COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES

Senate

Official Hansard

No. 4, 2007
Tuesday, 27 March 2007

FORTY-FIRST PARLIAMENT
FIRST SESSION—EIGHTH PERIOD

BY AUTHORITY OF THE SENATE
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SITTING DAYS—2007

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

RADIO BROADCASTS

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

- **Canberra**: 103.9 FM
- **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
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. Nigel Gregory Scullion
Deputy Leader of The Nationals—Senator Christopher Vaughan Evans
Deputy Leader of the Australian Labor Party—Senator Stephen Michael Conroy
Leader of the Australian Democrats—Senator Lynette Fay Allison
Leader of the Australian Greens—Senator Robert James Brown
Leader of the Family First Party—Senator Steve Fielding
Liberal Party of Australia Whips—Senators Jeannie Margaret Ferris and Stephen Parry
Nationals Whip—Senator Fiona Joy Nash
Opposition Whips—Senators George Campbell, Linda Jean Kirk and Ruth Stephanie Webber
Australian Democrats Whip—Senator Andrew John Julian Bartlett
Australian Greens Whip—Senator Rachel Siewert

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### Members of the Senate

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

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

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

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

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

The Hon. John Winston Howard MP
The Hon. Mark Anthony James Vaile MP
The Hon. Peter Howard Costello MP
The Hon. Warren Errol Truss MP
The Hon. Dr Brendan John Nelson MP
The Hon. Alexander John Gosse Downer MP
The Hon. Anthony John Abbott MP
The Hon. Philip Maxwell Ruddock MP
Senator the Hon. Nicholas Hugh Minchin
The Hon. Peter John McGauran MP
The Hon. Kevin James Andrews MP
The Hon. Julie Isabel Bishop MP
The Hon. Malcolm Thomas Brough MP
Senator the Hon. Helen Lloyd Coonan
The Hon. Ian Elgin Macfarlane MP
The Hon. Joseph Benedict Hockey MP
The Hon. Malcolm Bligh Turnbull MP
Senator the Hon. Christopher Martin Ellison

(The above ministers constitute the cabinet)
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
Leader of the Opposition in the Senate and
Shadow Minister for National Development, Resources and Energy
Deputy Leader of the Opposition in the Senate
Shadow Minister for Employment and Industrial Relations and Shadow Minister for Social Inclusion

Kevin Michael Rudd MP
Julia Eileen Gillard MP

Senator Christopher Vaughan Evans
Senator Stephen Michael Conroy

Anthony Norman Albanese MP
The Hon. Archibald Ronald Bevis MP

Christopher Eyles Bowen MP
Anthony Stephen Burke MP

Senator Kim John Carr
The Hon. Simon Findlay Crean MP
Craig Anthony Emerson MP
Laurence Donald Thomas Ferguson MP

Martin John Ferguson MP

Peter Robert Garrett MP

Shadow Minister for Veterans’ Affairs, Shadow Minister for Defence Science and Personnel and Shadow Special Minister of State
Shadow Attorney-General and Manager of Opposition Business in the Senate
Shadow Minister for Sport and Recreation, Shadow Minister for Health Promotion and Shadow Minister for Local Government
Shadow Minister for Families and Community Services and Shadow Minister for Indigenous Affairs and Reconciliation
Shadow Minister for Foreign Affairs
Shadow Minister for Ageing, Disabilities and Carers

Alan Peter Griffin MP
Senator Joseph William Ludwig
Senator Kate Alexandra Lundy
Jennifer Louise Macklin MP
Robert Bruce McClelland MP
Senator Jan Elizabeth McLucas
Shadow Minister for Federal/State Relations, Shadow Minister for International Development Assistance and Deputy Manager of Opposition Business in the House
Robert Francis McMullan MP

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

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

Shadow Minister for Health
Nicola Louise Roxon MP

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

Shadow Minister for Education and Training
Stephen Francis Smith MP

Shadow Treasurer
Wayne Maxwell Swan MP

Shadow Minister for Finance
Lindsay James Tanner MP

Shadow Minister for Human Services, Shadow Minister for Housing, Shadow Minister for Youth and Shadow Minister for Women
Senator Penelope Ying Yen Wong

Shadow Parliamentary Secretary for Foreign Affairs
Anthony Michael Byrne MP

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

Shadow Parliamentary Secretary for Environment and Heritage
Jennie George MP

Shadow Parliamentary Secretary for Treasury
Catherine Fiona King MP

Shadow Parliamentary Secretary for Education
Kirsten Fiona Livermore MP

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

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

Shadow Parliamentary Secretary for Industry and Innovation
Bernard Fernando Ripoll MP

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

Shadow Parliamentary Secretary to the Leader of the Opposition (Social and Community Affairs)
Senator Ursula Mary Stephens
## CONTENTS

**TUESDAY, 27 MARCH**

### Chamber

**Business**—
- Consideration of Legislation ................................................................. 1
- Safety, Rehabilitation and Compensation and Other Legislation Amendment Bill 2006— Second Reading ......................................................... 1

### Questions Without Notice—

- Workplace Relations ............................................................................ 21
- Workplace Relations ............................................................................ 23
- Workplace Relations ............................................................................ 24
- Workplace Relations ............................................................................ 25
- Commonwealth Scientific and Industrial Research Organisation .......... 26
- Broadband ............................................................................................ 28
- Mr David Hicks .................................................................................... 29

### Distinguished Visitors ....................................................................... 30

### Questions Without Notice—

- Workplace Relations ............................................................................ 1
- Workplace Relations ............................................................................ 2
- Workplace Relations ............................................................................ 3
- Workplace Relations ............................................................................ 4
- Workplace Relations ............................................................................ 5
- Commonwealth Scientific and Industrial Research Organisation .......... 26
- Broadband ............................................................................................ 28
- Mr David Hicks .................................................................................... 29

### Questions Without Notice—

- Workplace Relations ............................................................................ 3
- Workplace Relations ............................................................................ 4
- Workplace Relations ............................................................................ 5
- Commonwealth Scientific and Industrial Research Organisation .......... 26
- Broadband ............................................................................................ 28
- Mr David Hicks .................................................................................... 29

### Distinguished Visitors ....................................................................... 30

### Questions Without Notice—

- Workplace Relations ............................................................................ 30
- Iraq ........................................................................................................... 32

### Distinguished Visitors ....................................................................... 33

### Questions Without Notice—

- Housing Affordability .......................................................................... 33
- Aged Care .............................................................................................. 34

### Questions Without Notice: Additional Answers—

- Water ....................................................................................................... 35

### Questions Without Notice: Take Note of Answers—

- Answers to Questions ........................................................................... 36

### Petitions—

- Defence: Involvement in Overseas Conflict Legislation ......................... 42

### Notices—

- Presentation .......................................................................................... 42
- Leave of Absence ................................................................................... 44

### Notices—

- Postponement ......................................................................................... 44

### Committees—

- Legal and Constitutional Affairs Committee—Meeting ...................... 45
- Tasmanian Tigers Cricket Team ................................................................. 45
- Slavery .................................................................................................... 45
- Senator Heffernan .................................................................................. 45
- Nuclear Weapons ................................................................................... 46
- Mr David Hicks ..................................................................................... 48

### Matters of Public Importance—

- Workplace Relations ........................................................................... 48

### Committees—

- Membership .......................................................................................... 63

### Safety, Rehabilitation and Compensation and Other Legislation Amendment Bill 2006—

- Second Reading ..................................................................................... 64
- In Committee .......................................................................................... 75
- Mr David Hicks ..................................................................................... 87

### Safety, Rehabilitation and Compensation and Other Legislation Amendment Bill 2006—

- In Committee .......................................................................................... 87
CONTENTS—continued

Third Reading..................................................................................................................88
AusCheck Bill 2006—
   Second Reading ...........................................................................................................89
Safety, Rehabilitation and Compensation and Other Legislation Amendment Bill 2006—
   Third Reading—Recommittal ..................................................................................102
Notices—
   Presentation ..................................................................................................................104
AusCheck Bill 2006—
   In Committee ...............................................................................................................104
   Third Reading .............................................................................................................110
Airports Amendment Bill 2006—
   Second Reading .........................................................................................................110
Adjournment—
   Workplace Relations ................................................................................................122
   Defence Equipment ....................................................................................................124
   Workplace Relations ..................................................................................................126
   Diabetes ......................................................................................................................128
   Workplace Relations .................................................................................................130
   Workplace Relations
   Senate Committee Staff: Mr Alistair Sands .................................................................133
   New South Wales State Election ................................................................................134
   Tasmania: Ten Days on the Island ..............................................................................137
   Workplace Relations ................................................................................................139
   Workplace Relations ................................................................................................141
   Relay for Life ..............................................................................................................144
Documents—
   Indexed List of Files ................................................................................................145
   Tabling .......................................................................................................................145
Questions On Notice
   Proposed Pulp Mill—(Question No. 2967) .................................................................149
The PRESIDENT (Senator the Hon. Paul Calvert) took the chair at 12.30 pm and read prayers.

BUSINESS

Consideration of Legislation

Senator ABETZ (Tasmania—Manager of Government Business in the Senate) (12.31 pm)—I move:

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.

Question agreed to.

SAFETY, REHABILITATION AND COMPENSATION AND OTHER LEGISLATION AMENDMENT BILL 2006

Second Reading

Debate resumed from 6 February, on motion by Senator Colbeck:

That this bill be now read a second time.

Senator WONG (South Australia) (12.31 pm)—I rise on behalf of the Labor Party to indicate that we will be opposing the Safety, Rehabilitation and Compensation and Other Legislation Amendment Bill 2006. We oppose this legislation because, like all legislation on industrial relations brought forward by the Howard government, this legislation is ultimately not in the interest of working Australians. Like the government’s unfair, extreme industrial relations legislation more generally, this bill has at its heart the stripping away of the terms and conditions of our workers.

Labor is driven by a desire for genuine improvements in the area of occupational health and safety across Australian workplaces and we believe that appropriate compensation is an important and essential part of that. However, this legislation will erode the compensation component payable to Australian employees.

This bill is the latest in a number of amendments made to Australia’s occupational health and safety legislative framework by the Howard government and follows on from previous legislation introduced by the government since the 2004 election. These include the repeal of the National Occupational Health and Safety Commission, a bill in 2005; the Australian Workplace Safety Standards Bill; the Occupational Health and Safety (Commonwealth Employment) Amendment Bill 2005; the promoting safer workplaces bill; and the occupational health and safety bill, and the safety, rehabilitation and compensation legislation bill in 2005. Labor opposed each of these bills for good reason. We opposed these bills because each of them reduced, compromised or put at risk the occupational health and safety conditions of Australian workers, and this bill is no different.

The bill before us is the Howard government’s formal response to recommendations made by the Productivity Commission that changes in this area were needed. It follows on from earlier legislative changes also made following the Productivity Commission recommendations, and principally this included the Safety, Rehabilitation and Compensation and Other Legislation Amendment Bill 2006.

The principal objective of the bill before us today is to minimise the cost of work related injury and disease for Comcare. The explanatory memorandum to the bill confirms that the savings to the scheme are substantial with an estimated $20 million per annum to be saved as a result of the measures being debated in the chamber. One has to question the real object and timing of these measures in light of these savings. At a time when private sector firms are being en-
couraged to migrate to the traditionally white-collar scheme, it is clear that these savings will be shared by self-insurers under the scheme. We need to ask the question in this place why these savings are being pursued, why coverage is being undermined and why the foundations of a beneficial scheme appeared to be reformed for new entrant self-insurers to this scheme.

The bill changes the extent to which injury, illness or disease must have been contributed to by an employee’s work before the injury is compensable. It does so by changing the definition of ‘disease’ to strengthen the connection between the disease and the employee’s employment. In particular, it requires the worker to prove that employment has made a significant rather than a material contribution to the disease for it to be compensable. This rewording of the bill has this effect: the government is narrowing the circumstances in which Australian workers may claim compensation. The government argues that this is because courts have misinterpreted the meaning of the word ‘material’; however, the government’s intent is betrayed by the wording of its own explanatory memorandum to the bill, which states:

... the Government is seeking to significantly amend the legislation to reflect its desire to decrease the number of injuries covered by the Scheme.

The EM makes clear what the government’s agenda is. If the Howard government was concerned about wording and interpretation, it could have inserted a clarifying statement into the bill. By its own admission, it is seeking to significantly amend the legislation for the sole purpose of decreasing the number of injuries to workers which are covered by the Comcare scheme. The government is not concerned about injury prevention, employee protection or care. The one aim of this Howard government, as we have seen in all its occupational health and safety and Comcare legislation, is to lower levels of protection for employees in workplaces covered by the Commonwealth jurisdiction, and now it wants to further reduce the sorts of injuries for which Australian employees may be eligible for compensation.

Another amendment contained in the bill changes the definition of ‘injury’ to exclude injuries arising from reasonable administrative action taken in a reasonable manner. The bill also expands the exclusionary provisions for stress claims to specifically include performance appraisals and counselling in relation to performance.

Labor has two concerns in relation to these specific proposed changes. First, we are of the view that there ought not to be a difference between how different sorts of injuries are treated. The broadening of the exclusions from the definitions of ‘injury’ or ‘aggravation’ purports to apply to all injuries covered by the act. However, Labor is of the view that in practice it is likely to be a restriction on the ability of employees to make claims for compensation relating to stress related illnesses. These sorts of injuries are particularly relevant to the demographic of workers covered by the Comcare regime, which is predominantly white-collar employees. Labor is of the view that where an injury arises in the course of, or as a result of, an employee’s work then they should be eligible for appropriate compensation.

The bill also seeks to remove coverage for non-work related journeys and recess breaks where the employer has no control over the activities of the employee, such as meal breaks away from the workplace. In our view, this is yet another example of the government trying to reduce its expenditure on workers compensation. The proposed new section 6(1)(b) represents another attempt by the government to narrow the range of circumstances in which an injury is covered by
Comcare. Firstly, by removing almost all journey claims from the coverage of the legislation, the government is engaging in a significant cost shift back onto state governments—generally to cover through compulsory third party claims. Labor notes that not all state jurisdictions have excluded journey claims from their state workers compensation systems. For example, New South Wales still covers workers when they are injured on their way to or from work.

Our second area of concern also relates to this issue. Although the proposed section has five subsections detailing various circumstances in which an injury may occur, the bill is unclear about injuries arising in a number of areas. For example, how will an injury be treated when an employee is out of the workplace on work business but diverts for personal business? Will an injury they sustain be covered by Comcare under these amendments?

Lastly on this point, Labor believes that where an employee is injured during travel for the purpose of attending work or returning home from work then there is a policy argument that the travel is for work purposes. This bill automatically excludes from coverage injuries arising in these circumstances. This is of concern. Labor believes the government has not established a case to depart from the general principle that injuries sustained during work related travel should be compensable unless broken by a substantial deviation. These aspects of the bill before the chamber leave gaps in coverage and lead to uncertainty which will create problems for the Commonwealth, other federal employers, employees and administrators in the future.

The bill also changes the calculation of retirees’ incapacity benefits to take into account changes in interest rates and superannuation fund contributions. It updates measures for calculating benefits for employees relating to the definitions of ‘normal working earnings’ and ‘superannuation scheme’. This means that all potential earnings from suitable employment can be taken into account when determining incapacity payments. It enables determining authorities to directly reimburse healthcare providers for the cost of their services to injured employees and increases the maximum funeral benefits payable.

The bill sets out what is a ‘reasonable administrative action’ in relation to appraisals, counselling, suspension and the disciplining of employees. The only way the bill provides that these are reasonable is to use that word as a descriptor—for example, to say ‘reasonable appraisal’ and ‘reasonable counselling’—but it fails to provide appropriate steps and guidance as to what actually constitutes ‘reasonable’. The government is trying to make what will be in practice a broad exclusion sound innocuous by including the word ‘reasonable’. The wording of the proposed section 5A betrays this intention; it requires that a ‘reasonable administrative action’ be conducted in ‘a reasonable manner’. This is poor drafting which will not assist employees or administrators to determine whether or not there is a valid claim for compensation.

There are other areas of the bill where Labor fears poor drafting will lead to compromising the scope of the scheme. For example, item 15 provides that the normal weekly earnings of an employee must be increased for the purposes of determining appropriate future payments. Whilst proposed section 8(9D) refers to ‘the index prescribed by the regulations’, no indication has been given as to the methodology, relevant factors or appropriate formula the government intends to use to calculate these wage increases.

Labor is concerned about the government’s recent tendency, particularly in rela-
tion to industrial relations and occupation health and safety legislation, to include important matters in the regulations, to be released only after the relevant bill has already passed through the parliament. We have seen problems with government bills. In fact, some 300-plus amendments to the Work Choices legislation were introduced in the Senate—that is, the government worked out what needed to be changed between voting for the legislation in the House and putting it into this chamber. We have also seen, under Work Choices and other legislation, the government including in the regulations and other delegated legislation a significant amount of detail that should have been in the primary legislation.

Another area of the bill which may present difficulties in practice is item 18, which changes the rules relating to when and where Comcare is to direct payments for medical and other services and says that Comcare can later recover the amount from any damages awarded to the employee. We are concerned that difficulties may arise in practice on three grounds as a result of these amendments. First, the bill does not require Comcare to inform employees when payment to a provider, and not to the employee, is to be made. Second, it is unclear whether Comcare or the employee will bear the burden of fees and charges arising from accounts paid outside the due date. Third, it is unclear from the text of the bill whether there is a mechanism for employees to receive information about the quantum of payments Comcare has made on their behalf so that they can monitor that information against any assessment of likely damages.

I want to touch briefly on superannuation, which is dealt with in clause 20(3). This sets out a formula for payment. The new formula provides that the weekly amount of compensation payable in accordance with clause 19 is reduced by the combined superannuation amount and five per cent of the employee’s normal weekly earnings. Those in the military are required to pay five per cent super contributions, so the reduction in relation to such employees is understandable, but many other Commonwealth employees are only required to pay a minimum two per cent contribution. As such, this could be considered unfair if they are only paying the minimum two per cent but are then deemed by this legislation to forfeit five per cent compensation. In our view, a fairer option would be to determine a person’s average contributions over their Comcare covered working career.

The Senate Standing Committee on Employment, Workplace Relations and Education, which considered this bill, had three days of hearings and received 28 submissions on the changes being considered in this bill. I note that my colleague Senator Marshall, who is the deputy chair of that committee, will be making a contribution in this debate shortly. The majority of those submissions expressed concern at the changes being made. The Howard government has linked these changes to future viability of the scheme and the explanatory memorandum to the bill states that the scheme is increasingly under pressure. But, as the dissenting report noted, the Comcare annual report 2005-06 reveals that the types of claims to be reduced or eliminated by this bill are not financially significant and are also decreasing. But, while they will have little impact upon the scheme’s viability, there is no doubt that their impact on employees will be potentially devastating.

The committee also heard and received evidence which supported the scheme’s ongoing and future viability. One of these sources was the 2006 Comparative performance monitoring report, the CPM report, which found:

- The Commonwealth jurisdiction has one of the best Assets to Liabilities Ratio;
The Commonwealth jurisdiction has the lowest premium rate of any Australian jurisdiction;

- The scheme does not have escalating claims numbers or costs;
- The incidence rate and frequency rate of compensated claims in the Commonwealth jurisdiction is decreasing; and
- An actual analysis of claims costs for the Commonwealth jurisdiction shows little overall change.

From these statistics, the scheme appears to be operating on a perfectly acceptable cost basis and it is hard to understand why the government continues to assert that the scheme is in financial jeopardy.

In conclusion, I want to reiterate Labor’s concerns about the motivations behind this legislation. The bill before us today has as its principal objective the minimisation of the cost of work related injury and disease for the Comcare scheme. As I mentioned previously, the EM for this bill confirms that the savings to the scheme are substantial, with an estimated $20 million per annum to be saved as a result of these measures. These savings will not be reinvested in the scheme to ensure that its coverage is not compromised, nor will they ensure that cost shifts and gaps will not arise and leave workers under the scheme unprotected. Let us be clear who is contributing the $20 million: it arises out of workers who would otherwise have got the protection of this compensation scheme.

As I said at the outset, we question the government’s motivations behind this bill. We need to ask why it is that the foundations of a beneficial scheme appear to be reformed for new self-insurer entrants to the scheme. It has historically been the case that, through the evolution of occupational health and safety policy in this country, the overriding objective has been preventing workplace injury and illness. This principle has historically underpinned state and federal legislation in this area. The government’s objective in this bill departs from that longstanding approach. Instead, the government’s objective is to reduce the cost of the Comcare scheme by narrowing the eligibility criteria for compensation under the scheme. This in turn would decrease the number of injuries covered under the scheme.

Let us be clear: we are talking about not just abstract numbers but also workers who suffer injury and who will receive no or less compensation as a result of the bill which this government will push through this chamber. The $20 million that the government says it will save comes out of the compensation that would otherwise have been extended to employees. We consider the government’s approach to be wrong. It is the wrong approach to take a simple value proposition that places a premium on cost over rehabilitation. I indicate that at the committee stage Senator Marshall will be moving an amendment on behalf of the opposition in relation to the formulation of the rates.

Senator SIEWERT (Western Australia) (12.49 pm)—Once again, we are presented with a bill from the government with the intention of watering down the rights and entitlements of workers. The Safety, Rehabilitation and Compensation and Other Legislation Amendment Bill 2006 is the next instalment in a long line of government interventions and legislative changes that undermine both industrial relations and occupational health and safety. In recent sittings, we have seen the Occupational Health and Safety (Commonwealth Employment) Amendment Bill, which dramatically reduced the role of unions in occupational health and safety arrangements in Commonwealth workplaces. It also greatly reduced the powers of Comcare and health and safety representatives in Commonwealth work-
places. The Greens argued very strongly at the time that we believed this would undermine safety in the workplace.

Then we had the Building and Construction Industry Improvement Bill and the Building and Construction Industry Improvement (Consequential and Transitional) Bill, which we believe impact very significantly on the ability of workers to look after safety in their workplaces. I remind the House that, on average, 50 deaths occur each year in unsafe workplaces on building sites; this is almost a death a week. At the time, we expressed concern—and we continue to express concern—that safety is being significantly undermined in building workplaces. We then had the amendments to the trade practices legislation in relation to independent contractors. We also indicated a great deal of concern for the safety of independent drivers.

The stated rationale for the current bill, the Safety, Rehabilitation and Compensation and Other Legislation Amendment Bill, is to maintain the financial viability of the workers compensation scheme established under the Safety, Rehabilitation and Compensation Act 1988. Yet there is no evidence to suggest the scheme is in danger. On the contrary, the Commonwealth workers compensation scheme is among the most effective in the country. Statistics from the 2006 Comparative performance monitoring report, the CPM report, cited in a number of submissions to the Senate inquiry into the bill, demonstrate:

- The Commonwealth jurisdiction has one of the best Assets to Liabilities Ratio;
- The Commonwealth jurisdiction has the lowest premium rate of any Australian jurisdiction;
- The scheme does not have escalating claims numbers or costs;
- The incidence rate and frequency rate of compensated claims in the Commonwealth jurisdiction is decreasing; and
- An actual analysis of claims costs for the Commonwealth jurisdiction shows little overall change.

To my mind, these amendments seem to be less about protecting an effective system of workers compensation and more about limiting and restricting the system to the detriment of workers.

It is also noteworthy that the bill is presented at a time when we see the expansion of the Commonwealth scheme to non-traditional government employers and encouragement by government for employers to leave state systems for the federal system. So we see the government expanding the system for employers and at the same time limiting access to the system for employees.

In speaking to these changes, I would like to particularly focus on three key aspects: the new definitions of ‘disease’ and ‘injury’, journey cover and off-site recess breaks, and calculation of retiree benefits. The minister in his second reading speech noted:

The definitions of ‘disease’ and ‘injury’ are of central importance ...

This is precisely why we believe the changes being proposed are of great concern. The changes to these two definitions have the potential to significantly limit access to the workers compensation scheme for what we believe are unjustifiable reasons.

The bill introduces a new definition of ‘disease’ which now requires that an ailment suffered by an employee or the aggravation of an existing ailment was contributed to to a ‘significant degree’ by the employee’s employment by the Commonwealth or a licensee. The bill goes on to define ‘significant degree’ as ‘substantially more than material’. The current definition refers to ‘a material degree’. This is a significant and unnecessary
change. It is significant because it creates a much greater threshold test, which will mean many work related injuries will be excluded.

I am particularly concerned about the impact of the new definition on people with existing conditions, particularly psychological conditions, and also where multiple causes of injury are identified. As the CPSU put it in their submission:

The test presumes that it is possible to weigh the relative causes of an injury and arrive at some sort of quantitative assessment of the relative importance of each event. We believe this presumption is misconceived and extremely problematic, especially so in the context of mental illness. Mental and psychological illnesses often have multiple causes, and it is very difficult to determinatively assess the relative weight of each cause.

