694]*.

106—AD/V2500/3—No. 3 Bearing [F2007L00693]*.

107—

AD/PFP/19—Blade Leading Edge Protection [F2007L00696]*.

AD/PMTV/2—Blade Leading Edge Protection [F2007L00695]*.

Corporations Act—ASIC Class Order [CO 07/123] [F2007L00668]*.

Customs Act—Tariff Concession Orders—

0615762 [F2007L00739]*.

0618693 [F2007L00672]*.

0618734 [F2007L00673]*.

0618759 [F2007L00674]*.

0619471 [F2007L00684]*.

0619500 [F2007L00685]*.

0619540 [F2007L00734]*.

0619682 [F2007L00735]*.

0619683 [F2007L00732]*.

0619718 [F2007L00727]*.

0619720 [F2007L00728]*.

0619978 [F2007L00729]*.

0619996 [F2007L00730]*.

0619997 [F2007L00731]*.

Migration Act—Statement for period 1 July to 31 December 2006 under section 33, dated 16 March 2007.

Product Rulings—

Addendum—PR 2006/122.
Taxation Determinations—
Notice of Withdrawal—TD 95/52.
TD 2007/5.
* Explanatory statement tabled with legislative instrument.