The new definitions of ‘disease’ and indeed ‘injury’ have the potential to discriminate against people with mental and psychological illnesses. The government attempts to justify this change by arguing that it returns to the original intent of the act—that is, that the person’s employment was ‘more than a contributing factor to the contraction of the disease’.

But it is an unnecessary change because in the recent Federal Court decision of Comcare v Canute 2005, French and Stone found that there must be a close connection between the disease and the employment. The current definition would therefore seem to be entirely adequate and in line with the intention of the act. Furthermore, as the Law Council of Australia comments in its submission to the inquiry into the bill, a new definition will require testing through litigation, whereas there is clarity as to the meaning of the current definition. I am also concerned that the new test will reduce the incentive for employers to maintain safe workplaces. Again, this is a particularly real concern for people who are predisposed to mental health problems, where there may well be less incentive for employers to provide sufficient support and appropriate staff management.

In a similar way, the proposed amendments to the definition of ‘injury’ seem directed at reducing access for people suffering psychological injuries in the workplace. The amendments to the definition of ‘injury’ exclude injuries suffered as a result of ‘reasonable administrative action’. This is an unjustified wide-ranging exclusion that could be read to exclude the effects of any management decisions. It is patently not fair to have such a broad exclusion which in effect allows management off the hook for the consequences of their actions. The changes to these two vital definitions will lead to people not being covered by the scheme who otherwise would have been covered—for no justifiable reason. Furthermore, it would seem that once again it will be the more vulnerable people in our community missing out.

The removal of claims for non-work related journeys, including journeys to and from work, and for off-site recess breaks demonstrates the real intention of this bill to be the elimination of employee rights. Journey cover and off-site rest breaks have been recognised within the scheme for a number of years, and it is merely a cost-shifting exercise to remove them now. The government’s reasoning for eliminating these claims is that employers have no control over such circumstances. There are a couple of points to be made on this reasoning. Firstly, it is illogical—employers also have no real control over work related journeys which are covered by the scheme. Secondly, it is a nonsense to say that journeys to and from work are not work related. Of course they are. Workers are required by their employers to travel to work, usually at given times.

The CFMEU make an important point in their submission to the inquiry: they have
had many members injured travelling to and from work when fatigued after working long hours of overtime or doing arduous work. To cut off workers compensation in these circumstances reduces the incentive for employers to provide safe working conditions and shifts the cost from employers to the community. More importantly, the question of control is the wrong issue. Australia rightly has no-fault workers compensation systems. As the Communications Electrical and Plumbing Union submission explains:

Workers Compensation is beneficial legislation with an underlying premise of ‘no fault’. Arguments to exclude compensation on the basis that the employer has no control or fully complies introduces concepts which if extended would exclude many compensable claims and undermine the whole social framework of workers compensation legislation.

Any moves to water down the no-fault nature of workers compensation cannot be supported. Another aspect of making this amendment is that it also could act as a disincentive for physical activity and what could be termed as more ‘environmentally friendly’ forms of transport, such as walking and bicycle riding, and may as a result have adverse effects on the long-term health of workers.

The calculation of retiree benefits and the deduction of superannuation contributions is a major issue for, as I understand it, around 2,000 former public servants, as well of course for those into the future. The current arrangements have resulted in massive disadvantage to retirees under the scheme, with many receiving benefits well below the 75 per cent of normal weekly earnings which the scheme’s charter states as the safety net. The unfairness of the current situation and the fact that the changes proposed in the bill do not fix the problem are demonstrated by the experience of Mr Ian Emery. Mr Emery is currently receiving benefits at a rate of around 43 per cent of his former salary, significantly less than the 75 per cent safety net.

Rather than properly addressing this unfairness, the changes proposed in the bill entrench it. The bill proposes a five per cent deduction that replaces the current superannuation contribution deductions; a new calculation of deemed interest rates; and that the deemed rate applies to gross lump sum payments, not net payments.

There is no real justification for directly reducing entitlements for retirees from 75 per cent to 70 per cent. The five per cent decrease is described by the government as being for notional superannuation contributions. However, retirees are not making superannuation contributions, and they are not getting them returned. If these moneys—the five per cent—are really being deducted for superannuation contributions, as the government claims, then at the very least that money should be credited to the individuals, for example to their super fund.

The current deemed rates provisions of 10 per cent have been acknowledged as unfair. It is about time that the rates were amended. Unfortunately, the government’s response does not go far enough. The bill proposes that the minister may, by legislative instrument, specify the rate of weekly interest on the lump sum. The explanatory memorandum indicates that the intention is for the minister to use the 10-year government bond rate for the previous 12 months. Our concern with this provision is that it sets up a different measurement of deemed rates from those in other government agencies and will still result in higher rates than for persons who receive Centrelink or Veterans’ Affairs pensions.

The unfairness of the deemed interest rates is compounded by the fact that they are applied to the gross superannuation payment, not the net. Thus recipients are being disad-
vantaged by having amounts deducted that they would never have received. The upshot of the bill’s changes to how benefits for retirees are calculated is that unfairness and disadvantage are entrenched rather than properly addressed—again, another opportunity lost. The Greens oppose this bill and see it as another attempt to further disadvantage workers in this country.

Senator GEORGE CAMPBELL (New South Wales) (1.02 pm)—As Senator Wong has outlined in her contribution, Labor are opposed to the Safety, Rehabilitation and Compensation and Other Legislation Amendment Bill 2006, as indeed have we opposed other occupational health and safety bills that the government has put to the Senate. We believe that the best way to have cheaper workplace insurance premiums is through safer workplaces. Further, Labor believes that workers have the right to be fairly compensated for injury and disease related to their work and their workplaces.

The primary issue here, once again, is the government attacking workers’ entitlements. This time the motivation is cost cutting. In order to cut costs of Comcare, the government is cutting back on workers’ rights. The costs will still accrue, but instead of Comcare and employers being responsible it will be the workers, private insurance companies and the public health system that will be forced to meet the costs. Labor argues, as it always has, that the best solution for reducing workplace insurance costs is in fact safer workplaces. The government is—as it is on many issues—hell-bent on making the user pay. In this instance, it is the workforce.

While Comcare is increasingly under financial pressure, some of the claim types eliminated by this bill are falling and in any case impose no great burden on the scheme. As was noted by the Workplace Relations Ministers Council, the Commonwealth jurisdiction has one of the best assets to liabilities ratios; the Commonwealth jurisdiction has the lowest premium rate of any Australian jurisdiction; the scheme does not have escalating claims numbers or costs; the incidence rate and frequency rate of compensated claims in the Commonwealth jurisdiction are decreasing; and an actual analysis of claim costs for the Commonwealth jurisdiction shows little overall change. The urgent need to cut entitlements in this case is not clear, nor indeed, on the facts, is it justified.

The bill changes the definition of ‘disease’, requiring proof that employment has made a ‘significant’ rather than simply ‘material’ contribution to a disease for it to be compensable. The bill also changes the definition of ‘injury’ to exclude injuries arising from reasonable administrative action taken in a reasonable manner. The bill also specifically excludes the availability of compensation for stress arising from performance appraisals and counselling.

This in fact creates a new threshold. It tightens the test and limits the ability of workers to be compensated for injury. The notion of a proportional responsibility is missing. Where proportional responsibility is present, proportional liability should accrue. In this bill, it does not. This may pose, in some instances, some very serious problems. It reduces the onus on employers to ensure a safe workplace and working environment. Proportional responsibility acts as an encouragement to employers to apply safe practices and create a safe working environment. It provides protection for workers to assist recovery from injuries that are at least partly due to failings in their work environment.

In particular, for workers with mental health issues, pre-existing genetic dispositions or any underlying diseases, this may in effect deny them any protection whatsoever. In their submission to the inquiry, the Mental
Health Council of Australia argued that the new test might exclude such employees from the statutory protections and prevent them from obtaining help and treatment, that employees might not disclose the nature of an illness for fear of workplace discrimination, and that the exclusions could result in a significant loss of productivity and experienced workers.

How is it fair that someone may be unable to be even partly compensated because there is some other contributing factor? How is it reasonable that the liability is privatised in this way? This may also mean that workers who would otherwise have been compensated to some degree and assisted with return-to-work plans will be denied this assistance in the future. The cost of their health care will pass on to the public health system. They may be forced to leave their employment and, with no help, fall back onto the welfare system. This is totally unacceptable and, further, it is un-Australian. Through unwillingness to help people in the workplace, we are paving their path from work to welfare. Labor is concerned about the exemption from claims where injury was a result of reasonable management action through performance appraisals and counselling. We note concerns by the Australian Manufacturing Workers Union that this might break the link between employers’ behaviour and the consequences of it. It removes incentives to create and follow good and fair processes in the workplace.

When an employee goes to work, they are not making the trip by choice. Over recent decades, it has simply been accepted that when an employee is injured in their journey to or from work, they can claim compensation. That is not unreasonable. It is something that is undeniably a part of the employment relationship. The employee has no choice in the matter; they are going to work and it is part of their working day. That they should not be compensated for an injury arising from their journey is an erosion of a basic right. The argument is made that employers do not exercise control over the worker’s trip to and from work, so it is unreasonable that they be liable. But the employee does not exercise control over this trip either. The time when they travel and the place they travel to are more or less beyond their control. The best solution is that the employee be covered for any injury under the no-fault workers compensation scheme. In this way, the priority is not on apportioning blame; it is on rehabilitation and a swift return to work. But the worker has the security of some cover in the event of an accident.

As the CEPU told the inquiry, employers’ arguments that they should not be liable because they are not at fault undermine the entire no-fault workers compensation system. Furthermore, for some workers, it is not clear what is a journey claim and what is not. People whose vehicles are essentially mobile workplaces have a special set of circumstances. For example, Telstra technicians are not in an office or another easily-defined workplace very often. For all intents and purposes, their vehicle is their workplace. They travel from job to job, and all the while they have no control over their whereabouts. For many, their workplace is garaged at their home. This narrowing of the definitions is troublesome. This bill gives no clarity or certainty to workers in so-called mobile workplaces like this.

Workers will also take time off for lunch and other breaks as mandated by enterprise agreements and so on. They will have a break, but they may not necessarily have a lunchroom. They may not have a canteen. If an employee goes off site—an example given in the inquiry was going over the road to eat a sandwich in a park—and is injured, they will not be covered. This is one of the more outrageous consequences of this bill.
The physical activity restrictions mean that such things as cycling to work or going to the workplace gym will no longer be covered. For example, imagine if a staffer hurts themselves in the Parliament House gym and is off work for some time with no compensation available. Or perhaps a worker is hurt in the course of a social game of squash over a lunch break. Woe betide the worker who rolls an ankle in the office lunchtime touch footy competition, because that person will not be covered. The employee may decide that the risk is not worth it and simply forgo the exercise. How much more of an impact will that have on the health of employees? When so many workplaces across the country are doing admirable work in encouraging a healthy and active workforce, this bill removes some of the necessary protections and will act to discourage this activity.

The basic thrust of this legislation is clear: either workers are restricted in their actions to those under the direct control and supervision of their employers, or they are not covered. They are not permitted to get a bite to eat, to go to the gym or even to drive to work with the security of knowing that, if something goes wrong, they will not bear the liability. Never mind that they do not choose the entirety of circumstances of their travel. Never mind that these things are, and have been, recognised as an essential part of the employment relationship. Instead, the potential liability is shrunk down as small as possible, and the risk for the worker increased.

The calculation of retirees’ incapacity benefits will change to take account of changes in interest rates and superannuation fund contributions. The Superannuated Commonwealth Officers Association argues that, for a small saving, the changes to calculations of retirees’ incapacity benefits will cost a small group a lot. Former Commonwealth employees will simply be subsidising the government’s liability from their own superannuation. A deeming rate is applied to pre-tax lump sum payments to calculate the appropriate sum to be paid in compensation payments. This is the rate of assumed earnings from superannuation and is intended to give an estimate of the amount a retiree will receive. At present, this rate is 10 per cent, which is significantly higher than actual interest rates and therefore artificially reduces compensation payments. This will reduce as a result of this bill, as I understand it, to the 10-year bond rate. But there is still an argument as to whether or not even that is the appropriate level at which it should be set. As has already been indicated, my colleague Senator Marshall will be moving an amendment to try to deal with this issue.

The CEPU argued that deemed interest rates used to calculate changes to benefits should reflect either actual interest rate expectations or deeming rates used by other legislative payments. The age pension or veterans service pension rates are preferable. The Superannuated Commonwealth Officers Association also argued that this deeming rate should be applied to the post-tax lump sum amount. It seems unreasonable in the extreme to make calculations on a pre-tax figure, as this overestimates the amount actually received. The calculations will therefore underestimate the appropriate compensation sum. It seems to me that this is just a mean act by a miserly government. The reduction of incapacity payments impacts on the ability of incapacitated employees to fund their retirement.

In conclusion, this bill further demonstrates the difference in approach of the Labor Party and the coalition. Where Labor seeks solutions that promote safer workplaces, the government seek to cut the rights and entitlements of workers. Where Labor pushes for commonsense arrangements, the government simply want to control. Either workers will be under the control of their
employers or they will not be covered. This is both unreasonable and unfair. Workers should be appropriately compensated when their work contributes to an injury or disease. When workers are retired, they deserve to see the fruits of their savings rather than to see their superannuation subsidise government payments.

Like many of the bills we have seen since the government took control of this place, it demonstrates the difference between us and them. We believe in fairness; they do not. We believe in due process and just workplaces; they do not. We want to make work safe and give people the security of knowing that, if they are hurt at work, they are covered. The government do not.

Senator MARSHALL (Victoria) (1.16 pm)—I also rise to speak on the Safety, Rehabilitation and Compensation and Other Legislation Amendment Bill 2006, and I completely endorse the comments of my colleagues Senator Wong and Senator George Campbell. The government’s motivation in respect of this piece of legislation, and other pieces of legislation that preceded it, is to establish a national workers compensation jurisdiction. Clearly that new workers compensation jurisdiction would be based on lower standards, the disempowerment of working people and the reduction of entitlements. All the preceding legislation and this legislation prove that very point. This bill clearly reduces benefits and makes people who are covered by the Comcare system or the licensing arrangements attached to the Comcare system worse off in respect of their entitlements to compensation for injuries.

Comcare was a Commonwealth Public Service compensation system. It was expanded to include corporatised bodies that were previously Commonwealth Public Service organisations. This government has now introduced legislation to provide licences to private companies to self-insure under the Comcare scheme. The licences will go to companies that have nothing to do with or have no relation to the Commonwealth public sector—for example, the National Australia Bank; Linfox; KNS Transport; John Holland, a construction company; and Optus.

The government is creating a scheme to duplicate those workers compensation arrangements at a state level. It is a scheme that will compete at a lower standard of care, that has the potential to lower benefits in order to attract more and more employers to a cheap workers compensation scheme in every aspect—namely, the premiums, compensation and conditions of those workers who are covered by that scheme.

Having said that, the government has introduced a couple of minor benefits too. I want to acknowledge them because we are often accused of looking only at the negative aspects of the bill and never recognising the positive ones. There are a couple of positive aspects. One is that, through this legislation, the government has increased the limit on the funeral benefit payment. It also introduces an administrative change—and a long overdue correction—to superannuation calculations. I will talk about that later in my contribution. As has been indicated, I will move an amendment in the committee stage that goes to that issue.

As we so often see with this government, it gives a very measly amount with one hand and gouges out entitlements and benefits with the other. The Labor Party look at the issues on balance and see the massive discrepancy between the advantages and the disadvantages. Thus we will oppose this bill, as we should, because it will significantly reduce the entitlements to people covered by the Comcare scheme.

As Senator Wong said, the overall cost savings to the government have been esti-
mated to be around $20 million. Let us understand where that $20 million comes from. There is nothing in this bill that streamlines or makes more efficient the Comcare system to generate savings. Every single dollar of savings will be from a reduction of benefits paid to working people, from a reduction in the coverage—and I will go to some of those issues in a moment—and from a reduction in the sorts of diseases and injuries that will be compensable under the new scheme. When the $20 million per annum savings are realised by this scheme, it will have come out of the pockets of those workers covered by this scheme who have been injured or who are ill as a result of workplace incidents.

The first significant change that this bill introduces is to the definition of ‘disease’. If you were an employee covered by the Comcare scheme and you have a disease right now that has a work related component to it, then you can validly make a claim under the Comcare scheme but, under this bill, if you are an employee with a disease, you will not be able to make a claim under the Comcare scheme unless the work related component is a substantial component to that disease. In legal terms, that is a very significant difference. It means that the number of people entitled to make a claim will be reduced. That, of course, is the point of the amendment.

Comcare indicated to the Senate Standing Committee on Employment, Workplace Relations and Education inquiring into this legislation that its estimate is that there will be 2.5 per cent fewer claims eligible under the new definition, a saving in that area alone of $5 million per annum. That saving will grow as the scheme is expanded to include more employers. There is some significant dispute about the potential savings due to that change, but I thought it was important to put the department’s figures to the Senate. We can expect that to be the minimum saving—and the minimum disadvantage. The real disadvantage is potentially much greater. Many of the people who made submissions to the Senate inquiry indicated that their view is that it will be much greater than that.

A significant problem with this is that it will introduce some uncertainty into the claim system. In their submission to the committee, the Law Council of Australia was of the view that these changes will also result in a significant increase in litigation. The savings on the one hand that may be generated will potentially be lost because of increased litigation. That cost would not only be to Comcare, because half of the litigation costs will be borne by workers who have been injured but whose claims are denied because of the change to the definition.

The second significant reduction in benefits is the removal of journey accident cover. Right now, if you have an accident on the way to or from work you are covered. The employers and Comcare argue that the employer has no ability to control the environment on the route to and from work. As Senator Campbell rightly pointed out, neither does the employee. Going to and from work is a requirement of your employment. You are required to attend work as part of your employment, so the journey is at the request of the employer in the first place. The employers try to make a rational argument by saying that as they do not have any control over things outside their workplace then this scheme should not cover those journeys.

What we have is a no-fault system. All of the state workers compensation systems and the Comcare system are no-fault systems. If we want to view it simply, it is an insurance cover to insure people against accident and injury suffered while doing things associated with their work. Travel to and from your work is clearly associated with your work. Given that it is a no-fault system, the gov-
ernment has given no rationale as to why they want to take this away. Going to and from work is part of your employment obligations. Insurance to cover you for accident, injury and illness on your way to and from work is the way that a no-fault system works.

If we do not have that, what will happen is that those costs will be transferred to others. If you are in a motor vehicle accident, for instance, the traffic accident commissions in many states will have some sort of overarching cover. But if you are not in a vehicle and you have an injury or illness and are unable to go to work, eventually you will find yourself in the welfare system. The cost savings to the Comcare scheme will potentially be put back onto the community and the taxpayer. That is what we say. A no-fault system should not allow that transfer of cost. This is why workers compensation systems have been set up as no-fault systems: to provide that overall insurance for people.

As Senator Campbell rightly pointed out, it is difficult now in the modern workplace to determine what a journey to and from work is. There are many people whose workplaces are in fact their vehicle. As a former electrician, I know the difficulty with determining that. If you get a call-out at night and you must go and fix a piece of machinery which is required urgently, when do you commence work? Do you commence work when you get in your vehicle to drive to the job, or do you commence work when you get to the job? Many people, especially those in the trades areas and other service industries—people in Telstra, for instance—get their job by computer at home. They start work on the job. They rarely go to a depot. When does work start? Is it when they get to the first job that has been allocated for the day, wherever that may be, or when they leave home? This will introduce more litigation to determine what the legal status of those things is. If there is preparation done for the job—preparing material, doing paperwork—before people get into the vehicle to attend the job, how is that coped with? We say that this introduces an enormous grey area which will mean more litigation and will simply disadvantage people who work in those situations.

The third concern is that this legislation removes the right to make a claim where there has been 'a reasonable administrative action taken by the employer'. While this sounds reasonable on the surface, employers will never admit that their administrative actions are unreasonable. If people take those actions, they must say that they are at all times reasonable. But, in my experience in the workplace, I have often seen where these sorts of administrative actions are used to bully and harass people. We have talked about performance appraisals and about how they are being used to bully and harass people. I have seen this regularly. It is well documented around the place. I have seen how administrative action is used sometimes to stress people in order to encourage them to leave. I have seen people who, as a result of restructures, have been placed in windowless offices and given nothing to do for months on end, causing enormous stress to them. Yet the employers will always argue in those situations that these are reasonable administrative actions. We believe that the definition goes too far.

Quoting from the Hansard of the Law Council of Australia’s evidence to the committee inquiry, this is what they said about it: Those provisions would apply to all diseases and may catch a range of other events. Our main concern regarding the focus on such a broad definition of administrative action is that the concept of ‘reasonable’ really introduces a fault based notion into a no-fault scheme. What you end up with is an investigation of whether what happened was a reasonable thing to happen or not in a scheme that
is clearly designed as a safety net no-fault scheme.

They go on to say:

Our concern is—one of the provisions is that it is cost saving—that it will simply lead to greater litigation as the question of reasonableness or otherwise of this administrative action is litigated.

So, again, while the government says that there will be some cost savings about these things which they claim to be reasonable, potentially the cost savings are removed or costs are incurred due to the increased litigation around these very broad questions of law.

The fourth area is the removal of workers compensation during lunch or rest breaks. I find it quite unfathomable that the government seeks to withdraw this compensation. Let me go back again and say that this is a no-fault system. It is an insurance system that provides coverage for people during their work and work related activities. The same thing that I have said about journey accidents applies to rest breaks. If you remain in the lunch room at work, you are covered. If you go out to a shop to buy your lunch, which you would only do because you are at your workplace, you are not covered. If you want to take your lunch across the road to the park, you are not covered for any injuries or illnesses that occur during that process.

I come back to the example of people who have mobile workplaces. If you are a Telstra technician, for instance, and you are on the road from the beginning of your shift to the end of your shift doing repairs, construction or installation or fixing faults—whatever it is that you are doing—there is no provision to return to the depot to eat your lunch in the so-called safety of the employer’s environment. Of course you eat your lunch on the road. The employer insists upon that. The employer would not tolerate people returning to a depot. If you are in one of the major metropolitan cities, it could take at least an hour to return to your depot. If you pull up in a park or on the side of the road to eat your lunch, you are simply not covered in those situations anymore. I think that is grossly unfair.

The government does not apply this principle equally across the board. I have not had an opportunity to go through the government’s amendments in detail, but they make it clear that if you are attending a place of education, for instance, you will be covered. I think you ought to be, and I am not arguing that you should not be, but the government clearly is not applying the principle of removing that coverage equitably. I will listen with interest to see if the government can explain why the situation is different for those attending places of education and those at work. The issue remains that it is outside of the employer’s control.

The other point I want to touch on briefly—I will be talking about it in much more detail in the Committee of the Whole—is that of deeming rates. As I said at the outset, this is a long overdue amendment. Many people have been significantly disadvantaged by the 10 per cent deeming rate that has been applied over the last 10 years. This amendment is long overdue. There is an argument about what the deeming rate for superannuation lump sum payments ought to be in the mix of your overall payment, but clearly 10 per cent was a ridiculous amount. Finally the government has acknowledged that; I welcome that. But people have been disadvantaged over a long period of time. I want to table a document before the committee stage so that government members who may want to contribute to this debate have an opportunity to see it. I seek leave to table that document.

Leave granted.
Senator MARSHALL—The document is an example provided by the department through Comcare. It was as a result of a scenario that was provided by the Law Council to our committee. Comcare took it away and did their own calculations. While the calculations are in dispute, the principle of the disadvantage is not. The intention of the act was to provide people with 75 per cent of normal weekly earnings. I have tabled the case study of Daryl, and this is the department’s response to that. In the example, the normal weekly earnings of Daryl were $1,038 a week; therefore 75 per cent of his weekly earnings was $778.50. On permanent disability, Daryl received $242,000-odd as a superannuation lump sum payout. Interest was applied to the pre-tax payout at a rate of 10 per cent. He was also required to pay another five per cent superannuation contribution, deducting in total $518.22 from his 75 per cent of average weekly earnings, leaving Daryl with $260.28. The effect of these amendments—we will talk more about that—will improve Daryl’s situation by $206.97. (Time expired)

Senator MURRAY (Western Australia) (1.36 pm)—On occasions the second reading debate contributions on bills are of varying quality. But I must say I have enjoyed listening to those second reading debate contributions I have heard to date on the Safety, Rehabilitation and Compensation and Other Legislation Amendment Bill 2006 because I think they have been well and comprehensively presented. In particular, a number of opposition senators have made contributions reflecting a very practical experience of the issues at hand. So I for one have valued their contribution. I valued too the minority report written by the opposition senators. It was well constructed. It happened to be double the size of the government senators’ report. Of course, quantity does not always equal quality; but in this case it certainly did. It covered the matters as they should be covered.

The Safety, Rehabilitation and Compensation and Other Legislation Amendment Bill 2006, which amends the Safety, Rehabilitation and Compensation Act 1988, aims to amend the act to maintain the financial viability of the Commonwealth workers compensation scheme. In other words, this amending bill is about money. If in fact the Comcare scheme is not under the pressure that the government maintains it is, it brings into contention many of the criticisms as to its motive and outcomes. The government believes the scheme is under growing pressure from increasing numbers of accepted claims, longer average claim duration and higher claim costs.

The main amendments will amend the definition of ‘disease’ to a higher threshold, to mean an injury which was caused or aggravated by work to a ‘significant degree’; amend the definition of ‘injury’ to exclude injuries arising from ‘reasonable’ administrative action; remove claims for non-work related journeys and recess breaks; amend the calculation of retirees’ incapacity benefits vis-a-vis changes in interest rates and super fund contributions; update measures for calculating benefits for employees that include definitions of earnings and super schemes; ensure that all potential earnings from suitable employment can be taken into account when determining incapacity payments; enable determining authorities to directly reimburse health care providers; and increase the maximum funeral benefits payable under the scheme.

My conclusion from the evidence presented to the committee is that there is insufficient evidence of a significant threat to the financial viability of the scheme. The scheme itself is in good shape, and the financial statements indicate that. The major effect of
the change encapsulated in this bill appears to be a reduction in costs to the Commonwealth and employers and a shifting of those costs to the employees affected by injury—and, of course, to the taxpayer through the broader welfare benefits system. While the bill addresses some inequities in the deeming rate used to calculate benefits, these are not retrospective; and it does not satisfy the criticisms that have been levelled against this process.

The changes to the key definitions of ‘disease’ and ‘injury’ tighten access for injured employees to the scheme. The matters of a lack of clarity in the new provisions; non-coverage of journey claims, physical activity and off-site recess breaks; and notional superannuation contributions and suitable employment were raised in evidence given to the Senate Standing Committee on Employment, Workplace Relations and Education. That committee report came down on 20 February 2007.

The Democrats’ policy is to strike a balance between the legitimate interests of unions, workers and employers. This bill does not achieve that. This bill will further reduce access to the scheme, reduce the fair access which presently exists and erode the compensation component payable to workers; all, as far as we can see, on an unnecessary basis. Amongst those expressing an opinion on the bill, Australian Air Express, Telstra and the Australian Lawyers Alliance supported the bill or aspects of it. The ACTU, CPSU, AMWU, CEPU, CFMEU, RTBU, the Law Council, SCOA, AFDO, the Mental Health Council and others opposed the bill or parts of it.

This bill will pass because the coalition has the numbers in the Senate. Many people still do not realise what that means and naively expect modern members of the coalition to exercise a conscience vote. I had an email conversation with a concerned citizen, who had received supporting noises from a Liberal senator and thought this senator might stop this bill. He also thought that Senator Fielding’s vote mattered. In part I answered: ‘If Senator Fielding is opposed to the bill, then you have to get two members of the coalition—Liberal or Nationals—to vote against the bill. In my experience, apart from the courageous Senator Joyce, the rest of the coalition senators almost never do that. If Senator Fielding supports the bill, you need three coalition members to vote against the bill. That is just not going to happen. Sorry, but that’s how it is.’

The reason I have drawn the attention of the chamber, and those who are interested in this bill and are listening, to those remarks I made is that you simply cannot presently adjust bills in this chamber under the philosophy of the present coalition government, which does not routinely allow conscience votes. This will not happen unless you give the control of the Senate back to non-government parties. Those who are affected detrimentally by this bill—and they number hundreds and hundreds of thousands of potential claimants—need to understand that, because in the next election they need to cast their vote away from the control of the Senate being held by the government.

So when, not if, this bill is passed, it will have the effect of stripping away terms and conditions of workers as they relate to work related injury and sickness. It will also erode the compensation payable to workers. For these reasons, the Democrats take issue with this part of the government’s continuing industrial relations crusade to wind back worker entitlements and conditions. We oppose it because it goes beyond useful reform and efficiencies. We oppose it because it, once again, shifts costs from a specific agency and mechanism dealing with issues
back to the taxpayer community at large. It is not good public policy.

The bill is the government’s formal response to the Productivity Commission’s latest recommendations for changes required in the area of occupational health and safety. The point to be made is that continuing reform and review are necessary, but the policy principles which have applied in key areas like this have to be maintained. Back in September 2004, in the *Journal of Australian Political Economy*, Kevin Purse, Frances Meredith and Robert Guthrie wrote an article titled ‘Neoliberalism, workers’ compensation and the Productivity Commission’. They said of the commission:

The real significance of its contribution lies in the fact that it provides a veneer of legitimacy for a neo-liberal political agenda designed to curtail the entitlements of those unfortunate enough to be injured as a result of their employment.

That may be a little unkind to the Productivity Commission as a general view of its work, but it does in many respects accurately reflect the intent of this bill. The government is up-front about its intent, which is explained in the explanatory memorandum as being the desire to decrease the number of injuries covered by the Comcare scheme—note: ‘to decrease the number covered’ not to decrease the number of injuries. The number of injuries is going to continue as before; they are just not going to be covered in the same way as they were before.

If, as the government argues, the Comcare scheme is under threat because of the added pressures from increasing claims, the answer should not lie with reducing the rights and protections available to workers and employees. The answer should lie elsewhere with, for instance, a better resourced Comcare or, if necessary, increased levies from employers—which, in my view, are not warranted because the system is viable; right now, it is financially strong—or, preferably, and most importantly, measures to prevent injury and disease in the first place.

It is not necessary to impose other measures, as there is insufficient evidence that there is a significant threat to the financial viability of the scheme. It appears, then, that these reforms will only accompany cost reduction and cost shifting and, therefore, lowering levels of protection for workers and workplaces covered by the Commonwealth.

Most concerning of the reforms are the principal amendments under item 11 that change the definitions of ‘injury’ and ‘disease’ for the purpose of the act. These changes are indeed telling because they will narrow the circumstances under which employees may claim compensation. For a worker to be compensated, he or she will have to show that their injury or disease has a connection with their workplace to a ‘significant degree’. At present, a ‘material contribution’ is used as a definition.

What is in a couple of words? In this case, a great deal. ‘Significant degree’ is defined as ‘a degree that is substantially more than material’. The quantitative and qualitative significance of this shift of definition may turn out to be high. It does not stop there. The definition of ‘injury’ will also exclude injuries stemming from what is considered reasonable administrative action taken in a reasonable manner. An exhaustive list is provided of matters that would fall under the term ‘reasonable administrative action’ as actions relating to appraisals, counselling and the suspension and discipline of employees.

However, the bill provides no guidance as to what is ‘reasonable’—an omission that leaves it open for a very broad interpretation that is unlikely to benefit employees. I am aware that the issue of ‘reasonableness’ has a very broad history of jurisprudential analysis and commentary. The government may well
argue that they do not need to define ‘reasonable’ but it does seem odd that ‘reasonable administrative action’ would get an exhaustive list and ‘reasonable’ otherwise does not with respect to this bill.

Underpinning this part of the bill appears to be the rather misleading assumption that managerial behaviour is likely to be beyond reproach; that the question of fault could be impartially decided by employers within the scheme. The situation worsens for workers under item 12. It will be the case that claims for injuries sustained while travelling between home and work will no longer be possible, which, as has been clearly outlined, is most unfair in many circumstances. Surely, a number of injuries acquired while travelling to or from work are intrinsically work related? What of the situation where a worker is injured, even killed, when returning home at night extremely fatigued from an extended and arduous shift at the request of the employer? Should not this person and his or her family be compensated? As we know, many people from white-collar workers all the way through to blue-collar workers use their vehicle as a workplace. An architect who is employed by an architectural firm outside a building site is as much using his car as an office as is a Telstra person attending a fault.

The bill retains various travel situations that will remain covered, such as attending places of work related education; obtaining a medical certificate or receiving treatment; and undergoing medical examinations or rehabilitation. Nonetheless, other situations could arise that would cause coverage confusion or should be legitimately covered in these circumstances. If a worker were to sustain an injury during temporary absences on meal breaks, would workers face those problems? It is thought that employers have no control over activities during such breaks; but, as has been outlined by previous speakers, this could be sometimes yes, and sometimes very definitely no.

By removing most journey claims from coverage, the government succeeds in narrowing the range of workplace injuries that Comcare is liable for; it will not—and that is the point—narrow the range of workplace injuries that will continue to occur. So there will be more injuries or the same number of injuries but a lower level of coverage. Once again, this is a shift from a specific process and an institution that is able to cope with those matters at present to a broader welfare or taxpayer supported system. It is a significant cost-shift back to state governments—and, in some respects, back to the federal government—to cover through compulsory third-party claims and the federal government through the Centrelink welfare system.

The Democrats take no issue with the amendments relating to increasing the maximum benefits for funerals and updating the ways in which a retiree’s incapacity benefits are calculated by taking into account interest rate changes. It is typical of many bills that you oppose that they contain elements that you support—and these are such elements that we do support.

However, the amendments that provide a reference scale for adjusting employee entitlements in line with the definitions of ‘normal weekly earnings’ and ‘superannuation schemes’ are troubling, as are those that allow determining authorities to directly reimburse healthcare providers for their service costs. Although less contentious, they are troubling because of the lack of detail about the formula that will be used to calculate entitlements and the lack of clarity to do with the changing rules regarding the direct payment of medical bills by Comcare. The bill leaves gaps in coverage and contains uncertainties, and that can only lead to future problems. But the overwhelming problem
with this bill, which is far too harsh for what is necessary, is that it limits the criteria by which workers can claim compensation in the event of a plausible workplace related injury or illness. Its passing will seriously undermine progress made to date in occupational health and safety policy in Australia. It is a clear step backwards.

The Democrats do not support the bill, because it goes beyond useful reforms and efficiencies. The Democrats do not support the bill because there has been little evidence to back the government’s claims of addressing a significant threat to the scheme’s financial viability. The Democrats do not support the bill, because it will result in unnecessary outcomes of reduced access and employee conditions, and poorer outcomes for injured workers. We say to the government: you had adequate notice from the opposition senators’ report and from the committee hearings that adjustments needed to be made to this bill. We say to the government: it is still possible for you, at the end of the second reading debate, to suspend debate of this bill and go away to adjust the bill to ameliorate some of its worst outcomes. What you are facing otherwise is that, when there is an inevitable change of government, either in the next election or later, these provisions will be overturned. You would be far better getting the common agreement of the Senate to reforms and efficiencies that are necessary with respect to Comcare—they will always be necessary, because you can advance these things—than shoving through something that is obviously strongly opposed by the Labor Party. They are the alternative government, and, if they are elected in November, I would expect them to overturn it—and I hope to hear from the Labor opposition a commitment to do exactly that.

**Senator MARK BISHOP** (Western Australia) (1.54 pm)—The Safety, Rehabilitation and Compensation and Other Legislation Amendment Bill 2006 seeks to make a range of amendments to the principal act. It amends the definition of ‘injury’, linking that to workplace causation; excludes injuries arising from reasonable administrative action; removes claims for non-work related journeys and other workplace absences; amends the calculation of retirees’ incapacity pay; updates measures for calculating benefits for employees; ensures that potential earnings are not taken into account in calculating incapacity pay for ex-Commonwealth employees; enables Comcare to directly reimburse health providers; and increases funeral benefits to $9,000. Put simply, it is a quick-fix bill to some longstanding problems. But it does not take us to underlying policy issues. When this legislation first became law in 1986, it was then a new benchmark in workers compensation. It followed consideration of a single workers compensation scheme, but this is still a dream. This bill does not address any such vision. It is typical of the short-term thinking plaguing the policy minds in a range of areas of members of this government.

There are a number of features of policy in the act which this bill amends. First, the public employer must be insured with Comcare and pay a premium based on the claims experience of that employer. Second, the emphasis is also on rehabilitation before permanent disability is assessed. Third, medical costs must be paid. Fourth, compensation must be fair. Incapacity payments must also accurately reflect other residual income-earning capacity. Sadly, many of these principles are not well understood and may be unfair in practice. That is because disability compensation, by definition, is a complex matter.

To begin with, medical science is far from perfect. It is almost impossible in any regulatory regime to predict future events and developments with substantial discretion being
the rule of thumb. Every claimant’s circumstances are different and, as with all no-fault schemes, one size has to fit many. The successful rehabilitation of the injured can vary and future income-earning capacity is not counted. The only way to achieve satisfaction for that, though, is through common-law action for damages. As we know, this can take many years at a huge cost. The current scheme is the best we have devised to date, but it does need regular finetuning.

There are a number of themes in the framework that can be seen in this amending bill. They come into play when there is any finetuning, as with this bill. The most obvious with the bill is industrial relations—that is, entitlements of employees to protection from injury and for health care and compensation when that protection fails. That is generally considered to be the basis of no fault, and that is why legislation such as this is considered by many to be a threat to working conditions.

Next, there are the economic arguments, and we should be looking carefully at all costs of production to maintain Australia in a competitive position. Good employers, reasonable employers, rational employers know that reasonable occupational health and safety saves money. They freely accept their social and industrial responsibility. But we know these practices and ideals are often not honoured. There are plenty of employers around who are only too willing to have their costs covered by others. It happens within organisations as well—for example, wastage through medical discharge in Australia’s armed forces in recent years. We know that this practice was rampant. In short, the attitude to workplace injury was to go for medical discharge of the injured person and then find a quick replacement. That avoided the trouble of supervising rehabilitation and the necessary and consequential return to work. It was also a device to get rid of perceived troublemakers. The cost of this waste was, of course, borne by the ADF and by the taxpayer in due course. There was not any unit accountability, so the problem was endemic, sustained and consistent and remained untreated. Something needed to be done. Fortunately, it is fair to say that there seems to have been some improvement within Defence on this angle in recent times. That is apparent as the new OH&S regime becomes operational.

Debate interrupted.

**QUESTIONS WITHOUT NOTICE**

Workplace Relations

**Senator Wong** (2.00 pm)—My question is to Senator Abetz, representing the Minister for Employment and Workplace Relations. Is the minister aware of reports that the new Nationals MP for Tweed, Mr Geoff Provest, has concerns about his 26-year-old son, Patrick, standing to lose penalty rates under Work Choices? Does the minister agree with Mr Provest that “there’s some more work to be done in terms of protecting those penalty rates”? Is the minister concerned that one of Mr Provest’s successful election strategies was to disown Work Choices? What will your government do to protect the wages and conditions of those like Patrick Provest and others at the Tweed bowls club?

**Senator Abetz**—First of all, I congratulate the new member for this particular seat—

Opposition senators interjecting—

**Senator Abetz**—Tweed. I thank my friends on the opposition for that assistance. I hope they are as cooperative throughout the rest of question time. First of all, I congratulate the gentleman on his election. I am more than happy, and I am sure a lot of my colleagues would be happy, to disabuse him of some of the views that he may have in relation to Work Choices, because, as we cele-
brate the first anniversary of Work Choices, there is nothing but good news for the working men and women of this country, and for Australia.

If the National Party strategy in Tweed was to disown Work Choices, I am not sure that that necessarily follows with the New South Wales election result, because, as I understand the New South Wales election result, there was in fact a three per cent swing against Labor. In other words, the Labor Party are saying to the Australian people that the three per cent swing against Labor was as a result of Work Choices. Indeed, in the union heartland of the Hunter—so ably represented by senators from New South Wales—can I indicate that there were substantial swings. I understand that, in relation to the New South Wales election, the Premier asserted that when he stood at a polling booth—I think it was in the seat of Menai—everybody who came up to him at the time talked to him about Work Choices. The unfortunate fact for the Premier is that there was in fact a federal member at the booth at exactly the same time, and that assertion by Premier Iemma is simply false, incorrect, untrue, because she witnessed him gladhanding a whole row of people without engaging in any meaningful way other than to say hello. So what we have here is a desperate attempt by the Australian Labor Party to rewrite the history of the New South Wales election, as they tried to do in Victoria and Tasmania. For over two years—and keep in mind that Work Choices has only been in for one year—the Labor Party has been condemning Work Choices and what it might do for the people of Australia.

Honourable senators interjecting—

The PRESIDENT—Order! Senator Wong, are you taking a point of order about noise?

Senator Wong—No. Mr President, I rise on a point of order about relevance. The minister was asked about the loss of penalty rates for the son of the new National Party MP. He has not come close to addressing that issue. I would ask him to return to the question.

The PRESIDENT—Minister, you have just over a minute to finish your answer. I would remind you of the question.

Senator ABETZ—I thought I had got very close to it and, in fact, right on top of it when I said that I would be happy to talk to the National Party member and disabuse him of those certain views that he might be holding. I am not sure how young or old the son of the new member for Tweed is, but I do know that youth unemployment, since Work Choices, has gone down by 0.8 per cent. He may well be in another demographic like the very long term unemployed. Do you know what? Since Work Choices, the number of very long term unemployed has gone down by 25 per cent. What I challenge the Labor Party to do is tell me the demographic in which this young man or gentleman fits into and I will tell you how that demographic has benefited as a result of Work Choices.

Senator WONG—Mr President, I ask a supplementary question. Can the minister tell us if the government agrees with Pru Goward, who stated, ‘I can’t deny that Work Choices was a factor’ in costing her votes at last Saturday’s New South Wales election? Minister, aren’t your own candidates in the field seeing the negative impact Work Choices is having on hardworking Australian families? Given that the Howard government has stopped listening to the community, will you at least heed the warnings from your own candidates?

Senator ABETZ—In relation to the person that I hope will be the successful candidate for Goulburn, I do note that what she
said—and listen to this very carefully—was that those people who did not want to engage with her, those who were quite short and abrupt at the door, raised the issue of Work Choices. So you would imagine that there is a cohort in the electorate that would be against Work Choices—and we do not deny that—and they are vehement about that. Just as much, if the Labor candidate were honest, he would say that he got short shrift at certain doors from people who said: ‘The trade union domination of the Labor Party is such that we cannot vote for your party.’ I am sure it happens on both sides of the equation. The only difference is that Pru Goward was honest enough to tell us what happened at the doors, whereas the defeated Labor candidate remains strangely silent. (Time expired)

Workplace Relations

Senator CHAPMAN (2.07 pm)—My question is also directed to the Minister representing the Minister for Employment and Workplace Relations, Senator Abetz, and follows the question of Senator Wong. I note the minister’s reference to the fact that this is the very welcome first anniversary of Work Choices. In that context I ask the minister: what does the empirical, factual evidence reveal about Work Choices? How does this factual evidence compare to the doomsday predictions made about the policy before its introduction, and to the false claims made by its critics?

Senator ABETZ—I thank Senator Chapman for his question. Today is an important milestone for the workers and families of Australia. It does, as Senator Chapman indicated, mark exactly one year since Work Choices came into effect on 27 March 2006. What a great year it has been for the families and workers of Australia. Let us look at the empirical, unquestionable, solid facts.

Unemployment is at a historic, 30-year low of 4.6 per cent. In the year since Work Choices was introduced, unemployment has fallen dramatically, by a full half of one per cent. This represents the creation of 263,700 new jobs, 87 per cent of those being full time. The participation rate has increased from 64.4 per cent to 64.9 per cent. Teenage unemployment has fallen by 0.8 per cent. Mature age employment has increased by 96,800, or 2.6 per cent. Long-term unemployment has fallen by 14.5 per cent. Very long term unemployment is down by almost 25 per cent. These are solid, irrefutable, hard facts.

Work Choices has not led to the mass sackings those opposite so falsely claimed it would. It has in fact led to mass employment. And yet, incredibly, we see the Labor Party and unions continuing to deny the facts. Just yesterday, the Deputy Leader of the Opposition, Julia Gillard, incredibly claimed: ‘Work Choices hasn’t led to a new era of job creation.’ Try telling that to the 263,700 of our fellow Australians who know that that assertion is simply false.

Similarly, the independent, solid, hard, Australian Bureau of Statistics data show that real wages have increased by 1.5 per cent since Work Choices—that is over and above inflation, and more than Labor could manage in its 13 years in office. Yet, incredibly, Labor and the unions claim, like Mr Cocker in Tasmania this morning, that we have seen a loss of take-home pay—a desperate, barefaced, brazen lie in the face of the statistics from the bureau.

Unfortunately, this is symptomatic of the almost two year campaign Labor and the unions have subjected the Australian people to over Work Choices. It is a bit like the Greens—‘Do not bother with the facts; do not let the truth get in the way of a good headline.’ And, whilst I am on the Greens, I happened to note that their policy website is
still down. And so, to coin a phrase, it would seem that their policies are still ‘on ice’.

But back to the Australian Labor Party. Take the New South Wales election. The New South Wales Labor Party had a swing against them and they claimed Work Choices was the reason they had a swing against them. What a desperate attempt by those opposite to rewrite history and the indisputable fact that over 260,000 of our fellow Australians now have employment because of the tough decisions that we as an Australian government have taken. I invite the Labor Party to show that they have not only changed leaders but that they have actually changed policies and come on board with Work Choices as they so reluctantly had to do with tax reform and so many other reforms that we have undertaken on behalf of the people. (Time expired)

Workplace Relations

Senator STEPHENS (2.11 pm)—My question is to Senator Abetz, representing the Minister for Employment and Workplace Relations. Is the minister aware that John Anderson, the member for Gwydir, has raised concerns that the Christian concept of a regular day off is being undermined? Hasn’t Mr Anderson stated that:

I would hope the law would facilitate such a choice—
to spend more time with your family. Don’t these comments back up the findings of the report An unexpected tragedy: evidence for the connection between working hours and family breakdown in Australia, which the member for Gwydir advised on, that the quality of family life is being progressively eroded because of long and irregular work hours? Hasn’t Work Choices only added to these pressures, by taking away protections for workers with little bargaining power?

Senator ABETZ—The most damaging pressure that any Australian family can be placed under is that of the scourge of unemployment. And when we came to government we ensured that we would devote ourselves to getting rid of that scourge. And today we celebrate a generational low, a 30-year low, rate of unemployment of only 4.6 per cent. Having said that, there is a lot more to be done and a lot further to go, and we as a government look forward to those opportunities.

In relation to Mr Anderson, I happen to agree with his view that the concept of a day off, especially for religious worship, is very important. That is what Work Choices is all about.

Senator Carr interjecting—

Senator ABETZ—People can go to their employer and say: ‘I am a committed Seventh Day Adventist and I do not want to work on a Saturday but I would be available to work on a Sunday’—

Senator Carr interjecting—

Senator ABETZ—as can somebody who may be of the Catholic persuasion or the Reform persuasion, who might want to have Sunday as sacred. Indeed, the same would apply to the Jewish community, who might want—

Senator Carr interjecting—

The PRESIDENT—Senator Carr, you are warned.

Senator ABETZ—Saturdays off. This is about choice, whereas, when you have a look at some of the awards that the trade unions negotiated—including, may I add, the one for the media in this country—public holidays and other things were wiped out for an increase in wages, and they have to work on those days.

If that is what workers want to do, that is their good luck. If they do not want to, we are putting into the workplace system the possibility of flexibility. I simply say to the
workers of this country: if you are a good worker, like the vast, overwhelming majority of workers are, you have nothing to fear from approaching your boss, exercising choice and asking for flexibility, because the vast majority of employers in this country know that their greatest asset is the Australian workforce. That is why we have seen productivity levels go up. We are saying—

The PRESIDENT—Order! Senator Polley and Senator Sterle, shouting across the chamber is disorderly.

Senator ABETZ—get rid of the ridiculous red tape that those from the other side made a living from creating and allow flexibility in the workplace, which will allow for people of a particular religious persuasion to exercise choice in having a Saturday, a Sunday or whatever day and working it out with their employer.

Senator STEPHENS—Mr President, I ask a supplementary question. Haven’t international studies shown that in families where both parents worked atypical hours, the parents display less effective parenting and their children show higher levels of aggression? In other words, tired and stressed people do not make good parents. Don’t the government’s IR changes only increase those pressures, with some employees being forced to work longer hours or weekends and holidays?

Senator ABETZ—What a desperate attempt by the honourable senator! Everybody in this place knows that the worst social indicator is mum or dad or both being unemployed. That is the legacy that the Australian Labor Party left to over one million Australians. I am proud to say that, as a result of 11 years of the Howard government, school leavers at the end of last year were practising job application forms; whereas when we came into government school leavers at the end of the year were practising filling out dole applications. That is the cultural change that we have brought to Australia. We are proud of it, but we need to build on it even further.

Workplace Relations

Senator IAN MACDONALD (2.17 pm)—I will follow the theme of the questions so far today and ask the Minister for Finance and Administration if he would outline to the Senate the importance of flexible labour markets to the continuance of Australia’s strong economic performance over the last decade. Does the minister know of any alternative approaches to this issue?

Senator MINCHIN—I thank Senator Ian Macdonald for that very good question. As Senator Ian Macdonald well knows, today is the first anniversary of our Work Choices reforms and, as Senator Abetz noted, in the first year under Work Choices we have had some tremendous results: 263,000 new jobs, real wages up in one year by 1½ per cent—more than was achieved in 13 years of Labor—and the lowest level of industrial disputation since records commenced in 1913.

We have to look at Work Choices in terms of the economy as a whole. Under our government, the Australian economy has achieved its longest ever run of continuous expansion. We are experiencing unprecedented rises in real incomes. In the past, strong economic growth and high commodity prices inevitably led to rising inflation, wages break-outs and a boom-bust cycle. As the result of our reforms, we have secured and sustained our current economic strength without those consequences that inevitably used to be the case. Those reforms include the independent Reserve Bank, which was opposed by Labor; they include the medium-term fiscal strategy, aimed at keeping the budget in balance over the economic cycle and keeping pressure off inflation and interest rates; and they include the elimination of all government debt and an increase in our
national competitiveness through privatisation, waterfront reform and tax reform. All of these things were opposed by the Labor Party.

Most importantly, our ongoing workplace relations reforms since 1996 have been critical to underpinning our extraordinary run of prosperity. Without that workplace flexibility, productivity would inevitably suffer because we would have the old days of centralised tribunals dictating workplace practices in individual firms. Without legal sanctions against secondary boycotts, we would see a return to union inspired wildcat industrial disputes, further undermining our productivity and our reliability as an exporter. And if we had the return of unfair dismissal laws we would see again the reluctance of small businesses to hire new staff, just as we saw before the introduction of Work Choices.

With Labor’s proposed return to union dominated pattern bargaining, we would see wage rises in strong sectors of the economy like mining flowing through to other sectors of the economy that cannot afford them, inevitably resulting in widespread unemployment. That is exactly what happened in the previous commodity price boom of the 1970s and it is exactly what happened when a certain Labor senator was in charge of the metalworkers union, resulting in mass unemployment in his union.

In the current economic climate, it really would be a recipe for general wage pressures, inflation, higher interest rates and job losses if we followed that path. And yet with incredible timing, on the first anniversary of Work Choices, what does Labor do but reveal that its industrial relations platform is all about the return of unfair dismissal laws for small business, a preference for pattern bargaining, the scrapping of secondary boycott protections and a return to centralised industrial relations with tribunals interfering in workplace relations in individual workplaces. The Labor Party, just like the Australian people, face a stark choice. You can have either this union-inspired industrial agenda or a continuation of low unemployment, low inflation and strong economic growth, but you cannot have both.

Commonwealth Scientific and Industrial Research Organisation

Senator CARR (2.21 pm)—My question is to Senator Brandis, the Minister representing the Minister for Education, Science and Training. I refer to the Productivity Commission’s damning report on the Howard government’s science and innovation policies. Is the minister aware that the report vigorously argues:

... the current real level of public appropriation funding for CSIRO should not be reduced.

Can the minister confirm that the real increase in CSIRO’s costs is at four per cent per annum? Does the minister recall the government’s recent announcement that CSIRO would only receive indexation of two per cent, which effectively imposes a two per cent annual cut for the next four years? Will the government now admit it is delivering a real funding cut to CSIRO and then ensure that CSIRO receives adequate funding for its nationally important research programs? Minister, hasn’t Australia been badly let down by more than a decade of the Howard government’s neglect of innovation?

Senator BRANDIS—Ever since I was woken this morning by the dulcet tones of Senator Carr on the radio speaking of the Productivity Commission report, I have been hoping that Senator Carr might choose to ask me a question about the Productivity Commission report today.

Senator Coonan—And you’re not disappointed!

Senator BRANDIS—As Senator Coonan says, I have not been disappointed. I have
looked at the report, although—I am sure, like Senator Carr—I have not yet read all 851 pages of it.

Senator Carr interjecting—

The PRESIDENT—Order! Senator Carr, I have warned you once; I will not warn you again.

Senator BRANDIS—But—Mr President, through you—what I can advise Senator Carr is that the Productivity Commission report, commissioned by Mr Pearce, the Parliamentary Secretary to the Treasurer, on 10 March last year, finds that the condition of R&D and of government support for R&D in Australia is healthy and increasing. Allow me—Mr President, through you—to direct to Senator Carr’s attention some of the key findings of the report. On page 22 it says:

Gross domestic spending on R&D in 2004-05 for governments, businesses, the higher education sector ... was around $15.8 billion (in current prices) or about 1.76 per cent of GDP ... Real total spending was about 50 per cent more than in 1996-97... What do we know about 1996-97? That was when the party that Senator Carr represents in the Senate was last in office and last in control of R&D spending in Australia. So the first finding, Senator Carr, which you seem not to have noticed, is that the Productivity Commission report finds a 50 per cent increase in funding over the last 10 years. The author of the report goes on to say:

Australia’s total R&D to GDP ratio has increased at a much faster pace than most other OECD countries in recent years.

Senator Chris Evans—Mr President, I raise a point of order that goes to the question of relevance. While I am happy that Senator Brandis has spent his day doing something useful in reading the report, question time is actually where the opposition get to ask him questions. He was asked about CSIRO funding and whether or not there had been a real decrease in CSIRO funding. He has not actually attempted to answer the question at all. I draw your attention to the question.

The PRESIDENT—Senator Brandis, you have just under two minutes to complete your answer. I remind you of the question.

Senator BRANDIS—Thank you, Mr President. In the event that Senator Carr’s eagerness to make a cheap political point out of this important issue also diverted his attention from some of the other findings of the report relevant to his question, can I point out to him that at page 45 the author of the report says—

Senator Carr—Mr President, I raise a point of order. I asked a very specific question about CSIRO’s funding. The minister has ranged widely over the recommendations of the report. He has failed to deal with finding 11.1, which directly relates to CSIRO funding. I would ask him, if he has had a chance to look at the recommendation, to address that particular recommendation.

The PRESIDENT—It is 16 seconds since the last point of order was taken. I would remind the minister of the question.

Senator BRANDIS—Thank you, Mr President. With respect to you, Senator Carr, I think I have acquainted myself more with the report in the last few hours than you seem to have done, because if you were better acquainted with the report which is the subject of your question you would not have omitted to notice the finding on page 45:

... Australia’s overall innovation and economic performance has been good compared with many high R&D performing countries.

Had Senator Carr taken the trouble to study the report rather than to rush into the chamber on the back of an incomplete report in this morning’s Canberra Times, he would also have noted the observation on page 347 of the report—and this is directly to the point
of Senator Carr’s questions—which warns against cross-sectoral methodological error by picking out one aspect of R&D funding in isolation from other areas of R&D funding.

So the conclusion of the Productivity Commission report is that Australia’s R&D spending is 50 per cent greater than it was at the time your side of politics, Senator Carr, was last in power, has been accelerating at a rapid pace and has reached the OECD average, which is not where it was, Senator Carr, when the Australian Labor Party was last responsible for R&D.

**Senator CARR**—Mr President, I ask a supplementary question. Given that the minister has failed to identify the particular recommendations of the report, seven out of 10 of which are actually highly critical of this government’s response in innovation, I ask him: is it not the case that the Productivity Commission has also rejected the government’s botched management of the Cooperative Research Centres program, which was established under Labor, and has argued that ‘the original objectives of the program should be reinstated’? Minister, I ask you again: isn’t it the case that the government’s approach to innovation is little more than rhetoric and red tape?

**Senator BRANDIS**—With all due respect to Senator Carr, I think one of us is engaging in rhetoric and the other is referring to the report. It is not the case, as Senator Carr asserts, because Senator Carr, I am sorry to say, has not made himself familiar with the report. Might I also, Mr President, remind Senator Carr that one of the findings of the report in relation to the CSIRO is that research funding for the CSIRO has increased in real terms by 11 per cent since the Australian Labor Party was last in power. But that is to be put in the context, as I said before and as the authors of the report are at pains to point out, that one must not make the methodological error of looking at one sector of R&D funding in isolation from the total support for the sector. Senator Carr, it is obvious to me you are not familiar with the report. I doubt you possess a copy, so come and see me after question time and I will make you a gift of my own.

**Broadband**

**Senator McGAURAN** (2.29 pm)—My question is to the Minister for Communications, Information Technology and the Arts, Senator Coonan. Will the minister update the Senate on proposals to provide—

**Opposition senators interjecting—**

**The PRESIDENT**—Order! There is that much noise that I cannot hear the question. Could you please repeat that, Senator, because I could not hear the question.

**Senator McGAURAN**—Will Minister Coonan update the Senate on proposals to provide fast-speed broadband throughout metropolitan, regional and rural Australia?

**Senator COONAN**—I thank Senator McGauran for his question and recognise his longstanding interest in the issue of broadband. As the Senate knows, there are a number of proposals on the cable to give Australians access to a higher speed broadband. Both Telstra and the G9 consortium have mounted competitive proposals to roll out broadband to commercial areas, including major metropolitan cities and parts of regional Australia. The Australian Labor Party has rolled out a headline grab to provide fibre to the node to 98 per cent of the population. To do this, it proposes to smash and grab the Future Fund, abolish the regional communications fund and close down the government’s Broadband Connect program. It has become blatantly obvious to telecommunications analysts that Labor has failed to do its homework with this unworkable fast-fix broadband plan. On the day Labor made its announcement, ABN Amro slammed La-
bor’s proposal, declaring it would take the industry back 20 years to government provision, gold plating and restricted rollout. In their opinion, it fails to resolve access regulation issues but entrenches them, adds new inefficiencies and re-establishes a conflict between government as owner, whose dividends rely on access prices, and as a regulator of access.

The damning reviews have just kept rolling in. Telecommunications researcher Market Clarity have come out today in the Australian criticising the ALP’s plan as failing to do its homework and undershooting the mark. Its chief, Shara Evans, said:

Nothing in the Labor plan really addresses the backhaul issue. It doesn’t seem to be addressing what I see as the most critical problem - getting high-speed pipes into the regions so these access networks actually have something to connect to.

It goes on. Eminent professor of economics at Melbourne University, Joshua Gans, has conceded the proposal is ‘overkill’. Ross Gittins, the economics editor of the Sydney Morning Herald, has dismissed the plan as a waste of taxpayers’ money and a cynical bribe. In today’s Financial Review, the global research firm Ovum has predicted that Labor’s broadband proposal will not have any impact until after 2010 and will be more than likely bogged down in commercial and competitive wrangles for years. According to Ovum, a raft of issues have not been addressed under Labor’s plan, such as which part of the network will be unbundled, how the multiple stakeholders other than Telstra will have access to the consumer and how they will share the revenue from the services offered on the jointly held network. Economics editor of the Australian Financial Review, Alan Mitchell, agrees. He said there are a lot of questions to be answered about the cost and value to the consumer of proposed high-speed networks. Mitchell concludes that Rudd’s political commitment to the high-speed broadband network has been made without any serious evaluation of the likely costs and benefits. Everyone agrees that it is unworkable, underfunded and will not go anywhere near covering 98 per cent of the population. What matters is a sound policy for encouraging investment in broadband in metropolitan areas and regional centres, and targeted incentives to get it to rural Australia—otherwise you will not have broadband for all Australians. The coalition government has a plan; Labor is just making it up on the run.

Mr David Hicks

Senator BOB BROWN (2.34 pm)—My question is to the Minister representing the Attorney-General, Senator Johnston. I refer to quotes from a discussion last night about torture with the commandant of the Guantanamo Bay gulag who said that interrogation approaches are designed to manipulate the detainee’s emotions and weaknesses to gain his willing cooperation and that he hoped that that philosophy had been employed in the interrogation of David Hicks. Do the Attorney-General and this government believe in torture as a means of influencing evidence and/or pleas before a court? Does this government believe that retrospective charges should be part of a criminal justice system?

Senator JOHNSTON—I thank the Senator for his question. Of course the government does not believe in torture or coercion to obtain confessions. I inform the Senate that today Mr Hicks has entered the plea of guilty to the charge of providing material support for terrorism at his arraignment before a military commission. I should also point out that this man has very competent legal advice. I understand that the judge has requested that the parties file an agreed upon statement of facts on 27 March, Guantanamo Bay time.
To the extent that Senator Brown raises the question as to what has gone before, it would seem rather redundant in the face of an admission which has been afforded to the court. The plea is obviously a matter for Mr Hicks. The government welcomes the fact that Mr Hicks’s case should now be resolved quickly. I underline the fact that there has now been a voluntary plea of guilty to the charge of providing material support for terrorism. The matter, as I say, is for Mr Hicks, his lawyers and the US authorities. Sentencing is a matter for the military commission. I do not believe I can take it much further. The matter is in the care and custody of the commission and it would be inappropriate for me to say anything further.

Senator BOB BROWN—Mr President, I ask a supplementary question. How can torture ever be dismissed as redundant? Is the minister not ashamed of that statement and is this government not ashamed of dragging our great judicial system into the mire by compromising and associating it with the corrupt, illegal system in Guantanamo Bay? Aren’t you ashamed?

The PRESIDENT—Order! Senators on my right will come to order.

Senator JOHNSTON—The government does not and has never supported the use of torture or coercion to obtain admissions or cooperation in any judicial process. I said that torture was redundant in respect of Mr Hicks because the government is unaware of any matters pertaining to Senator Brown’s question. The fact is that this man has appeared before the commission and has voluntarily entered a plea of guilty to the charge of providing material support for terrorism.

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 Pakistan led by Mr Hamid Nasir Chatta. On behalf of all senators, I wish you a warm welcome to Australia and, in particular, to the Senate.

Honourable senators—Hear, hear!

The PRESIDENT—I also draw the attention of honourable senators to the presence in the chamber of a parliamentary delegation from the Republic of Poland, led by His Excellency Mr Bogdan Borusewicz, Speaker of the Senate. On behalf of all senators, I wish you a warm welcome to Australia and, in particular, to the Senate. With the concurrence of honourable senators, I propose to invite His Excellency to take a seat on the floor of the Senate.

Honourable senators—Hear, hear!

Mr Borusewicz was seated accordingly.

QUESTIONS WITHOUT NOTICE

Drugs in Sport

Senator BERNARDI (2.38 pm)—My question is to the Minister for the Arts and Sport, Senator Brandis. Will the minister update the Senate on the latest developments in the fight against the use of drugs in sport, particularly illegal drugs?

Senator BRANDIS—I thank Senator Bernardi for the question and acknowledge his distinguished contribution to Australian sport as both a participant and as a member of the Australian Sports Commission. In the course of my answer I propose to address an issue that he first raised in this place in an important speech on 11 September last year.

Australia has been a leader in the fight against doping in sport. It played an active role in the development the UNESCO International Convention Against Doping in Sport, which came into force on 1 February this year. Last year the Australian government launched the Australian Sport Anti-Doping Authority, ASADA, a single, dedicated focal point designed to combat the use of drugs in sport. Australia was also an active
participant in the negotiations associated with drafting the World Anti-Doping Author-
ity code. The code has been adopted by the
International Olympic Committee, national
Olympic organisations and all Olympic
sports.

The Australian government’s position is
that all sports in receipt of government fund-
ing are required to be code compliant. All
such Australian sports are code compliant,
including the AFL. Under the code, while
unlawful drugs are prohibited in competi-
tion—whether or not they are performing
enhancing—only performance-enhancing
drugs are prohibited out of competition.
Non-performance-enhancing drugs—
sometimes described as illicit drugs—are not
generally banned by the WADA code out of
competition. The words ‘illicit drugs’ are in
fact weasel words. These are illegal drugs
and their use in any but defined medical cir-
cumstances is a criminal offence.

This government supports a zero-tolerance
approach to illegal drug use. While it is the
philosophy of the WADA code to leave it to
domestic law to police the use of non-
performance-enhancing drugs out of compe-
tition, the obligations of sporting bodies are,
in the government’s view, more extensive.
That is the very point that Senator Bernardi
made in his speech last year. Mr Andrew
Demetriou, the chief executive officer of the
AFL, said last year:

Our strong view is that the fight against illicit
drugs is not a fight that should be restricted to
match day. We believe that if we are to take the
toughest possible stance against drugs, then we
need to fight the use of illicit drugs out of competi-
tion and out of season. It is not a part-time fight.
It is a full-time fight.

They are commendable words, but unfortu-
nately the AFL’s three-strikes policy, while
admittedly assuming an obligation beyond
the strict requirements of the WADA code, is
unequal to the standard prescribed by Mr
Demetriou. A three-strikes policy is not a
zero-tolerance policy. It is not, in Mr De-
metriou’s words, the toughest possible stance
against drugs. It does not go far enough.

Under the three-strikes policy, after a first
positive test, the player enters a treat-
ment/education program coordinated by an
AFL medical officer, who informs the AFL
club doctor at that point. The club doctor is
under strict ethical and contractual obliga-
tions to maintain confidentiality, so the result
is known only to those involved in the
player’s treatment and education. A second
positive test is dealt with by the AFL medical
officer with a view to further educating,
counselling and treating the player. The AFL
medical officer informs the relevant AFL
club doctor on a confidential basis. It is only
after a third positive test that the AFL player
is deemed to have breached AFL rule 1.6
dealing with conduct unbecoming or prejudi-
cial to the interests of the AFL and must face
the AFL tribunal. If the player is found guilty
in those circumstances—(Time expired)

Senator BERNARDI—I have a supple-
mentary question, Mr President. Can the
minister contrast the AFL’s doping policy
with the doping policies of other sporting
organisations?

Senator BRANDIS—Under rule 1.6, af-
fter the third positive test the player found
guilty will receive a suspension of not less
than six matches but not more than 12
matches, except in the case of marijuana,
where the sanction for the first offence is up
to six matches. I find it impossible to accept
that it is only when a player has been found
to be taking unlawful drugs—in other words,
has been found to have been guilty of com-
mitting a drug related criminal offence—
three times, that he is considered to have
engaged in conduct unbecoming of a player
or of bringing the sport into disrepute. Re-
cent events highlight that anyone taking
these drugs exposes themselves and others to a range of health and broader social risks. In the case of elite athletes, this practice undermines the integrity of the sport and sends the wrong message to the young people who look up to those athletes.

Iraq

Senator Faulkner (2.45 pm)—My question is directed to Senator Minchin, the Minister representing the Prime Minister. I refer the minister to the 2006 survey which was published in the Lancet and which concluded that over 650,000 Iraqis have died, mostly from violence, since March 2003. Is the minister aware that documents assessing the survey have been released under the United Kingdom’s FOI system? Is the minister also aware that those documents indicate the British government was advised by the UK Ministry of Defence’s chief scientific adviser against publicly criticising the survey because the survey’s methods were considered ‘close to best practice’ and ‘robust’? On what basis did the Prime Minister, in October last year, criticise the survey as ‘out of whack’ and ‘not plausible’?

Senator Minchin—I think the opposition and the government share an equal concern for civilian casualties in Iraq, and any civilian casualty in Iraq is a matter for remorse and regret. It is a fact that the coalition forces in Iraq are seeking to minimise, to the greatest degree possible, obviously, civilian casualties and I think it is accepted, on both sides of this chamber at least, that indeed the extent of civilian casualties is a function of the terrorist insurgent and sectarian activity in that country.

As to the estimates of civilian casualties, as I understand it, John Hopkins University is the source of this report of 655,000 casualties, which, as I am advised, is one casualty for every 40 Iraqis. I think that is reasonably widely regarded as simply not credible. The methodology and the results of that survey have come under serious question. A BBC report on this matter does make it clear that there is considerable debate among the scientific community about the accuracy of those figures. The accuracy of the figures has been questioned by Iraqi officials. They are at odds with those compiled by other groups which monitor civilian casualties.

A range of government agencies stated in Senate estimates, back in October-November, that they were of the view and their advice was—and I am sure Senator Faulkner is aware of this—that those figures were simply not credible. There are other estimates of civilian casualties, and they do vary widely. There is a UK website, Iraqi Body Count, which estimates as of yesterday that between 59,801 and 65,660 civilians have been killed since March 2003. The Brookings institute estimates as of October 2006—albeit that is a few months ago now—that about 70,000 civilians have been killed since March 2003. I respect Senator Faulkner’s concern for this matter; we share it. But the government does not accept as reliable the 655,000 figure. It is not easy to determine the exact figures but there are other sources that I think are equally as reliable which have much lower casualty figures than that.

Senator Faulkner—Mr President, I ask a supplementary question. Yes, I am aware of the evidence that was given at Senate estimates committee because it was in answer to questions that I asked. But I would ask the minister if he can confirm that at no stage has the Australian government or the Australian intelligence community either sought or produced any assessment of Iraqi civilian casualties. I ask if the minister can inform the Senate, and explain to the Senate, why the Prime Minister has not instructed the Office of National Assessments, the Defence Intelligence Organisation or any other
agency to monitor and assess Iraqi civilian casualties or, for that matter, even seek information from our allies in relation to this absolutely crucial matter.

Senator MINCHIN—As I say, we share Senator Faulkner’s view that this is a crucial matter. The whole purpose of our engagement in Iraq is to provide peace, security and long-term democratic government to the people of Iraq; that is why we are there. I am not in a position to confirm that at no stage has that information been sought. I am happy to seek to determine whether or not that is the case, in response to Senator Faulkner’s question. It also begged the leading question about why the PM has not sought to instruct agencies. I am not in a position to say one way or the other on that matter, but I am happy to seek what information I can on what information has been sought by the PM from relevant agencies.

DISTINGUISHED VISITORS

The PRESIDENT—Order! I draw the attention of honourable senators to the presence in the President’s gallery of Ms Winnie Kiap from the National Executive Council of Papua New Guinea. On behalf of all senators, I welcome you to Australia and, in particular, the Senate.

Honourable senators—Hear, hear!

QUESTIONS WITHOUT NOTICE

Housing Affordability

Senator BARTLETT (2.51 pm)—My question is to the Minister representing the Treasurer. Does the minister acknowledge that the crisis in housing affordability in Australia is now more serious than ever for both home buyers and many people in the private rental market? Is the minister aware of the latest proposals released by housing groups calling for a national affordable housing agreement that includes increased investment in public and community housing and federal tax incentives to encourage private sector investment in affordable housing? Is the government giving consideration to this proposal? If not, can the minister outline what specific action the federal government is planning to take that is directed at the serious and very longstanding problem of housing affordability?

Senator MINCHIN—The government is always interested in ideas in the community about housing affordability. We are concerned to ensure housing is as affordable as is possible; therefore, I am sure that relevant officials are examining the report that the senator refers to and will provide advice to relevant ministers on that matter, because it is indeed something that we keep under constant review. Housing affordability really is a function of three factors: it is a function of people’s incomes, it is a function of interest rates and it is a function of house prices. One of the two things that we can most influence through our policies is, of course, ensuring that our fiscal policy is such that there is as little pressure on interest rates as is possible from a federal government level.

The fact is that home loan mortgage rates today are lower than they were at any time under the previous Labor administration. That is a remarkable fact, but it is the fact, as a result of our very tight fiscal policy, our maintenance of government surpluses and our elimination of government debt. We are doing more than any previous government to keep downward pressure on interest rates by not being in the market borrowing money and therefore competing for funds and putting upward pressure on interest rates. That is probably the most significant thing we can do for housing affordability because, obviously, if interest rates today were at the rates they were back in the early nineties, housing affordability would be much worse than it is.
In terms of the other variable, income, the fact is, as Senator Abetz and I have been saying, real wages have been rising under this government and under our economic reforms to the point where just in the last year real wages have risen more than they rose in the whole period of the previous Labor administration. The deplorable fact of life is that real wages actually declined through the period of the previous Labor administration. So, from the point of view of the capacity of households to afford housing, both in terms of interest rates and real incomes, the position is as strong as it could be from the federal government’s point of view.

House prices, of course, are a function of a whole range of variables, many of which are beyond the federal government’s control. The cost of actually building a house, as the housing industry has been pointing out, has been declining in real terms. The greatest contributor now to the actual cost of housing, at least new housing, is of course the cost of land. The cost of land is a function of a whole range of variables, but it is a function of state Labor government policy as to the availability and price of land. It is also certainly true that with a strong economy and strong population growth, which we have, there is greater pressure on the most desirable areas for housing, and obviously there has been a rise in house prices, most particularly in inner city areas. But the price of housing in outer suburban areas should be a function of the availability of land, and the fact is that state Labor governments are not making sufficient land available to ensure that the price of land is maintained at a level that new homeowners can afford.

It is also a function, most critically, of state taxes. We have complained long and loud about the extent to which state taxes place an unbearable burden, particularly on new home purchasers. They represent a remarkable proportion of the price of a new house, and there is something that the state Labor governments could do about it. (Time expired)

Senator BARTLETT—Mr President, I ask a supplementary question. I ask the minister: is it true, despite all the statistics he runs off about wage increases and the like, that housing affordability has got significantly worse over the time of this government? The increase in the cost of housing has outstripped growth in the rise of wages. Will the government reconsider the recommendations made by the Productivity Commission report into this area that applied to the federal government, which the Treasurer rejected in June 2004, including examining the various tax incentives and distortions in the housing market, to see if there is more that the federal government can do to alleviate what is a very serious burden on a growing number of Australian families?

Senator MINCHIN—We do share Senator Bartlett’s concerns that we maximise the extent of housing affordability. The Productivity Commission report was a very good document and a very interesting document, but Senator Bartlett knows full well that the Treasurer did reject the proposals in that report on taxation. One of them was on negative gearing. Of course, we have had an experiment in the abolition of negative gearing. The previous Labor government for a period abolished negative gearing and it resulted in a disaster for those seeking to rent housing. There was a drought in the availability of rental housing as a direct result. As a result, the previous Labor government reintroduced negative gearing for that very reason. So it is a reminder that you have to be very careful when you start fiddling around with the policy settings in this area.

Aged Care

Senator McLUCAS (2.57 pm)—My question is to Senator Ellison, the Minister
representing the Minister for Ageing. I refer to the report that the Prime Minister has directed be produced into the 94 aged care bed licences allocated to Mr Russell Egan Jr on the Gold Coast and ask: when will this report be released to the public? Further, is the minister aware that 70 bed licences have been allocated to another provider, Varsity Age Care, on the Gold Coast? Can the minister confirm that the allocation was made off the public record, after the bed licence allocation in December 2006, and was to an aged care organisation that did not have approved provider status in December? Will the minister now investigate the Varsity Age Care bed allocation?

Senator ELLISON—I understand that Mr Pyne was investigating the issue of the bed licences concerning Mr Egan and that the finding was that there was nothing inappropriate in relation to the allocation of those bed licences. I will take it up with the minister to see if there is anything further to add to that, and I will advise the Senate accordingly.

Senator McLUCAS—When was that announced? It certainly has not been announced publicly as far as I am aware. Can the minister confirm that the director of Varsity is also a director of McKenzie Aged Care, which operates an aged-care facility in Victoria, which received government sanctions in 2003 for causing ‘immediate and severe risk to the health, safety or wellbeing of residents’? How did the government ensure that Varsity Aged Care had a very good record of conduct as a provider of aged care as required by the aged care principles?

Senator ELLISON—in relation to the announcement on the inquiry into those bed licences concerning Mr Egan, the advice I had was that there was no reason to believe that anything untoward had occurred in the allocation process. The minister is yet to make a formal announcement, but that was my advice on the brief that has been given to me. In relation to the other question about McKenzie Aged Care, I think it was, I will take that question on notice and advise the Senate accordingly.

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

QUESTIONS WITHOUT NOTICE:
ADDITIONAL ANSWERS

Water

Senator ABETZ (Tasmania—Minister for Fisheries, Forestry and Conservation) (3.00 pm)—Mr President, on 21 March 2007, Senator Siewert asked me a question and also a supplementary question, and I undertook to get back to the honourable senator. I now have answers and I seek leave to incorporate the answers in Hansard.

Leave granted.

The documents read as follows—

Senator Siewert asked the Minister representing the Minister for the Environment and Water Resources, which was taken on notice, on 21 March 2007:

“My question is to the Minister representing the Minister for the Environment and Water Resources, Senator Eric Abetz. I draw the minister’s attention to the announcement by South Australia’s water minister today that, if the South Australian allocation dropped below 50 per cent next year or they could not maintain weir levels, they would be forced to cut the supply of water to a number of lakes, lagoons and wetlands. Would such an action be compatible with, and supported by, the national water plan? Given the current predictions for reduced inflows into the Murray-Darling, does the minister consider it likely that this will occur?”

Senator Abetz—The Minister for the Environment and Water Resources has provided the fol-
lowing answer to the honourable senator’s question:

The South Australian Government’s announcement of the potential closure of the wetlands is a result of the record dry conditions being experienced in the Murray-Darling Basin. If 2007 is very dry or a repeat of 2006 then the critical needs of many towns, in particular Adelaide, which rely on the water systems of the southern Murray-Darling Basin could be at risk. While there are signs the drought will break, it is prudent to plan for the contingency that it will not.

With proper preparations, the critical demands of urban areas and towns, and other households relying on the water supply systems of the southern Murray-Darling Basin, will be able to be met. Senior officials from jurisdictions across the Basin have worked together collaboratively and have made recommendations to governments about improving the flexibility of the system. The recommendations are being implemented as necessary.

A group of eight wetlands in South Australia and NSW have been identified by the Murray-Darling Basin Commission (MDBC) as offering relatively high yields in evaporative savings with manageable costs and environmental impacts under such extreme circumstances. Some of the wetlands announced for potential closure by South Australia on 20 March 2007, including Lake Bonney and the Gurra Gurra Lakes, are among the eight wetlands identified by the Murray-Darling Basin Commission.

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 subject to the Environmental Protection and Biodiversity Conservation Act 1999.

Senator Siewert asked the Minister representing the Minister for the Environment and Water Resources, which was taken on notice, on 21 March 2007:

“Mr President, I ask a supplementary question. That would be appreciated and perhaps, in that case, he could also tell us how much of the already allocated $10 billion has been spent to date purchasing water to return flows to threatened wetlands. Also, will the government move to urgently buy water to save these wetlands and prevent them being cut off?”

Senator Abetz — The Minister for the Environment and Water Resources has provided the following answer to the honourable senator’s question:

The funds for the $10 billion National Plan for Water Security are contingent on the referral of powers from the States. On 23 February 2007 all Murray-Darling Basin States other than Victoria agreed to a clear referral of constitutional powers to manage water in the Basin in the national interest. Discussions with Victoria on this issue are continuing. Funding was not budgeted to become available until 1 July 2007 therefore none has been spent to date.

The Government is not intending to urgently buy water for these wetlands identified by the Senator.

QUESTIONS WITHOUT NOTICE:
TAKE NOTE OF ANSWERS

Answers to Questions

Senator O’BRIEN (Tasmania) (3.01 pm)—I move:

That the Senate take note of answers given by ministers to questions without notice asked by Opposition senators today.

In commencing this debate it is very interesting to note that Senator Abetz was asked to answer some questions in relation to statements by candidates in the New South Wales election—a National Party candidate in Tweed, Mr Provest, and a Liberal Party candidate in Goulburn, Ms Pru Goward. In each
case we have seen Senator Abetz being most creative in the way that he has interpreted the public contributions of these candidates, expressing their concern, firstly, about the negative impact that Work Choices legislation would have on the son of the candidate in Tweed and, secondly, from Ms Goward, in relation to the negative responses she received on the door in that campaign in relation to the Work Choices legislation.

But I suppose I should not have been surprised that Senator Abetz would try and turn a sow’s ear into a silk purse in this case. I am not surprised because yesterday Senator Abetz was answering a question and he gave an answer which did quite surprise me. He said in answer to a question from Senator Boswell about fisheries:

For example, at the recent estimates, Labor’s fisheries spokesman, Senator O’Brien, did not ask a single question about illegal fishing—not one.

That is a quote from Hansard. It is true: I did not ask one question about illegal fishing; I asked 61 questions about illegal fishing. Frankly, for Senator Abetz on that occasion to so misrepresent the facts colours the answers that he gives in this place and I think gives us the grounds to say, ‘You have to look very carefully at the basis for the answers that Senator Abetz gives in this place. You have to look very carefully behind what he says.’ There was no basis for what Senator Abetz said yesterday about what I had or had not asked in estimates. The fact of the matter is that he did not answer one single question in that estimates round. Today he is trying to invent reasons to justify the explanations he gave about those damning comments about the Work Choices legislation made by coalition candidates in the New South Wales election.

But if you want to get the most damning comments that you can about the Work Choices legislation you need only go to the Prime Minister’s comments in the House of Representatives yesterday. One of the key aspects of the Work Choices legislation is Australian workplace agreements. This is an instrument that the government chants is something which is, by providing flexibility, going to be good for workers. This is the mantra of the government: by providing flexibility, this will lift up wages for workers. This is the line that the government has been trying to feed to the Australian people for some time. What did the Prime Minister have to say about this yesterday? Let me read from Hansard. He was asked a couple of questions about AWAs and nurses and AWAs and TAFE and university funding. He said in answer to one of the questions:

What we said as a condition of funding was that one of the options should be AWAs.

He was talking about the TAFEs. He went on:

Let me emphasise that the conditions that apply in relation to the employment of nurses in our view is quite different and that is why we have absolutely no intention of introducing any conditions, either of the type contemplated in the question—meaning AWAs—that I answered a few moments ago or indeed of the type that were introduced in relation to academics. We have no intention of doing that in relation to nurses.

There was an interjection and then he went on:

I happen to take the view that nurses in this country, given their responsibilities and the onerous work they carry out, are grossly underpaid. Well, if AWAs are the solution for the workforce to make their work more accessible and easy and their pay—(Time expired)

Senator CHAPMAN (South Australia) (3.06 pm)—There is no doubt about the Labor Party. Despite the overwhelming evidence to the contrary, they still continue with the scare campaign in relation to Work
Senators that they have now been running for more than 12 months since Work Choices was introduced. When Work Choices was mooted and when it was introduced Labor and their mates in the trade unions made three allegations—they lodged three charges against Work Choices. The first of that was that, with the introduction of Work Choices, there would be mass sackings in the workplace.

Senator McGauran—Wrong.

Senator CHAPMAN—Wrong, as Senator McGauran says. I will come to that in a minute. The second allegation was that there would be drastic wage cuts. The third allegation was that there would be an enormous escalation in strikes, industrial action and disputation. The very welcome first anniversary of the introduction of Work Choices gives the lie to every one of those claims. They have been shown to be demonstrably false. They are nothing more than a cheap—intellectually cheap, because certainly financially they have not been cheap; there has been a massive expenditure campaign by the trade unions on the scare campaign—scare campaign by the Labor Party.

Of course, this replicates the false scare campaign that Labor ran against the first round of the Howard government’s workplace relations reforms back in 1996-97. Those reforms were demonstrated to be beneficial. The scare campaign run against them at the time has been shown over the years to be demonstrably false, as indeed was the scare campaign the Labor Party ran against the Howard government’s tax reform and the introduction of the goods and services tax. This shows us that all the Labor Party are capable of is false scare campaigns. It again reinforces that they are a policy-lazy party.

The facts give lie to this particular scare campaign. Let us have a look at the facts. The evidence shows that the new workplace relations laws are indeed working in the interests of Australian workers. Among that evidence is the fact that since the introduction of Work Choices 12 months ago there have been more than 263,700 jobs created, and 87 per cent of those new jobs have been full-time jobs. Over the previous decade there were very creditable improvements in job creation under the Howard government but a substantial number of those—almost half—over that period were part-time jobs. It was about a fifty-fifty split between full time and part time. But in the last 12 months 87 per cent of the new jobs have been full-time jobs. As an adjunct to that, many of those who were previously employed as casuals are now being given permanent positions—again, as a direct result of the Work Choices reforms.

The unemployment rate remains at a 30-year low of 4.6 per cent, and teenage full-time unemployment has also significantly declined. Our unemployment is the lowest it has been in 30 years, and this compares with the current average of the OECD countries of 5.8 per cent. Australia has an unemployment rate of 4.6 per cent; the average rate of unemployment for OECD countries is 5.8 per cent. What better demonstrates the benefits of Work Choices than that figure?

This fall in unemployment has been achieved notwithstanding an increase in the participation rate. Quite often when the participation rate increases—that is, more people are seeking jobs—the unemployment rate rises. In this case the participation rate has risen to a near record 64.9 per cent and yet unemployment has also fallen. That is because of the strong incentives that people now have to employ—our strong economy combined with the benefits of Work Choices. Real wages have grown by 1.5 per cent. This real increase in just one year is greater than the real increase in workers’ wages over the
whole 13 years that the previous Labor government was in office. What better demonstration do you want of the efficacy of Work Choices?

The third allegation that Labor made about industrial disputes again has not been borne out. We have near record low levels of industrial disputation. Work Choices has delivered the goods for Australian workers, as did our first round of workplace relations reforms in 1996-97, and indeed as have all of the other Howard government economic reforms. Back in 1996 when we came to office unemployment was 8.2 per cent and indeed had peaked at 10.9 per cent under Labor in December 1992. Since 1996 two million jobs have been created. *(Time expired)*

Senator WEBBER (Western Australia) (3.11 pm)—Senator Chapman must have a definition of what is good for Australian workers that is very different from mine. Certainly, since Work Choices has come in we have seen reduced job security for working families throughout Australia. We have seen thousands of workers being pushed onto AWA individual contracts and we have seen AWA individual contracts cutting workers’ pay and conditions. When we have a Senate estimates process and the relevant government body is forced to reveal that information, what is the government’s solution? Stop collecting the data. That way we will not know what is going on.

But, unfortunately for the government, there are some government instrumentalities that still collect data, like the Human Rights and Equal Opportunity Commission, which reports that they have had a 60 per cent increase in workplace related complaints since Work Choices came in. There has been a 60 per cent increase in discrimination cases and complaints in the workplace since this single piece of legislation came in. I suppose the government’s solution to that will be to tell them to stop collecting data too. You did not like the data you got from your other government bodies.

Let us recap on what that data was before they were told to stop collecting it. Your own report that you gave us in May last year showed that, of the AWA individual contracts that had been lodged to that point, 100 per cent cut at least one so-called protected award condition; 22 per cent provided workers with no pay rise at all, some for up to five years; 51 per cent cut overtime loadings—that is something to be proud of!; 63 per cent cut penalty rates; 64 per cent cut annual leave loadings; 46 per cent cut public holiday payments; and 52 per cent cut shift work loadings. That is something that was of concern to blue-collar workers in the seat of Goulburn, and Ms Goward might be reflecting on that, because she was certainly reflecting on it on my television last night. I do not know which television station Senator Abetz was watching, but she was very clear about the impact it had on blue-collar workers in Goulburn in the news I was watching last night.

When the government was prepared to release figures, those figures showed that 40 per cent of AWAs cut rest breaks; 46 per cent cut incentive based payments and bonuses; 48 per cent cut monetary allowances for employment expenses, skills, disabilities and the like; 36 per cent cut declared public holidays; and 44 per cent cut days to be substituted for public holidays. What is the government’s solution? Stop collecting the data. That is the only solution that they have had. The only data we get now is the delayed data from ABS and from HREOC, and I suppose you will just tell them not to collect the data either.

Then, of course, there is the impact that AWAs have had on women in the workforce. In November 1996, a date that some people
in this place should remember, the gender gap on full-time adult ordinary time earnings was 84.2 per cent. A decade later—a decade-long Howard government—the wages gap has increased and now the gender gap is 83.7 per cent. That is something else that you should be really proud of! There has been no narrowing either of the gender wages gap on the data relating to all employees’ total earnings, which has remained stuck at 65.5 per cent.

Australian women on AWAs now, thanks to this government, who work full time, earn on average $2.30 less per hour or $87.40 less per week than those on collective agreements, and they earn $100 a week less on average than their male equivalents in the workforce. Now that is progressive! That is something you should be very proud of achieving! It has taken you 10 years but you have got there. That is really good!

Australian women on AWAs who work part time earn $3.70 less per hour or $85.10 less per week for an average 23 hours a week than those on collective agreements. This is ABS data, so we cannot accept Minister Hockey saying, ‘It’s very difficult to compare one agreement with another when all of the clauses should be disclosed.’ This is ABS data that every government department relies on to do its planning. It is accepted data. It is robust data. Australian women who work as casuals—(Time expired)

Senator RONALDSON (Victoria) (3.16 pm)—It is a sad day when the Australian Labor Party views good news as bad news. I hope everyone who listens to the proceedings today and reads about the proceedings today will remember that the party that used to stand for Australian workers, who gave up that right a decade ago, are using this chamber and the other place to attack job growth. For their own dirty political ends, they are attacking an outcome that has been good for Australian workers and Australian families—

Senator Parry interjecting—

Senator RONALDSON—Yes, and for the country. Why is it totally beyond you to acknowledge good news? Why does Senator Webber come into this place today and completely abuse the statistics regarding women? Just for the record, I will go through the situation in relation to women’s wages, and hopefully Senator Webber, in the time that she is still in the chamber, will take good note of this. Since the government came to office, the hourly gender earnings ratio has averaged 88.9 per cent compared with an average of 86.8 per cent under the previous Labor government. Indeed, the World Economic Forum’s latest Global gender gap report 2006 described Australia as:

... leaders in closing the gender gap.

In addition, data from the OECD publication Women and men in OECD countries show that Australia’s gender wage gap is significantly below the OECD average and other similar countries such as the United Kingdom and the United States.

What is this bad news that Senator Webber is talking about today? What is this bad news in relation to women’s employment? I will tell you what the bad news is: female employment is up by 113,500 people in the last 12 months. That is the reality of the situation.

The other matter I want to raise is in relation to job security—and I have heard Senator Carr and Senator Ludwig talk about this, and I have heard other people from the Labor Party talking about it. Job security is the mantra that underpins their attack on Work Choices. I invite the Labor Party to read the ‘Features’ section in the Australian today and look at what is written about job security. Before I go to that, I want to talk about the Bracks Labor government, who are proudly
talking about spending hundreds of thousands of Victorian taxpayers’ dollars on industrial relations. This is the same state government that have seen cost blow-outs in relation to the so-called fast rail project and the Southern Cross Station—you name it. These matters have involved a gross abuse of their position as a state government and they intend abusing it further in relation to these advertisements. Just quickly, I want to quote this Australian article for senators. It states:

There is no hard and fast measure of job security. The official labour force survey offers the best clue and here the message favours the Howard Government.

At the end of 2005, in the final days of the old workplace regime, 96.5 per cent of employees could expect to be working the following month, the Australian Bureau of Statistics found. The proportion of employees who became unemployed was 0.9 per cent, while the remaining 2.6 per cent dropped out of the labour force. By any reckoning, this was a pro-worker labour market.

A year later, the hourly number that shifted was a fraction fewer employees became unemployed—

(Time expired)

Senator CARR (Victoria) (3.21 pm)—It is always a matter of some humour to me to have to follow the pompous ravings from the defeated member from Ballarat.

Senator Ronaldson—I wasn’t defeated, you twit.

Senator CARR—I think you just ran away, didn’t you? What we have heard today is a great deal of talk from this government about its so-called reform agenda. But what we have also seen is that the Productivity Commission, a group of people that is well known for its modest, moderate and extremely cautious language when it comes to defending the government’s policies, has brought forward a report on Australia’s science and innovation system, Public support for science and innovation. I notice that the minister, in a sort of John Mortimer’s ‘Soapy’ Ballard presentation that we had today, tried to explain that this was really a good report for the government. If you actually read this document, you will find that the Productivity Commission has highlighted the fact that our $6 billion public funding for science and research is in need of a major overhaul. Reading directly from the summary of the key points on page 16 of the report, the Productivity Commission draws our attention to the need for ‘major improvements’:

Major improvements are needed in some key institutional and program areas.

It goes on to point out that there are ‘notable shortcomings in business programs’. I repeat: this is from the Productivity Commission, one of the great bastions of support for this government’s economic policies. It is now saying to us that there are ‘notable shortcomings’ in the government’s business research and development program.

The Productivity Commission goes on to point out that the R&D tax concession needs a major overhaul. It also points out that the CRC program needs to be restored to its original policy objectives—policy objectives, I might note, laid down by Labor—and return to the proposition of public-good research. It goes on to say that, with these new changes that the government has introduced, there are major ‘problems in the governance and intellectual property frameworks of universities, weaknesses in their commercial arms and shortcomings in proof-of-concept funding’. And this is the most damning of all the criticisms it makes of public sector research and development:

However, the pursuit of commercialisation for financial gain by universities, while important in its own right, should not be to the detriment of maximising the broader returns from the productive use of university research.
The Productivity Commission is drawing our attention to the failure of the government’s cargo cult mentality when it comes to the commercialisation of research. The report continues:

The structure of funding for higher education research has increasingly eroded the share of block grants. Further erosion would risk undermining their important role in enabling meaningful strategic choices at the institutional level.

So the basic role of universities of educating people and providing people trained in research—scientists, technicians and the various other personnel who underpin our whole innovation system—is being put at risk, not to mention the fundamental role of our universities and public research agencies to address the problems faced by society and find solutions to those problems.

Finally, the Productivity Commission draws our attention to this:

The costs of implementing the Research Quality Framework may well exceed the benefits.

This is the rolled gold, newly minted research program that the government are spending $87 million to put in place. Yet their very own Productivity Commission is now telling us that the cost of implementing the Research Quality Framework may well exceed the benefits.

When it comes to research policy, it is quite clear the government has failed. It has adopted a cargo cult mentality to commercialisation. It has presumed that the rest of the world is not spending, the rest of the world is not moving forward, and that it can just set and forget our research programs and hope other countries to do the same. That is not happening. We are falling behind the rest of the world. We have a situation where China is now doubling its R&D every couple of years, the Europeans and Canadians are setting targets of three per cent of GDP by 2010, and we are on 1.8 per cent. (Time expired)

Question agreed to.

PETITIONS

The Clerk—A petition has been lodged for presentation as follows:

Defence: Involvement in Overseas Conflict Legislation

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

The Petition of the undersigned calls on the members of the Senate to support the Defence Amendment (Parliamentary Approval for Australian Involvement in Overseas conflict) Bill. Presently, the Prime Minister, through a Cabinet decision and the authority of the Defence Act, has the power to send Australian defence force personnel to an overseas conflict without the support of the United Nations, the Australian Parliament or the Australian people.

The Howard Government has been the first Government in our history to go to war without majority Parliament support. It is time to take the decision to commit our defence force personnel to overseas conflict out of the hands of the Prime Minister and Cabinet, and place it with the Parliament.

by Senator Bartlett (from 29 citizens)

Petition received.

NOTICES

Presentation

Senator Troeth to move on the next day of sitting:

That the time for the presentation of the report of the Employment, Workplace Relations and Education Committee on workforce challenges in the Australian transport sector be extended to 9 August 2007.

Senator Allison to move on the next day of sitting:

That the Senate:

(a) notes that 25 March 2007 was the 200th anniversary of the abolition of the trans-Atlantic slave trade;
(b) calls on the Government to:

(i) work for the eradication of the modern day version of slavery, the trafficking of humans for the sex industry in Australia, and

(ii) allocate sufficient funds for eradicating this form of slavery through prosecution of traffickers and support for the victims of this crime, noting that the current budget of $20 million for this work runs out in June 2007; and

(c) congratulates the Australian Catholic Religious Against Trafficking in Humans for its work in the fight against trafficking, including its publication warning women in Thailand about the dangers of working in the Australian sex industry.

Senator Mason to move on the next day of sitting:

That the following bill be introduced: A Bill for an Act to amend the law relating to gene technology, and for related purposes. **Gene Technology Amendment Bill 2007**.

Senator Mason to move on the next day of sitting:

That the following bill be introduced: A Bill for an Act to amend the law relating to food regulatory measures, and for related purposes. **Food Standards Australia New Zealand Amendment Bill 2007**.

Senator Watson to move on the next day of sitting:

That the Senate notes the achievement of the power sharing agreement in Northern Ireland as an historic day and trusts that this will lead to a lasting and resilient peace for the benefit of all people in Northern Ireland.

Senator Adams to move on the next day of sitting:

That the following matter be referred to the Community Affairs Committee for inquiry and report by 20 September 2007:

**The operation and effectiveness of Patient Assisted Travel Schemes, including:**

(a) the need for greater national consistency and uniformity of Patient Assisted Travel Schemes across jurisdictions, especially the procedures used to determine eligibility for travel schemes covering patients, their carers, escorts and families; the level and forms of assistance provided; and reciprocal arrangements for inter-state patients and their carers;

(b) the need for national minimum standards to improve flexibility for rural patient access to specialist health services throughout Australia;

(c) the extent to which local and cross-border issues are compromising the effectiveness of existing Patient Assisted Travel Schemes in Australia, in terms of patient and health system outcomes;

(d) the current level of utilisation of schemes and identification of mechanisms to ensure that schemes are effectively marketed to all eligible patients and monitored to inform continuous improvement;

(e) variations in patient outcomes between metropolitan and rural, regional and remote patients and the extent to which improved travel and accommodation support would reduce these inequalities;

(f) the benefit to patients in having access to a specialist who has the support of a multidisciplinary team and the option to seek a second opinion;

(g) the relationship between initiatives in e-Health and Patient Assisted Travel Schemes;

(h) the feasibility and desirability of extending Patient Assisted Travel Schemes to all treatments listed on the Medicare Benefits Schedule Enhanced Primary Care items such as allied health and dental treatment and fitting of artificial limbs; and

(i) the role of charity and non-profit organisations in the provision of travel and accommodation assistance to patients.

Senator Nettle to move on the next day of sitting:
That the Senate:

(a) notes the guilty plea by Mr David Hicks;

(b) rejects the validity of the United States of America military commission occurring in Guantanamo Bay; and

(c) calls on the Government to expedite Mr Hick’s return to Australia.

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

That the Senate:

(a) notes that 28 March 2007 is the annual Science Meets Parliament event;

(b) congratulates the Federation of Australian Scientific and Technological Societies for organising this annual event since 1999;

(c) welcomes the attending scientists to Parliament House; and

(d) commends the Australian scientific community for its continued success in generating world-leading innovation.

Senator Siewert to move on the next day of sitting:

That the Senate:

(a) notes:

(i) the success to date of the roll-out of the non-sniffable Opal fuel and the dramatic reduction in the number of young people sniffing petrol over the 2006-07 summer, particularly in remote communities, and

(ii) that some progress has been made on the difficult issue of tackling petrol sniffing in Alice Springs, but that some issues still remain to be resolved;

(b) congratulates the film makers involved in the Remote Fest short film festival and all the participants in the successful youth programs they documented;

(c) acknowledges that substance-abuse experts recommend (as noted in the Community Affairs References Committee report, Beyond petrol sniffing: Renewing hope for Indigenous communities, tabled on 20 June 2006) that reducing the availability of inhalants is an important first step to addressing petrol sniffing that needs to be backed up by other complementary programs, including youth workers, holiday programs and other diversionary programs; and

(d) notes that further resources are needed to provide programs and infrastructure to consolidate the success of the initiative, and to bring renewed hope to Aboriginal communities of a future free from the scourge of petrol sniffing.

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

That the Senate rejects the dictum of former United States Secretary of Defense Donald Rumsfeld that ‘interrogations must always be planned deliberate actions that take into account a detainee’s … physical strengths and weaknesses’ as tantamount to endorsing torture.

LEAVE OF ABSENCE

Senator PARRY (Tasmania) (3.27 pm)—by leave—I move:

That leave of absence be granted to Senator Lightfoot from 26 March to 29 March 2007, for personal reasons.

Question agreed to.

NOTICES

Postponement

The following items of business were postponed:


Government business notice of motion no. 2 standing in the name of the Minister for Fisheries, Forestry and Conservation (Senator Abetz) for today, relating to consideration of legislation, postponed till 28 March 2007.

General business notice of motion no. 761 standing in the name of the Leader of the
Family First Party (Senator Fielding) for today, proposing the introduction of the Workplace Relations (Restoring Family Work Balance) Amendment Bill 2007, postponed till 28 March 2007.

General business notice of motion no. 762 standing in the name of Senator Milne for today, relating to a proposed pulp mill in Tasmania, postponed till 28 March 2007.

COMMITTEES

Legal and Constitutional Affairs Committee

Meeting

Senator PARRY (Tasmania) (3.28 pm)—At the request of Senator Barnett, I move:

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.

Question agreed to.

TASMANIAN TIGERS CRICKET TEAM

Senator CAROL BROWN (Tasmania) (3.28 pm)—by leave—I, and also on behalf of Senators Abetz, Barnett, Bob Brown, Calvert, Colbeck, Milne, O’Brien, Parry, Polley, Sherry and Watson, move the motion as amended:

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;
(c) expresses its thanks to all the team’s support staff and others who have contributed to the success of the team; and
(d) acknowledges the important contribution of the Australian Sports Commission to cricket through the Cricket Centre of Excellence.

Question agreed to.

SLAVERY

Senator HUTCHINS (New South Wales) (3.30 pm)—I move:

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.

Question agreed to.

SENATOR HEFFERNAN

Senator ROBERT RAY (Victoria) (3.30 pm)—I move:

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 Heffernan, as to the courtesies extended to fellow parliamentarians; and
(d) believes that retaliation for Senator Heffernan’s actions will not add to the dignity of the parliamentary process.

Question put.
The Senate divided. [3.35 pm]
(The President—Senator the Hon. Paul Calvert)

Ayes............ 30
Noes............ 34
Majority........ 4

AYES

Allison, L.F.       Bartlett, A.J.J.
Brown, B.J.        Brown, C.L.
Campbell, G.       Carr, K.J.
Crossin, P.M.      Evans, C.V.
Faulkner, J.P.     Forshaw, M.G.
Hogg, J.J.         Hurley, A.
Hutchins, S.P.     Ludwig, J.W.
Lundy, K.A.        Marshall, G.
McEwen, A.         Milne, C.
Moore, C.          Murray, A.J.M.
Nettle, K.         O’Brien, K.W.K.
Polley, H.         Ray, R.F.
Siewert, R.        Sterle, G.
Stott Despoja, N.  Webber, R. *
Wong, P.           Wortley, D.

NOES

Abetz, E.          Adams, J.
Barnett, G.        Bernardi, C.
Brandis, G.H.      Calvert, P.H.
Campbell, I.G.     Chapman, H.G.P.
Colbeck, R.        Coonan, H.L.
Eggleston, A.      Ellison, C.M.
Fielding, S.       Ferravanti-Wells, C.
Fifield, M.P.      Humphries, G.
Johnston, D.       Joyce, B.
Kemp, C.R.         Macdonald, I.
Macdonald, J.A.L.  Mason, B.J.
McGauran, J.J.     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.

PARIS

Bishop, T.M.       Heffernan, W.
Conroy, S.M.       Boswell, R.L.D.
Kirk, L.           Lightfoot, P.R.
McLucas, J.E.      Ferguson, A.B.
Sherry, N.J.       Ferris, J.M.
Stephens, U.       Minchin, N.H.

* denotes teller

Question negated.

NUCLEAR WEAPONS

Senator ALLISON (Victoria—Leader of the Australian Democrats) (3.37 pm)—I move:

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 efforts 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.

Question put.

The Senate divided. [3.38 pm]

(The President—Senator the Hon. Paul Calvert)

<table>
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<tr>
<th>AYES</th>
<th>NOES</th>
<th>MAJORITY</th>
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<td>30</td>
<td>34</td>
<td>4</td>
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AYES


NOES


PAIRS


* denotes teller

Question negatived.

**MR DAVID HICKS**

**Senator NETTLE** (New South Wales) (3.41 pm)—I move:

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.

Question negatived.

**MATTERS OF PUBLIC IMPORTANCE**

**Workplace Relations**

The **DEPUTY PRESIDENT**—The President has received a letter from Senator Wong proposing that a definite matter of public importance be submitted to the Senate for discussion, namely:
That after just one year of the Howard Government’s Work Choices Laws, it is clear that these extreme and unfair laws are hurting working Australian families through erosion of take-home wages and conditions and fewer rights in the workplace.

I call upon those senators who approve of the proposed discussion to rise in their places.

More than the number of senators required by the standing orders having risen in their places—

The DEPUTY PRESIDENT—I understand that informal arrangements have been made to allocate specific times to each of the speakers in today’s debate. With the concurrence of the Senate, I shall ask the clerks to set the clock accordingly.

Senator WONG (South Australia) (3.43 pm)—I rise to speak on a matter of public importance: the first anniversary of the unfair industrial relations laws introduced by this government. Today marks one year since Mr Howard’s unfair and extreme industrial relations laws came into force. At the time that these laws were being debated, we in the Labor Party said that their full impact would not be felt for some time. But, just one year on, the results are already worse than many of us would have expected, and the facts speak for themselves. Let us not forget some of the people who we know have been most hurt this year by Mr Howard’s unfair laws.

Who can forget Annette Harris at Spotlight, a worker who saw her conditions and entitlements shredded for the princely sum of 2c per hour? Who can forget the 2c per hour this Spotlight worker was given for having to give up a range of penalty rates and other wages and conditions? Let us not forget the 29 Cowra abattoir workers who were sacked for so-called ‘operational reasons’ then reinstated on inferior terms and conditions. These laws also have been pretty devastating for employees at the Lufthansa call centre, who were up to $50 per week worse off in take-home pay due to the Prime Minister’s wage-cutting AWAs. The laws have also been pretty devastating for Mr Michael King, the 25-year-old who worked for seven years at the Hilton IGA supermarket in Perth but had to look for a job elsewhere because his only work choice under the supermarket’s new owner was a wage-cutting AWA or no job at the supermarket at all.

We know that this is only the tip of the iceberg and there are many more Australian families who have been affected by Work Choices, but what we do not know is the statistical information about that. Why is that? It is because this government is trying to hide the true impact of Work Choices. The last and only time the government released its own figures about the impact on employees of these unfair laws was May last year, and what did those statistics on Australian workplace agreements show? The only set of figures the government has ever seen fit to release, and what did they show? One hundred per cent of all AWAs surveyed removed at least one so-called protected award condition, 63 per cent removed penalty rates, 52 per cent removed shiftwork loadings and 46 per cent removed public holiday payments. That is the only information this Howard government has ever allowed into the public arena. But since then what have they done? They have covered it up. The Minister for Employment and Workplace Relations has refused to direct the Office of the Employment Advocate—

Senator Abetz—Because he can’t!

Senator WONG—He can direct them! He can seek that information. The Howard government does not want this information out because it realised in May 2006 that exactly what we on this side of the chamber said would happen has happened—that those AWAs, for the vast majority of people, are
about reducing wages and conditions. That is why you do not want this information out there and why you do not want to come clean.

Despite the government’s refusal to give out any of this information—not to ask the Office of the Employment Advocate or the Department of Employment and Workplace Relations more broadly to do a review and tell the Australian people exactly what is happening under AWAs—some information is still getting out there. It is even getting out there to Liberal candidates. We know, for example, that Pru Goward on Radio National recently made the following statement about people in the seat of Goulburn, where she was campaigning for the New South Wales election:

... they were telling me that their shift loadings were being cut and their incomes ... were going down.

Today in question time we also heard about the Nationals’ candidate for Tweed, Mr Provest, who had raised concerns about his son’s penalty rates and indicated that more needed to be done to protect those penalty rates. The reality is that, despite the government trying not to release figures and not telling people what is happening on AWAs, even their own candidates are starting to become aware of the impact Work Choices is having on working Australian families.

The Australian people understand this. They understand that if Prime Minister Howard were so sure that AWAs were good for working families he would require that the data be released. Why have you stopped everything since May 2006 when the damning statistics were released by your own Office of the Employment Advocate? Why have you stopped any further information coming out? If you were so sure this is doing good, you would not be frightened, Senator Abetz—through you, Mr Deputy President—of releasing this data. The reality is that the Howard government has simply refused to release information on the impact of its industrial relations changes since May last year.

I think Australians deserve to know what the impact is. I am a South Australian senator. I think South Australians deserve to know the impact of Australian workplace agreements on their wages and conditions. I think all Australians deserve to know that. Why will you not release the information as to what AWAs in my home state of South Australia or, indeed, around the country are doing to workers’ wages and conditions? You do not want to release it because you do not want people to know the truth. The reality is that the government simply wants to hide it.

What is most concerning on this first anniversary is this: we know, because Senator Minchin, a South Australian senator, has let the cat out of the bag previously, that the government wants to go further. We know that Senator Minchin, in front of the HR Nicholls Society, virtually apologised for the fact that these extreme laws did not go far enough. So, one year on, I ask Senator Abetz or anyone else in the government: how much is left? How much more do you want to do? What further unfair changes do you want to try to ram through and impose on Australian working families? What are you going to do to the wages and conditions of South Australians and of all Australians? We already know that Senator Minchin is of the view that the government needs to go further in industrial relations changes and in stripping away fairness from the workplace.

Let us have a look at some of what we do know from Australian Bureau of Statistics information. A report on ABS statistics was released not long ago. The report shows that on average, across the country, workers on
AWAs earned three per cent less than workers on collective agreements. When you take out the state of Western Australia, which is obviously doing extremely well economically because of the resources boom, the shortfall is even greater—around 10 per cent. The two major sources of data on the gender pay gap show a recent deterioration in women’s pay relative to men’s, especially in the private sector, with some or all of the gains over the previous decade being lost under Work Choices. It has also been demonstrated that women in permanent full-time jobs are working 1.3 hours more per week if they are on an Australian workplace agreement than if they are on a collective agreement. So they are working longer. But there is more. They are earning five per cent less per week; and when you look at the hourly wage, the shortfall for women on AWAs is about eight per cent and for casuals it is about 17 per cent. It is completely untrue to say that AWAs are good for working women or good for workers who have very little bargaining power. That is the reality. And that is why the government does not want to show the information it could release on the actual impact of AWAs.

Why doesn’t the government do what it should do, and that is come clean with the Australian people? We know that the minister, Joe Hockey, has more than 400 answers from his department to questions put on notice at Senate estimates in November 2006 that are simply sitting on his desk. The department of workplace relations confirmed in February this year that, of the 800 questions asked, 400 answers have been provided but are being held up in the minister’s office. The reality is the government does not want to provide this information.

So let us remind ourselves yet again, one year on, of what we have seen. We know from the government’s own data that AWAs cut wages and conditions. And who can forget some of the cases that have hit the headlines in the last 12 months? One that I particularly remember was the dismissal on the day of the commencement of this legislation of two apprentices in South Australia who were unfairly retrenched. It is referred to in the Adelaide Advertiser today. The only thing protecting them was South Australian industrial laws, the very laws you want to try and override, insofar as they relate to contracts of training. The reality is that what your government has done is undercut wages and conditions, undercut job security, and removed and eroded people’s rights in the workplace. That is the legacy of the Howard government.

We need to cut through all the rhetoric from the other side about Work Choices and look at what the real facts are. We need to think about people like Annette Harris, who was told: ‘Here’s the 2c an hour but you lose the rest of your penalty rates and other conditions.’ We need to consider workers such as Michael King at the Hilton IGA, who was told: ‘Either you get a wage-cutting AWA or no job at all.’ And we need to think about the employees at Lufthansa who are up to $50 a week worse off. These are the real stories, the real personal experiences of working Australians one year on. So we can truly say when we look at these and other statistics, but particularly at these personal stories of Australians, that these laws are hurting working Australian families. (Time expired)

Senator TROETH (Victoria) (3.55 pm)—I am very proud to be a member of the Howard coalition government which introduced Work Choices one year ago today and I would like to wish this evolution—not a revolution—a very happy birthday. For every single individual case that the opposition can drag up, I would like to ask them: why is it
that, in the time since Work Choices began, the number of Australian workplace agreements that have been agreed on is 298,499 compared with—I will give you the numbers for the other agreements—employee collective agreements, 2,791; union collective agreements, 2,422; employer greenfields agreements, 458; union greenfields agreements, 227; and multiple business agreements, four? If people are so unhappy with Australian workplace agreements why are they signing up to them in droves?

Senator Wong—Because they don’t have a choice!

Senator Wortley—They don’t have a choice!

Senator TROETH—They do have a choice.

The DEPUTY PRESIDENT—Order, Senator Wong and Senator Wortley!

Senator Marshall—Mr Deputy President, Senator Troeth has asked the opposition a question and I am happy to answer that.

The DEPUTY PRESIDENT—Resume your seat, Senator Marshall. Senator Troeth has the call.

Senator TROETH—Mr Deputy President, given that Senator Marshall has chosen to make a remark through you, may I also do that? I listened in silence to Senator Wong and I would ask the same courtesy from her.

I will tell you why. Australian workers find workplace agreements suit their life balance and the way in which they wish to conduct their lives. As Senator Abetz remarked some time ago, the fact is that some allowances or conditions may be traded off for others so that if you are a working mother and you want particular conditions to allow you to pick up your children from school or from preschool you can trade off some of the other things you have, but there are some things which are non-negotiable. It is very true that we have laid down a fairly inclusive arrangement so that workers can choose the sorts of conditions which suit them. No-one is forced to sign an AWA.

I would like to take in some outside opinions here. For instance, the Business Council President, Mr Michael Chaney, said that all the evidence indicates that Work Choices has been a success to date. He says:

Our view has been all along Work Choices was part of the evolution, not a revolution, started by Labor and continued by the Coalition. It’s just a sensible next step.

For a stronger statement we might go to the Prime Minister. He says:

What on earth is unfair about the fact that we have the lowest unemployment rate in 32 years? What is unfair about the fact that we have fewer industrial disputes since 1913? And what is unfair about the fact that real wages continue to grow? The reason that people are critical of Work Choices; and indeed opposition to WorkChoices is not driven out of concern for workers and their families, although that is the label used by those who attack the Government, it’s not driven out of that. It’s driven out of a desire to re-establish union power over the industrial relations system of this nation.

That is much closer to the truth than anything that the Labor Party can serve up. When the Senate Employment Workplace Relations and Education Committee, of which I am chair, was holding the industrial relations hearings in November of the previous year, you may recall some of the statements that were made. For instance, Mr Kim Beazley, the then Leader of the Opposition, said:

There will be more divorce.

Mr Bill Shorten, now the candidate for Maribyrnong, said there will be a ‘green light for mass sackings’. Ms Julia Gillard said:

... these laws ... are bad for the economy.
You only have to transpose against that the figures I have given on unemployment and on industrial disputes. Mr Tony Upton from the Transport Workers Union said:

This legislation is a direct threat to road safety in this country.

Ms Sharan Burrow said:

Children won’t see their parents for Christmas.

Mr Bill Ludwig, the AWU national president, said:

Our children are going to school with bare feet because parents couldn’t afford shoes.

These sorts of comments have hit a new low. It is a fact that, since the introduction of Work Choices, real wages have increased by 1.5 per cent. On 26 October 2006 the Australian Fair Pay Commission awarded a $27.36 per week wage increase to Australia’s lowest paid workers, and that came into effect on 1 December 2006.

Since March 2006, when Work Choices was introduced, 263,700 new jobs have been created, including 229,200 full-time positions. This is a direct contradiction of the comments of those who argue that Work Choices will lead to the casualisation of the workforce. As we saw, the unemployment rate in February 2007 stood at 4.6 per cent—and I remind the opposition of the 10.9 per cent peak recorded under Labor in December 1992 with their highly centralised wage-fixing system, which was dominated by the unions. Full-time jobs growth—which is where everybody can get a job if they want to—has been the coalition’s hallmark, and there are now 7.4 million Australians in full-time employment. This is a record high of 7,407,000 people. It is no wonder that those on the coalition side are very pleased to have this as their record in government.

In view of Senator Wong’s remarks about how women have fared under Work Choices, there are another couple of points I would like to make. As Senator Wong knows, and as I and many other female workers know, sometimes it is necessary to juggle your job with commitments that you have at home or outside of your job, and Work Choices has been very good in the sense that women can decide what emphasis they will place on certain conditions in their job. The World Economic Forum’s latest Global gender gap report described Australia as a leader in closing the gender gap.

Listening to the opposition, you would think that there are no protections afforded under Work Choices. They know very well that these conditions are protected: (1) parental leave—there is a legislated entitlement to 12 months parental leave; (2) a 38-hour working week plus reasonable additional hours—and there has been a reduction in working hours of 0.7 hours per week in the first six months of the operation of Work Choices; (3) personal and carers leave—there is an entitlement of 10 days leave if you are sick or if a family member requires care and support; (4) annual leave—there is a right to four weeks annual leave; (5) a minimum wage entitlement—no worker can fall below the federal minimum wage of $511.86 per week; and (6) compassionate leave—there is an entitlement to two days compassionate leave in the event of the death of a family member.

When I contrast that with what the opposition presented in its 13 years of government, with its ever increasing, centralised wage fixing and with unions having a stranglehold over the hours people worked, the wages people earned and the way in which they were allowed to work, I am very proud to be part of a coalition government that has eased the constrictions on the workforce in this way. Australia will never prosper unless we adopt flexible working hours and flexible conditions but still protect the right of every worker to earn no less than a minimum wage. That is what this system has set in
place. As the Prime Minister has said, if we were to reverse this it would be the first time in 25 years that a major economic reform in this country has been reversed. It would be akin to reversing the progress we have made in trades and tariffs. It would be very negative for investment in this country. (Time expired)

Senator SIEWERT (Western Australia) (4.06 pm)—Of course we expect the government to come out swinging, bringing the ‘bogeyman’ of the union movement out yet again. How scary is that! Then Senator Troeth goes on to quote Michael Chaney as an independent commentator on how ‘effective’ Work Choices has been—a successful businessman. Do you know what I am scared of? I am scared of the big business that is running this country. I am not scared of the union movement, which is looking after workers and trying to find a genuine balance between work life and family life—which is being distinctly and definitely eroded by this legislation.

Let us look at a few of the details. Let us look at the gender pay gap, which has got worse under AWAs. Let us look at the penalty rates that have been taken away under AWAs. Work Choices was supposed to be about productivity, but productivity has dropped by 0.7 per cent. I know that Senator Abetz would not like me to quote from David Peetz, but the fact is that he has done some research that looks at the limited data that is available from AWAs—

Senator Barnett—Don’t quote from Peetz!

Senator SIEWERT—I knew that would be the reaction. But these are the facts of what is actually occurring in Australia. The gender pay gap is getting worse, not better. Family-work-life balance is getting worse. That is what the research is showing. HREOC has released a report. Relationships Forum Australia have released a report, entitled An unexpected tragedy, which looks at the link between long and unpredictable hours. More than 20 per cent of Australian employees work more than 50 hours per week, 30 per cent regularly work on weekends and 27 per cent work unpredictable hours. Australia has the second highest percentage of casual employees in the OECD. Relationships Forum Australia say that is having an impact on work-family balance. They say there is a link between long and unpredictable working hours and the breakdown of family life. They have been looking at that and the consequent impact on children. Their report noted that the long and unpredictable hours worked by many are making employees unhealthy, putting relationships under extreme stress, creating angry and inconsistent parents and reducing the wellbeing of children. The report concludes:

The cold statistics hide immense human tragedy.

The HREOC report, released only a couple of days before that, looked at the issue of balancing paid work with family and carer responsibilities. A common theme is that, in these times of economic prosperity, many Australians struggle to balance work and family life. Furthermore, HREOC heard from many Australians that they are not able to exercise real choice in their working lives. That is the point. This is ‘Work No Choices’. AWAs are not specifically individualised; they are basically done en masse. Particularly in many of the lower paid fields, you do not get to negotiate to pick up your children at three o’clock. I would like to hear from a wide variety of the Australian community on whether they can negotiate AWAs that would allow them to leave work at three o’clock to pick up their children. That is very, very unlikely, particularly as penalty and award rates have been removed.
Twenty-two per cent of AWAs do not provide for a wage increase in the life of the agreement, which can go up to five years. Compared to the rate of inflation, the total average earnings of full-time adult workers have dropped by 0.6 per cent over the 12 months since the new IR laws came in. For full-time workers in the private sector, average total earnings have dropped by 1.1 per cent. The drop in average earnings for women workers in the private sector is 1.8 per cent. This is not to the benefit of workers; it is directly to the advantage of the employers—the bosses. That is what this law is about. It is not about protecting the work-life-family balance. It is about making things harder for workers.

The two reports from Relationships Forum Australia and HREOC come on top of the report by Barbara Pocock, a well-known academic in the area of labour markets. She has written a well-known book, entitled The Labour Market Ate My Babies, in which she looks at how the modern labour force is having a detrimental impact on children, on youth and on our capacity to care. It talks about the impact of long hours, uncertain work, the intensity of work, the quality of work and how work and caring preferences match up. This is what is having an impact on families. The issue is not whether parents work but the state they are in when they come home from work. Parents are getting more stressed, they are working longer and unpredictable hours and they cannot make plans. Someone told me the other day that they are unable to make plans to go out with their children. They are not told when they will have regular work, so they cannot make arrangements to go out with their children, their friends or their partners. All this has an impact on people’s wellbeing. Work Choices is not delivering. It needs to be repealed. (Time expired)

Senator MARSHALL (Victoria) (4.11 pm)—After just one year of the Howard government’s Work Choices laws, it is clear that these extreme and unfair laws are hurting working Australian families through the erosion of take-home wages and conditions and fewer rights in the workplace. Today marks the one-year anniversary of John Howard’s unfair industrial relations laws. The contest for the election is now defined. If you want John Howard and his unfair laws then you can vote Liberal at the next election. If you want to get rid of these laws there is only one way to do it, and that is to vote Labor.

We know that these unfair laws were the single biggest issue on people’s minds when they voted in the New South Wales election. None other than New South Wales Liberal Pru Goward emphasised their impact. She said, ‘I predict that they will be the single biggest issue on people’s minds when they vote in the federal election.’ This issue is one of the great defining differences between the conservatives and Labor.

The press is full of stories about how these laws are hurting Australian working families. But what about real figures, statistics we can really analyse to look at how well or how badly these laws are treating Australian working families, solid information and analysis? My Senate colleagues and I have pressed hard to get verifiable facts. We have heard grandiose claims that Work Choices gives employees better flexibility and protects conditions, yet, when the figures are made available, what we find is exactly the opposite.

The Howard government was forced to respond to one set of statistics released last year by the Office of the Employment Advocate. It was through the Senate estimates process that the Office of the Employment Advocate provided details of the only analy-
sis of the content of Australian workplace agreements—and that study was conducted by the Office of the Employment Advocate itself. What did that study show? It showed that 100 per cent of AWAs cut at least one so-called protected award condition; 22 per cent of AWAs, some of them lasting for up to five years, provided workers with no pay rise; 51 per cent of AWAs cut overtime loadings; 63 per cent of AWAs cut penalty rates; 64 per cent of AWAs cut annual leave loadings; 46 per cent of AWAs cut public holidays payments; 52 per cent of AWAs cut shift work loadings; 40 per cent of AWAs cut rest breaks; 46 per cent of AWAs cut incentive based payments and bonuses; 48 per cent of AWAs cut monetary allowances; and 36 per cent of AWAs cut declared public holidays. However, after the great embarrassment and political damage this study has caused, the OEA has not done any further analysis of the content of AWAs. I wonder why!

It seems that the government have acknowledged that Work Choices is hurting working Australian families through the erosion of take-home wages, conditions and workplace rights, and that the government would rather have a debate in which there are no verifiable facts. In that way they can never be proved wrong. Senator Abetz would never like the facts to get in the way of grabbing a headline, as he indicated in question time today. It seems that the government would prefer to fly blind when it comes to the impact of Work Choices on the nation’s workers and workplaces.

Through questioning of Office of the Employment Advocate representatives and the minister’s representative in Senate estimates, I have found the following. The government has no way of knowing precisely how many AWAs are in operation. The government currently does not measure or analyse any data on wages and flexible working arrangements in AWAs, even when these arrangements could be beneficial to employees. There is no way of knowing whether an individual Work Choices AWA has replaced an existing AWA and, apart from the information already released by the Office of the Employment Advocate and the ABS, there is currently no way of knowing what may be contained in AWAs individually or by industry.

The government is not monitoring AWAs to establish how conditions are being treated, contradicting what they have said in parliament and to Australian workers. The government has admitted to not painting the full picture and has acknowledged that there should be robust analysis. But there is no project or formal job under way to do this; there is simply a discussion going on within the OEA itself. There has been no direction from any previous or current Minister for Employment and Workplace Relations to analyse AWAs.

The government is now refusing to answer almost any questions on them. The Department of Employment and Workplace Relations confirmed in February this year that, of the 800 questions asked, 400 answers had been provided to the minister but were being held up in the minister’s office. The Minister for Employment and Workplace Relations, Mr Joe Hockey, has more than 400 answers from his department to questions put on notice by the opposition at Senate estimates in November 2006, yet he has not provided to the Senate one answer in respect of those 400 questions since February.

Given the government’s bleating about how a detailed analysis cannot be undertaken due to the problems involved, it is almost unbelievable that they have not even asked for it to be done. I say ‘almost unbelievable’ as we must remember that it suits the government not to have any information on this
area: they can make whatever pie-in-the-sky claim they like and never be proved wrong.

However, information is still coming from highly regarded sources. According to data from the ABS, a truly independent authority, if we compare the earnings of men on AWAs with those of men on collective agreements, the men on AWAs earn less. If we look at the ABS data for the earnings of women on AWAs compared to those of women on collective agreements, we see women on AWAs do much worse. These are all published ABS statistics that are not capable of being denied.

Recently the ABS released employee hours and earnings data for May 2006. The data indicates that Australian women on Australian workplace agreements are earning less than Australian women on collective agreements. Australian women on AWAs who work full time earn on average $2.30 less per hour, or $87.40 less per week based on a standard 38-hour week, than those on collective agreements. Australian women on AWAs who work as casuals earn $4.70 less per hour, for every hour they work, than those women on collective agreements. These statistics are from May 2006 and therefore largely deal with AWAs entered into pre Work Choices when there was a no disadvantage test applied and before Work Choices allowed the stripping away of so-called protected award conditions. We can only assume, given the only figures we can rely on are from the Office of the Employment Advocate, that by now those figures will be considerably worse given the percentage of stripping away of so-called protected award conditions.

Across Australia, AWA employees’ average hourly earnings were 3.3 per cent lower than those of people on registered collective agreements. These are figures from the ABS, and they cannot be disputed. But what do we hear from the government? In question time today, I heard Senator Abetz being very careful with the language he used. One night in here some time ago, he told me about an old lawyer’s trick that he used to use: when you did not have a case to argue you argued the technicalities. That is what we have seen from the government today. That is what we have seen from the government for the last 12 months on Work Choices.

Government senators interjecting—

Senator MARSHALL—You want to argue the technicalities because you do not actually have a case to argue about Work Choices.

The ACTING DEPUTY PRESIDENT (Senator Forshaw)—Order! Senator Marshall, you will direct your remarks through the chair please. Senators on my right will cease interjecting.

Senator MARSHALL—Thank you for that advice, Mr Acting Deputy President. Today Senator Abetz was very careful in his language when he said that since the introduction of Work Choices there have been 260,000 extra jobs created in the Australian economy. He said ‘since the introduction’; he did not say ‘because of the introduction’. Why? We know there is no way the government knows about the impact of Work Choices.

Government senators interjecting—

Senator MARSHALL—Well, let us actually look at the employment figures that are on the public record, those produced by the ABS. Let us look at the two years prior to Work Choices. Let us look at employment growth for the first 11 months of Work Choices. It was 2.6 per cent. Since the introduction of Work Choices—Senator Abetz uses very careful language—employment growth has been by 2.6 per cent. But what was it for the two years prior to the introduction of Work Choices? Strangely enough,
according to the ABS, employment growth was by 3.9 per cent prior to Work Choices. So, if we actually want to look at the impact of Work Choices, we can argue, based on the statistics that are in front of us, that Work Choices is actually retarding the growth of employment in this country. For those opposite to argue that Work Choices is any way responsible for the growth of employment belies the fact of the massive resources boom that we are having, the insatiable appetite of the rest of the world for our natural resources and the significant natural employment growth that had been happening before that.

Senator Abetz would not want the true statistics. He would not want the Office of the Employment Advocate or anyone else to seriously look at AWAs, because the government want to fly blind and to be able to make grandiose statements about what has happened since the introduction of Work Choices, not because of the introduction of Work Choices. He will use any form of statistics to try to bolster their argument. The problem for the government, Senator Abetz, is that people know and feel and see that. They know people who are being screwed by Work Choices and are losing their wages, losing their conditions—

**The ACTING DEPUTY PRESIDENT**—Order! Senator Marshall, your—

**Senator MARSHALL**—losing their shifts—

**The ACTING DEPUTY PRESIDENT**—Order! Senator Marshall!

**Senator MARSHALL**—and getting the choice that Work Choices gives, which is no choice.

**The ACTING DEPUTY PRESIDENT**—Order! Senator Marshall, your time has expired—and you knew that.

*Senator Abetz interjecting—*

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**Senator BARNETT** (Tasmania) (4.22 pm)—I am proud to be a member of the Howard government responsible for instigating and passing through this parliament Work Choices one year ago. I say: congratulations and well done to the Howard government and thank you for what has been done and for what you have delivered to Australian men and women and their families throughout this country. As a member of the Senate committee that recommended and supported the legislation over a year ago, it is a very proud honour to be standing here in this Senate chamber to reflect on the last 12 months and, in particular, to respond to some of the accusations and allegations that have been made from the other side.

This morning Unions Tasmania’s Simon Cocker was interviewed on radio by Tim Cox. He was asked, ‘Well, what has the last 12 months brought workers in Tasmania?’ Simon Cocker said, ‘I guess it’s brought proof of everything that we said 12 months ago when this legislation came into effect.’ They were the first words that he shared publicly with the Tasmanian constituents on ABC radio this morning. What exactly were the two main allegations of the Labor Party and the union movement 12 months ago? They said that Work Choices would deliver fewer jobs and lower wages. The Labor Party said there would be fewer jobs and lower wages in addition to a range of other allegations, like the sky would fall in. Well, has it?

**Senator Abetz**—Like Chicken Little.

**Senator BARNETT**—That is right, Chicken Little, Senator Abetz. Let us look at exactly what they said more than 12 months ago. What did Bill Shorten from the AWU, now the Labor candidate for the Victorian...
bin the seat of Maribyrnong, say about Work Choices?

Senator Nash interjecting—

Senator BARNETT—Isn’t that interesting. Senator Nash—the link between the union movement and the Labor Party. What did Bill Shorten say? He said it would be ‘a green light for mass sackings’. What did they say about the effect on wages? Kevin Rudd, the Labor leader, said, ‘It could produce downward pressure on wages.’ Julia Gillard said, ‘Work Choices will drive down wages and productivity.’ They made a whole range of outrageous allegations, and I will mention a couple of them. Kim Beazley said, ‘Mums and dads know that Howard’s industrial relations laws are throwing their kids to the wolves.’ Sharan Burrow said: ‘This is an attack on the lives of working people. It will undermine families.’ She said also that ‘working families’ lives are at risk here.’ Greg Combet said: ‘Work Choices is very nasty legislation. It encourages exploitation, not enterprise.’ He also said, ‘This will put lives at risk.’ Give me a break!

The Australian people know what has occurred in the last 12 months. They can see the facts. I want to share this Latin maxim with the Senate and the Australian public: res ipsa loquitur—that is, let the facts speak for themselves. In the last 12 months the facts have demonstrated that we now have an extra 263,700 new jobs. Senator Marshall says that is really not all due to Work Choices. Of course it is not all due to Work Choices—but surely it is substantially due to Work Choices. He says that those figures do not add up. Let us look at the annual growth in jobs under the coalition compared to the last seven years under Labor. That figure is 185,800 jobs compared to 101,200 jobs. Senator Marshall, please, have a listen and look at the facts. What are the facts?

Senator Abetz—Where is Senator Marshall?

Senator BARNETT—Where is Senator Marshall? He has left the chamber; he does not want to listen to the facts. You can see that unemployment has gone down to 4.6 per cent, a 30-year record low. What has happened with wages? In the last 12 months we have seen a 1.5 per cent increase in real wages. Under the Howard government there has been a 19 per cent increase in real terms. That is not a cut in wages. That is not downward pressure on wages. That is the exact opposite.

Let us remember what happened in 13 years of Labor. You had a 1.8 per cent decrease in wages. You see, Labor has a plan, and the election will see this out. The Australian people will have a choice between the Labor Party and the coalition. Labor has a plan to rip up AWAs, which have in fact been a part of the Australian landscape since they started in 1997. We have had over a million signed since 1997. The penetration in industry is some eight per cent nationally. In my home state of Tasmania it is 13 per cent. AWAs play a very important part in the Australian economy in terms of providing jobs and higher wages. In fact, in Tasmania, on average people on an AWA are paid 48 per cent more than those on an award. That is a lot of money. You only have one party that is going to the election with a plan to cut wages for those people on an AWA.

We have had a lot of support from industry and community groups with respect to Work Choices. But, before I get onto that, I just want to say that the Labor Party’s second major policy proposal going into the next election is to go back to the old unfair dismissal laws. We tried over 44 times to pass legislation through the parliament to remove those laws, and we were finally successful. We removed them because they were unfair,
specifically unfair on Australia’s small businesses. We have not heard very much from the other side with respect to the benefits of Work Choices for small business. There are 1.9 million of them in Australia, and they benefit as a result of the choice available to them and as a result of the flexibility. Those in small business and their employees—full time, casual and part time—benefit.

Small business is going to cop it in the neck under Labor because Labor want to bring back the unfair unfair dismissal laws. These were the laws that scared small business away from employing. In my view, this particular initiative under the Work Choices legislation has resulted in a stimulus for small business to employ more people. That is my strong view. On the unfair dismissal laws, the New South Wales Business Chamber says:

The biggest change has been in small and medium sized businesses ... who no longer fear employing people because of the abuses that used to occur by employees exploiting the unfair dismissal system.

Here you have it: the Labor Party are going to bring back the unfair unfair dismissal laws, and that is scary. There was a rally in Bass, in Launceston, instigated by the union movement. There was a rally in Braddon where the hardworking members Michael Ferguson and Mark Baker are standing up for this government and saying, ‘Thank you for the jobs that have been created in these electorates.’ I stand with them and say this: the union movement are putting $30 million into this campaign; the Labor Party, $20 million. He who pays the piper calls the tune, and the Labor Party is doing the bidding for the union movement, and that is a scary prospect indeed. (Time expired)

Senator MURRAY (Western Australia) (4.30 pm)—I have been surprised at the volume of negative stories about Work Choices. I have been surprised because so many people do not fall under Work Choices. About a quarter of all workers still fall under the state systems and, of the other 75 per cent, the majority are still under old pre Work Choices collective and individual agreements. So in fact once those people shift over to Work Choices you should expect to see the volume of complaints lift enormously.

The second thing I have been surprised at is the debate over job creation. Since Work Choices came into law, 260,000 jobs have been created. If Work Choices had not come into law, 260,000 jobs would still have been created. I defy anyone from the government side to actually tell us how many jobs Work Choices has created—

Senator Abetz interjecting—

Senator MURRAY—because 260,000 jobs would have been created anyway, in my view. Until you can produce the statistics to show otherwise, that is a view I am entitled to hold.

The other thing I wanted to comment on in the brief amount of time I have available to me was a couple of quotes from the Australian today. One was in George Megalogenis’s article. He quotes the following from a Labor person. I thought it was quite an interesting statement of how this debate will play out.

“Howard’s key political tactic in 2001 and 2004 was to go after our base, to go after blue-collar workers, cultivating people who share his socially conservative set of values,” one Labor strategist says. “What this issue does is say to those people: ‘This guy is not on your side, he’s out to screw you and that’s the reason you have to vote Labor.’ After all that work he has done to win over those voters in recent years, this has totally rebranded him as being opposed to ordinary workers.”

What that quote tells you is that this debate is about how people feel, and quoting statistics at them will not interfere with their experience and how they feel about these matters. The other quote I wanted to give you was
from Peter Switzer, also in the *Australian* today. He says:

In sheer weight of numbers, the benefits that the new industrial relations laws give to business look unclear, and possibly light, compared to the fears that it generates for most employees.

Later on he says that 74 per cent of employers said they would make no changes because of Work Choices. In other words, it is not affecting employers’ actions or attitudes that much. Of course, if employers are saying it does not affect how they operate, you cannot claim that the job creation those employers are producing is a result of Work Choices.

Work Choices is radical. It is a radical break with the broad consensus that had previously existed. The act does assault the cultural, economic, social, institutional, legal, political and constitutional underpinnings of past work arrangements in Australia. Of course, the coalition says that this is a good thing. But my problem is still that the economic and social case has not been made for the radical change. It was faith based legislation; it was not evidence based legislation. In my view the contest at the election will come down to how people feel about matters of fairness and whether this government is in fact behaving in a way which will ensure a fair outcome for them in a situation where they are the employee and not the employer.

The question, of course, is what will happen after the election. If Mr Howard wins this election, the government are highly unlikely to change course—and I do not believe we should expect any significant law changes before the election. If, however, Mr Rudd wins, he will look to what parties hold what views. These are the Democrats’ views: we agree that Work Choices has to go and that the essential features of the pre-Work Choices regime must be restored. We agree with having a national unitary system. We believe there must be a national regulator. We would restore a strong, independent Industrial Relations Commission. We would keep statutory individual agreements but abolish the current AWAs. When it comes down to negotiation time, I will be there at the table with Labor trying to work out how we replace this Work Choices regime.

**Senator FIFIELD** (Victoria) (4.35 pm)—Today’s matter of public importance is nothing if not predictable. A year ago the Labor tactics committee put in their parliamentary diary to up the rhetoric to mark the first anniversary of Work Choices. Labor knew it would be difficult to sustain their campaign and that they would need a renewed focus. That is why we are here today. Forget analysis. Forget evidence. That is not the Labor way. The Labor way is to engage in hysteria and ideology. Senator Wong’s motion refers to ‘these extreme and unfair laws’, as if anything other than total union dominance of workplaces is extreme and unfair. Let me give the Labor Party some advice: just because you say something is extreme and unfair does not make it so; it does not mean the public will believe you.

Let us look at the substance of the Labor Party’s claims. Labor’s first assertion is that Work Choices is causing the ‘erosion of take-home wages’. Here are the facts. Under the coalition real wages have grown 19.8 per cent since 1996. Since Work Choices was introduced real wages have increased by 1.5 per cent. What happened under Labor? Real wages actually fell by 1.8 per cent. And take-home wages—what has the coalition done? We have cut income tax—not once, not twice, not three times, but five times. It was cut in 2000, 2003, 2004, 2005 and 2006. The coalition has grown real wages and cut income taxes, significantly boosting take-home pay. In contrast, the Labor Party failed to deliver on their own promises to cut tax in government, opposed most of our income tax
cuts and presided over a decline in real wages.

Labor’s second assertion is that Work Choices is causing the erosion of conditions. Work Choices actually enshrined in law five minimum employment conditions for the first time. All new agreements are required to meet these conditions. In addition, employees are enjoying the enormous flexibility Work Choices allows, in contrast to the one-size-fits-all system the Labor Party and the unions want to impose. This is particularly important for women who are seeking to juggle work and family. Our reforms allow agreements to be struck so that women who might otherwise not be able to work are able to do so.

Labor’s third assertion is that Work Choices is resulting in workers having fewer rights in the workplace. Under the government’s reforms, workers have a right that Labor and the unions would deny them. It is the right to negotiate an individual agreement, and it is a right that well over one million Australians on AWAs have exercised. Despite the fact that these million-plus Australians are happy with their AWAs, Labor want to rip them up, throwing the arrangements of over a million Australian workers and thousands of employers into turmoil. Workers have a fundamental right to freedom of association in the workplace, and the coalition want to support that.

The Labor Party say that Work Choices is unfair. Let me remind Labor of what their colleague Tony Blair said on ascension to office:

Fairness in the workplace starts with the chance of a job.

Mr Rudd likes to portray himself as some sort of Australian incarnation of Tony Blair—moderate, pro-business, the great liberator of the ALP, freeing it from union domination, establishing a bold new Labor.

There is a big difference between Tony Blair and Kevin Rudd. Tony Blair actually embraced the Thatcher industrial relations reforms, which went much further than our modest and fair reforms. Yet Kevin Rudd cannot even bring himself to embrace our modest reforms. He is no Tony Blair.

You cannot just look at Kevin Rudd’s mild persona. You cannot just look at what Labor say. You have to look at what Labor do. And what they do is put former ACTU presidents into parliament—Ferguson, George and Crean—and possibly an ACTU secretary on the way. Greg Combet is currently circling seats in Newcastle. John Roberts does not want him to enter parliament just yet. Poor Greg. He looks at Ferguson, George and Crean and he thinks, ‘It’s fair enough for the former presidents to get a gig in parliament; why not the secretaries?’ And you can understand Greg’s thinking—‘I ran the show, I’m the leader of the Labor movement, I’ve been running the opposition to Work Choices for a year, I’ve drafted the ALP legislation and they won’t even give me a seat in parliament!’ We should also spare a thought for the member for Charlton, who is facing an impending unfair dismissal.

The truth is that Australian workplaces are a lot fairer now than when Labor left office. Under this government, over two million new jobs have been created and unemployment is at 4.6 per cent, down from the peak of 10.9 per cent under Labor. It was still at 8.2 per cent when they left office. I note that, since the introduction of Work Choices, unemployment has dropped below five per cent.

But credit where it is due. At least Senator Wong’s MPI is not as hysterical as the MPIs of some of her colleagues. I had the fortune to watch Kevin Rudd’s MPI earlier today on TV and, watching some of his tortured analogies and attempts at humour, I could
only imagine how his colleagues feel when he tries them out in the party room.

Let us briefly recap what the Nostradamuses of the Australian Labor Party and the union movement predicted about Work Choices. Kim Beazley said, ‘There will be more divorce.’ Bill Shorten said it would be a ‘green light for mass sackings’. Julia Gillard said the laws would be ‘bad for the economy’. Janet Giles from Unions SA said Work Choices ‘is a pact with the devil’. Tony Upton from the Transport Workers Union said that our reforms are ‘a direct threat to road safety in this country’. Sharan Burrow said, ‘Children won’t see their parents for Christmas.’ Bill Ludwig said, ‘Our children are going to school with bare feet because parents couldn’t afford shoes.’

If you believe the hellfire and brimstone preachers in the Labor Party, Work Choices has turned Australia into a nation of children of divorced and jobless parents who have been forced to deal with Satan. They have to dodge cars on unsafe roads on their way to school, without shoes, and they will not have Christmas presents in December. It hardly needs to be stated that these claims are not just wrong, they are plain bizarre. The Labor prophecy of doom and gloom is wrong. Under this government we have taken the tough decisions, decisions which have not always been popular, but we have always pursued the national interest. Australia cannot afford an Australian Council of Trade Unions government.

Senator FIELDING (Victoria—Leader of the Family First Party) (4.42 pm)—Family First agrees that the government’s workplace changes have had a negative impact on some Australian families. That is exactly why Family First voted against the changes that were introduced in July 2005. Family First did not need a New South Wales election to tell us what was going on. The polls were saying before the election that it was the No. 1 issue, and Family First predicted that the workplace changes would have a negative impact on some Australian families.

But Family First intends to do more than just talk about the problems. Family First is actually going to do something. Family First is introducing a private senator’s bill to protect families, and we look forward to the support of both the coalition and the Labor Party for our legislation.

Back when Work Choices was passed, Family First took a different position to the government. The government saw workplace relations as part of economic policy. Family First saw it as part of family policy. Family First voted against the changes because they undermined family life by forcing workers to fight for what was previously guaranteed: their public holidays, meal breaks, penalty rates and overtime. People in Australia today can work on a public holiday and legally not have to be paid a cent more and legally not have to be given a day off in lieu. That is un-Australian. We can improve this flawed legislation and make life better and fairer. The government says that there are no problems. The opposition says wait until the election. Family First says let us do something now; let us get on with it and fix this legislation by giving back to Australian workers and their families what they have previously been guaranteed.

The ACTING DEPUTY PRESIDENT (Senator Forshaw)—Order! The time for the debate has expired.

COMMITTEES

The ACTING DEPUTY PRESIDENT (Senator Forshaw)—Order! The President has received letters requesting changes in the membership of committees.
Senator SCULLION (Northern Territory—Minister for Community Services) (4.45 pm)—by leave—I move:

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

Australian Crime Commission—Joint
Statutory Committee—
Discharged—Senator Ludwig
Appointed—Senator Bishop

Rural and Regional Affairs and Transport—Standing Committee—
Appointed—Participating member:
Senator Carol Brown.

Question agreed to.

SAFETY, REHABILITATION AND
COMPENSATION AND OTHER
LEGISLATION AMENDMENT
BILL 2006
Second Reading

Debate resumed.

(Quorum formed)

Senator MARK BISHOP (Western Australia) (4.48 pm)—When I was required to end my earlier contribution on the Safety, Rehabilitation and Compensation and Other Legislation Amendment Bill 2006, I was just entering a discussion about some problems that had been identified within the Australian defence forces as to blame shifting, lack of responsibility, and forum shopping by a range of people as to their choice of venue for resolution of workers compensation and associated legal problems. Fortunately, within defence, this practice seems to be changing and that has become apparent as the new occupational health and safety regime becomes operational.

Shifting costs to others is another theme that is a feature of overlapping jurisdictions. The question becomes one of where the costs ought to fall. Too often it is with the taxpayer in publicly funded schemes. The clearest example of this is with insurance companies. They will naturally try to avoid liability through journey-to-work provisions, especially with third-party accident claims. Despite offsetting rules aimed at defeating double compensation, this game continues to be played. Indeed it is endemic to the system, as the system provides an incentive to do so to reduce costs. Passing costs on to others can also be done by pushing injured people into the public health system. In such instances, the taxpayer again foots the bill.

On the employee side it must be conceded that there are attitudinal problems. Workers compensation is an element at the heart of employment conditions, and unfortunately it is sometimes an opportunity for exploitation. Personal gain occasionally emerges. Social security fraud and fraud against insurance companies is a constant and it requires ongoing attention.

There is a final theme emerging with this type of legislation: it is the continuing and eternal battle—between those seeking benefit and those assessing the benefit—over the written law and its particular interpretation from time to time. Any legislation providing benefits, including compensation, faces changing circumstances beyond those current at the time the original legislation was passed.

The trend in the view of most administrators and governments is that tribunals apply the law and, increasingly, interpret the law. Incrementally, the law becomes more generous, often departing substantially from its original intent. That might come down to a definition of words which can be contested before courts. That can be messy and expensive, but it seems to be preferable to running the political gauntlet of amending legislation.

Each of these themes I have just identified pervades this bill in its entirety. Whether the act needs amending legislation at this time really is a moot point, but many of these
problems are indeed longstanding. The view of the Law Council was that the problems had to be resolved and had to be resolved now. Perhaps in that context the government has an ulterior motive in reducing the value of employment conditions. Certainly, a number of my Labor colleagues on the Senate committee inquiring into the bill thought so, which is supported by their dissenting report, and it was a prevalent view in a range of submissions from particular trade unions.

Motives aside, perhaps there comes a time when constant recourse and a procession to the courts is pointless. That is where we are today with this bill. In the judgement of the Safety, Rehabilitation and Compensation Commission, which advises the government and the Department of Employment and Workplace Relations, that time has now come.

Let me turn to some of the provisions of the bill. First, may I commend the government on the most minor point—that is, the increase in funeral benefits to $9,000. It seems that this is a matter which has been poorly dealt with in the past. In fact, it makes the provisions of the Veterans’ Entitlement Act look positively stingy, although that act was amended within the last 24 months.

Next I would like to make mention of the definitional changes to the terms ‘disease’ and ‘injury’. The prime motive in tightening up the definitions of ‘injury’ and ‘illness’ are clear from Comcare’s evidence to the Senate committee—that is, the increasing difficulty in dealing with the emerging mental health problems in the workplace. The key one there is stress. We know the increased number of claims and costs in the past decade is due to this phenomenon. At the heart of this difficulty is determining whether the disability is work related or not. As usual, the worst-case scenario was chosen. In this case, bipolar disorder was nominated. While no doubt difficult, it is hardly typical. It is also unclear whether the cost should be borne within the health system, as opposed to being attributed to the workplace. I suggest it could be both, but the system is not so designed. What we end up with is this tug of war as to who is responsible: who is to blame; where does the fault lie? I suggest it might be some time before we know how these amendments take effect. If workers compensation is to carry reduced social responsibility for the care of workers, there are likely to be serious consequences for those workers as a result of the implementation of this bill.

Associated with this proposed change is a redefinition of management-induced stress. This amendment makes it harder for stress claims to be accepted where the cause is alleged to be management action of a disciplinary or counselling nature. I do not really question this scenario; I do, however, question its frequency. There may well be circumstances where this arises and where management action is unacceptable and over the top. Whether this amendment is a sledgehammer to crack a nut, we will have to wait and see. I do, though, share the unions’ concerns that a definition such as ‘reasonable management action’ could be abused if so broadly defined, but I expect the courts and tribunals will tell us if that is the case.

Finally, I refer to the amendments which propose to amend the journey-to-work rule. That has so many variations in Australian practice. In most jurisdictions, there is clarity about what constitutes an acceptable injury claim incurred through a journey to work, but the point is that there are many different jurisdictions. It would be very useful in this modern age to have some degree of consistency. This amendment seems to move the Commonwealth definition closer to common practice in some of the state jurisdictions, but incompatibilities do remain. As a matter of principle, as I have indicated, I would prefer
national uniformity. In every case I would prefer a codified, no-fault approach, free of expensive litigation.

That is just another concern I have about the complete lack of vision and policy content in this bill. It simply does not seem to be taking us anywhere, except on a chase for savings, however worthy that might be—and indeed, based on my own experience in this field, that chase for savings may well turn out to be illusory. So I am not too sure whether this set of amendments takes us very far. The opposition’s dissenting report makes that point quite clearly. The same points might be made about absence from work on entitled breaks. We will face a plethora of litigation over the most minute of details, again with a marginal impact on costs. Labor’s dissenting report also notes that these restrictions take the Commonwealth legislation further away from what is now fairly uniform practice across the states, which is further fuel to the suspicion that the legislation is about reducing employee entitlements. It is not about better workers compensation policy.

The legislation also makes provision for a number of amendments. Labor’s dissenting report deals with the objections to those changes so I do not propose to cover them in detail. But the amendments are incomplete, it must be said in passing. In conclusion, this is a disappointing piece of legislation. It is a stopgap measure that fails to advance any long-term policy for workers compensation. The pity is that we will have to wait for another decade of action in the AAT and the courts before we know.

Senator Lundy (Australian Capital Territory) (4.58 pm)—Along with my colleagues who have done so, I rise to oppose the Safety, Rehabilitation and Compensation and Other Legislation Amendment Bill 2006. As my colleagues have already told the Senate, Labor is opposing this legislation because, like all other government legislation relating to industrial relations, this amendment is not in the interests of working Australians. It is somewhat fitting that, on the first anniversary of the government’s extreme Work Choices legislation, the government is again seeking to use its majority in the Senate to push through legislation that will strip Australian workers of their rights. This time, it is workers compensation entitlements that are under attack.

The principal aim of this legislation is to minimise the cost of work related injury and disease for Comcare. It is a cost-cutting exercise. There is no rational explanation for introducing amendments that will further limit workers compensation entitlements. It represents a blatant cost-shifting exercise that shifts costs from Comcare to private insurance and healthcare companies. I have to say, it will also result in a direct cost to workers themselves. It is unfair and unnecessary.

I am particularly concerned about the effect this legislation has on my constituents in the ACT, a large percentage of whom are Commonwealth employees and, indeed, ACT Public Service employees—thus, they will be affected directly by these amendments. I have already received a number of specific complaints from members of the ACT community about how this bill will affect their daily lives, not just today as they listened to this debate but, indeed, previously as they were alerted to the implications of this appalling piece of legislation. A constituent wrote to me regarding this matter, and I would like to read their concern to outline the sorts of issues that have been raised. I will not mention the workplace that this particular constituent mentioned. The letter reads:

I live in suburban Campbell ACT and cycle to civic each day to work. I enjoy my morning ride
as it doesn’t take that long and is frankly easier than driving, dealing with the traffic and paying for parking. I’m also contributing towards my own healthy living with this extra exercise and not creating ... greenhouse burden.

When I started my job—
at a Commonwealth agency—
14 months ago I felt safe in cycling to work in the knowledge that I would have cover if I was involved in an accident. Indeed despite being a very aware and defensive cyclist, in that time I’ve had two near misses.

I think that little story demonstrates a couple of things. First of all, I think everyone would agree that it is terrific to encourage people to cycle to work, but I also think we would all acknowledge that it does come with risks. What we are dealing with today is a piece of legislation that would make the risk to the health of people like this—who are trying to do the right thing by looking after their health and getting to work without burning up more petrol—probably unacceptable or it would force them to take out additional private insurance. This bill will act as a disincentive to many public sector employees to continue to cycle to and from work every day, despite other policy areas at state, territory and federal government level encouraging such practice. We all think that this is a good idea.

Pedal Power, a local cycling group, raised some significant concerns about this legislation in its submission to the Senate inquiry into the bill, and I would like to go through some of that. Over the past six years, Pedal Power has run a Ride to Work program to encourage more Canberrans to ride to work more often. As Pedal Power pointed out in their submission, encouraging people to increase their fitness by cycling to work has many tangible benefits to the government in the form of reduced expenditure on hospitals, doctors and medicines. Just to follow through with this point, it is counterintuitive to put in place legislation that acts as an incredibly powerful disincentive to these people to take this particular way to get to work, not least because risk is involved.

That is just one perspective. Of course, the vast majority of people in Canberra still drive and a certain percentage use the public transport system. They will all be affected by this legislation. What we know about this legislation is that, for anyone who is injured on their way to work, despite traditionally always having cover through their workplace, that cover will no longer be there. The vulnerability it creates for many workers is simply unacceptable.

My Senate colleague in the Liberal Party and also from the ACT, Senator Humphries, has met with constituents about this bill. Those constituents have had the opportunity to raise with him some of the issues that I have raised today, so I am pretty keen to see what Senator Humphries’ position is on this, given the disproportionate impact the legislation will have on the residents of Canberra, a high proportion of whom work for the Commonwealth or the ACT Public Service. I will be very interested to see how seriously he takes these concerns and whether he has anything to say on this bill.

Unlike the Howard government, a Labor government will make genuine improvements in the area of occupational health and safety across Australian workplaces, and appropriate compensation is an essential part of that. I would like to add that it will not just affect public servants. I have certainly heard of a couple of building and construction companies who are going to take advantage of the opportunity to opt in to Comcare as their insurer when working on Commonwealth projects. That represents such a diminution of the cover for building and construction workers, who already have a highly risky workplace because of the nature of the
hazards across the physical grades. They too will now be, I guess, roped in under this legis-
lation. I know that building and construction workers who work in the private sector are gravely fearful about the negative impact that this will have on them.

What remains to be seen is the Howard government’s real motivation behind this bill. It has historically been the case that we have seen, through the evolution of occupational health and safety policy in this country, the overriding objective being the prevention of workplace injury and illness. This has been a principle that has historically underpinned state and federal legislation in this area. However, we are of the view that the government’s objective with this bill departs from that longstanding approach. Instead, its principal objective is the reduction of cost of the Comcare scheme by narrowing the eligibility criteria for compensation under the scheme. At a philosophical level, I think that is just disgusting. Occupational health and safety has fared poorly under the Howard government and this is a firm example of the lengths that this government is going to to undermine the principles of providing a safe and healthy place to work.

It was always going to be the case, as they bashed up unions and removed unions from workplaces, that occupational health and safety would suffer. My personal experience is that without a strong union in the workplace it is very difficult to maintain reasonable standards for occupational health and safety. This is particularly so for industries like building and construction—where I have worked as an asbestos removalist—and it is even certainly true for the white-collar workplaces that you would expect to find in the Commonwealth Public Service.

Because I have had that experience and worked in occupational health and safety, I think it is quite reasonable to make the observation that, over the last 11 years, this government has systematically wound back all the principles that underpin the quite reasonable and common-sense notion that employers have a duty of care to provide a safe and healthy workplace. Indeed, I believe that is a human right. I do not accept for a minute that journey claims, and the issue of travelling to and from work, should be exempt from that. Employees are required to attend at work and they need cover from the time they leave their home.

With respect to occupational health and safety generally, I have seen first hand, here in the ACT, what happens when pressure is put on to remove unions from the workplace. I have seen what happens when union delegates are intimidated by their employers into not making complaints about health and safety. I will have some more to say about that later in the week. But today I want to focus on the fact that this is another substantive ripping away of the rights of working people in relation to their ability to claim compensation for injuries sustained on their way to and from work—and during lunchbreaks, if they are off the premises.

This dry, cost-cutting approach, this abandoning of the principle of people’s right to be able to get to and from work in one piece and have some cover, stands as all the evidence we need that the Howard government will never be the friend of the working person in this country and certainly never the friend of Commonwealth and ACT public servants.

Senator BARNETT (Tasmania) (5.09 pm)—I stand today to support the Safety, Rehabilitation and Compensation and Other Legislation Amendment Bill 2006 and the subsequent amendments that have been introduced into this chamber. I want to speak to those and also respond to some of the allegations that have been made by the Labor senators about the motivations of our gov-
government for this legislation. They accuse us of not being the friend of Australian working men and women. In fact, the exact opposite is true.

This is the anniversary of the birthday of Work Choices and we have seen that deliver—together with the strong economy, and the legislation and policies of the Howard government that support a strong economy—the creation of over 263,000 new jobs in the last 12 months. We have seen a 1.5 per cent increase in real wages in the last 12 months, not to mention the 19 per cent increase in real wages for Australian working men and women since the Howard government has been in office. You now have over 10 million Australians in the workforce. These are all attributes that really should be applauded. And the members of the Labor Party on the other side, instead of throwing brickbats, accusations and innuendo with respect to the false and negative motivations for this legislation, should think again. The legislation is driven by this government’s policy of continual improvement—

Senator Lundy—Continual ripping off!

Senator BARNETT—Senator Lundy, you say it is a ‘continual ripping off’, but that is exactly what it is not. The only party in this Senate chamber that wants to rip off or rip up is the Labor Party. They have a plan to rip up AWAs. That is the plan you have.

Senator Lundy—And we’re proud of it!

Senator BARNETT—Yes, you’re proud of it, Senator Lundy. You want to rip up AWAs—

The ACTING DEPUTY PRESIDENT (Senator Marshall)—Order! Senator Barnett, you will address your remarks through the chair. Senator Lundy, I ask you to remain silent.

Senator BARNETT—Thank you, Mr Acting Deputy President; I am very happy to address my remarks through the chair.

We have seen well over one million AWAs signed since 1997 when they came into being. And in my home state of Tasmania, for example, those on AWAs are earning 48 per cent more than those on award conditions. So there is only one party that wants to cut wages in this country, and that is the Labor Party. There is only one party that wants to remove choice and dud small business by reintroducing the unfair dismissal laws, and that is the Labor Party.

We have had, I think, seven speakers from the other side now get up and wax lyrical with respect to the motivations of the Howard government for this legislation and for the Work Choices legislation which has delivered so much. Remember that the Labor Party, with the unions, said that Work Choices would cut wages and lower the number of jobs available. That is exactly what they said. And what has happened? As I have said previously in this place, the government has delivered. The economy is stronger. You have a higher number of jobs and you have increased wages. Through you, Mr Acting Deputy President, to Senator Lundy: the facts are on the table, and, please, consider the facts before you speak in the chamber on these matters and attribute motivations to the government which are false—entirely false. And I would say that to all the senators from the other side who have spoken in this debate and attacked the government with respect to this bill.

We in the Howard government have a policy of continual improvement, and we respond to community concerns. We respond to reports like the Productivity Commission report of March 2004, which specifically recommended that coverage for journeys to and from work not be provided and, for re-
cess breaks and work related events, should be restricted to those at workplaces and at employer sanctioned events. None of this has been said by the other side—not even acknowledged. Why would you not acknowledge it and then rebut it and say, ‘That is wrong; they said the wrong thing’?

The motivation behind this legislation is one of continual improvement. I want to speak a bit further to that. It is consistent with our policy of running a very strong economy and doing the best we can to ensure that working men and women have higher wages and more jobs and opportunities to be the best that they can be and to care for their kids and provide them with the best possible opportunities for their future.

I have happily taken some of the responses from the other side but I want to address the primary reasons for this amendment bill, which is to maintain the integrity of the Commonwealth workers compensation scheme and to facilitate the provision of benefits under the scheme.

With you, Mr Acting Deputy President Marshall, as deputy chair of the Senate Standing Committee on Employment, Workplace Relations and Education, under the chairmanship of Senator Judith Troeth, we considered this legislation at two hearings in Melbourne and one in Canberra. As a government senator, together with Senator Troeth and other government senators on that committee, I reported on and recommended support for the bill. There were some administrative and technical matters that needed to be considered and at times there were complex discussions and debate, but let us have a look at the fundamentals.

The scheme has come under pressure in recent years from increasing numbers of claims, longer average claim duration and higher claim costs. This is in part—and this was put to our committee by the department—as a result of court rulings that have expanded the scope of the scheme beyond what was initially intended by the previous government and agreed to by parliament. The main amendments contained in the bill seek to address those particular issues.

Two main definitions are amended in the bill. These are, firstly, the definition of disease and, secondly, the definition of injury. They are of central importance to the Safety, Rehabilitation and Compensation Act and they have been amended to strengthen the connection between the employee’s employment and the employee’s eligibility for workers compensation under the scheme. The bill does this in two ways. Firstly, it amends the definition of disease to ensure that Comcare is not liable to pay compensation for diseases which have little, if any, connection with employment. The amendment requires that an employee’s employment must have contributed in a significant way to the contraction or aggravation of the employee’s ailment before compensation is payable. This replaces the current test, which requires a material contribution by employment to the disease before compensation is payable.

When originally enacted—by the previous Labor government, I might say—it was understood that the ‘material contribution’ test required an employee to demonstrate that his or her employment was ‘more than a mere contributing factor’ in the contraction of the disease. However, since 1990 the courts have read down the expression ‘in a material degree’ to emphasise the causal connection between the employment and the condition complained of rather than the extent of the contribution itself. Although more recent decisions of the Federal Court, in particular the full court’s decision in Canute v Comcare, have stemmed the tide, the fact remains that there is still conflicting judicial authority
on this point. The amendment restores the original legislative intent. That is a key point.

The second point is that the bill amends the definition of ‘injury’ to expand and update the existing exclusionary provisions to prevent workers compensation being payable in respect of an injury—usually a psychological injury—arising from legitimate administrative action by management. This would include, for example, reasonable appraisal of the employee’s performance and reasonable counselling action taken in respect of the employee’s employment.

The bill also amends the provisions that set out the circumstances in which an injury to an employee may be treated as having arisen out of, or in the course of, his or her employment. Specifically, the amendments will remove coverage for injuries sustained by employees during journeys between home and work and during recess breaks undertaken away from the employer’s premises; for example, lunchbreaks during which an employee leaves the employer’s premises to go shopping.

At this point I will refer again to the Productivity Commission report of March 2004, National workers’ compensation and occupational health and safety frameworks. I will not go through it, but I alert the Senate to that report because it recommends change in accordance with the government’s policy and in accordance with the legislation before us in the Senate. This is something that has totally escaped the knowledge or understanding of the other side in their discussions and debate.

The fundamental, common-sense principle underlying the Productivity Commission’s recommendations was that employers should be held liable only for conduct that they are in a position to control. That is what the commission said. Employers cannot control circumstances associated with journeys to and from work or recess breaks taken away from the employer’s premises, and it is not appropriate for injuries sustained at these times to be covered by workers compensation—that is, the employer.

Again, the other side in this debate have not even mentioned—it has escaped my attention if they have—the positions of the various state governments around Australia with respect to their workers compensation schemes. You will recall, Mr Acting Deputy President, that at the hearings we had a matrix prepared for our committee which set out the positions of the various state Labor governments with respect to covering journey claims. This is referred to on page 6 of the Senate committee report, which states:

Half the states and territories cover journey claims within their workers compensation schemes, even though there is no obligation to provide such coverage.

We then saw which states provided the coverage and which did not. The compensation schemes of Victoria, Western Australia, South Australia and Tasmania do not cover travel to and from work; those of New South Wales, Queensland, the ACT and the Northern Territory do cover it. So in this chamber we cannot put to the Australian people that this is a one-off and that it is motivated by ideas of stripping away rights and entitlements when we are following through on a Productivity Commission report and we are consistent with many of the state and territory Labor governments.

If you have your views, and you are so fixed in your views, then I would like to know what those senators in this place from Victoria, Western Australia, South Australia and Tasmania have said to your state Labor governments about your positions and whether you debated this matter with them before you walked into this chamber and debated it with us. It is a little bit like the pot
calling the kettle black. Some people would call it hypocrisy.

This government, as I said before, has a policy of continual improvement and a policy to listen. The government has listened and it has indicated that it will support certain amendments as a result of listening to the Senate committee inquiry—and I am sure you will be pleased to hear that, Mr Acting Deputy President Marshall—and reading the submissions that were put to that inquiry. We had 28 submissions put to the committee. I just want to flag the amendments now. They will ensure the continuation of workers compensation coverage for certain work related journeys—in particular, travel between an employee’s place of work, but not his or her residence, and a place of education or a place for the purposes of, or association with, treatment or rehabilitation connected with a work related injury.

The bill will amend the method for calculating retirees’ incapacity benefits to take account of changes in interest rates. The change in the interest rate provision would result in increased benefits payable to retirees. I know this is a matter that the good Acting Deputy President had a particular concern about, and I think that has been taken on board. The department responded to many of the questions put by Senator Marshall at the Canberra hearing, as I recall, and the government no doubt considered those matters together with the submissions that had been received and the views of the department and of others. It is a tricky area, and I certainly do not profess to be an expert in it, but I want to draw that to the Senate’s attention. I thank those who made submissions and also thank the government for listening and being willing to improve it even further.

In terms of the proposed amendments, the scheme continues to cover employees while they are undertaking work related studies or receiving medical treatment or rehabilitation services in connection with a work related injury, and a proposed amendment will restore coverage for journeys between work and these places. That is consistent with the theme that there is a connection to the work, so why would you not want to support such an approach? Amendment (2) would have the effect of extending the workers compensation coverage under the act to any injury sustained in the course of travelling between the employee’s place of work and a place of education in accordance with a condition of the employee’s employment or at the request or direction or with the approval of the employer. Again, there has to be a connection: the employee, at the direction of the employer, undertaking such education or training and going to the particular facility or place to fulfil those requirements. So in a sense it continues our government’s support for employees engaged in ongoing learning and education.

Amendment (4) is also an important one. It will have the effect of extending workers compensation coverage to any injury sustained in the course of travelling between the employee’s place of work and a particular place for a number of purposes, which I will outline. Firstly, the purpose is for obtaining a medical certificate for the purposes of the act. This came up during the course of our inquiry, there was some debate about it and there is clearly merit in that matter being covered. We certainly support that. The other purposes are: secondly, receiving medical treatment for a work related injury; thirdly, undergoing a rehabilitation program provided under the act; and, fourthly, undergoing a medical examination or rehabilitation assessment in accordance with a requirement made under the act. Retaining coverage for these journeys ensures the Commonwealth scheme remains in line with the seven jurisdictions which cover such journeys. So,
again, the state Labor governments have similar conditions in place, and our conditions under the Commonwealth are consistent.

I will conclude my remarks there and thank the Senate for its time. The government’s policy of continual improvement is being acted out in this chamber today. We have listened and we have acted. That is exactly what we are doing.

Senator ABETZ (Tasmania—Minister for Fisheries, Forestry and Conservation) (5.27 pm)—I thank senators for their contributions to the debate. The Safety, Rehabilitation and Compensation and Other Legislation Amendment Bill 2006 amends the Safety, Rehabilitation and Compensation Act 1988 primarily to maintain the integrity of the Commonwealth workers compensation scheme and to facilitate the provision of benefits under the scheme. Opposition senators have tried to make much of the fact that the Comcare scheme is in excellent financial shape and that Comcare’s actual claims costs have declined over the past few years. They have argued that Comcare is not facing any cost pressures and that the amendments proposed by this bill are all about denying injured workers their basic entitlements and increasing their dependence on the public health and welfare systems. Senator Wong suggested that the $20 million saving estimated for this bill would be paid for by workers and their families.

Let us just inject some facts into this debate. The decline in Comcare’s actual claims costs is not an accurate indicator of the cost pressures facing the Comcare scheme. The fact is that the Comcare scheme is a long-tail scheme, with incapacity benefits payable to age 65 and medical benefits for whole of life. The total expenditure by Comcare each year in meeting the cost of all claims includes the cost of injuries and disease which may have occurred several decades ago. The current cost of these old claims is irrelevant in examining the current cost pressures facing the scheme today and which must be paid for by employers through their premiums—and, of course, in this scheme the vast majority of employers are government departments, therefore we could read it as the taxpayer bearing the cost. The premium rate which reflects the lifetime costs of injuries and disease that are occurring now is a much better indicator of current and future cost pressures facing the Comcare scheme.

Comcare’s average premium rate has increased by nearly 60 per cent since 2002-03. Whilst Comcare’s premium rate is somewhat lower than comparable schemes, it has been rising at a time when a number of other jurisdictions have been reducing their premiums. Even though the overall number of claims accepted by Comcare has been falling, there has been a significant increase in recent years in the number of high-cost claims—especially those arising from psychological injuries, often known as mental stress.

The number of accepted disease claims, which are also high-cost claims, has been increasing. For example, mental stress claims accounted for 7.6 per cent of the total number of claims in 2005-06 but now represent nearly a third of the total cost of all claims accepted by the scheme. The cost of accepted disease claims has risen from around $47 million in 2001-02 to nearly $105 million in 2005-06. Many of these claims have occurred in circumstances where work has made only a very small contribution to the injury or disease, contrary to the original intention of the act. The main amendments contained in the bill seek to address these issues by ensuring that only the costs associated with work related injuries are met by Comcare and funded by premium payers and, ultimately, the taxpayer.
The bill will amend the definition of disease and injury, which are of central importance to this legislation, to strengthen the connection between the employee’s employment and the employee’s eligibility for workers compensation under the scheme. The bill does this in two ways. First, the bill amends the definition of disease to ensure that Comcare is not liable to pay compensation for diseases which have little if any connection with employment. The amendment requires that an employee’s employment must have contributed in a significant way to the contraction or aggravation of the employee’s ailment before compensation is payable. This replaces the current test, which requires a material contribution by employment to the disease before compensation is payable.

Opposition senators, not surprisingly, have tried to beat up this issue. In fact, the amendment restores the original legislative intent. When originally enacted by the previous Labor government, it was understood that the material contribution test required an employee to demonstrate that his or her employment was more than a mere contributing factor in the contraction of the disease. However, since 1990, the courts have read down the expression ‘in a material degree’ to emphasise the causal connection between the employment and the condition complained of rather than the extent of the contribution itself. Although more recent decisions of the Federal Court, particularly the full court’s decision in the case of Canute—I like this bit that has been provided to me; somebody knows their history—have stemmed the tide, the fact remains that there is conflicting judicial authority on this point. Moreover, this amendment is consistent with every other workers compensation scheme administrator other than that of the Northern Territory.

Secondly, the bill amends the definition of injury to expand and update the existing exclusionary provisions to prevent workers compensation being payable in respect of an injury, usually a psychological injury, arising from legitimate administrative action by management. This would include, for example, reasonable appraisal of the employee’s performance and reasonable counselling action taken in respect of the employee’s employment. Again, opposition senators have suggested that the reasonableness requirement will enable employers to bully and harass employees under the guise of reasonable managerial or administrative action. As Senator Murray correctly anticipated, the government’s view is that the reasonableness requirement is not novel. It is a feature of comparable legislation in most jurisdictions around the country and the term is used in many other laws for the simple reason that there often is not a better alternative. It should be remembered as well that the amendment will limit the potential for abuse of the scheme by employees dissatisfied with management decisions.

The bill also amends the provisions that set out the circumstances in which an injury to an employee may be treated as having arisen out of, or in the course of, his or her employment. Specifically, the amendments will remove coverage for injuries sustained by employees during journeys between home and work and during recess breaks undertaken away from the employer’s premises—for example, lunch breaks during which an employee leaves the employer’s premises to go shopping. Interestingly, the Victorian, South Australian, Tasmanian and Western Australian workers compensation schemes do not allow journey claims. So I am sure some of the matters that were addressed by opposition senators will also have been addressed to their state Labor governments. I suggest that they have not been.

These amendments are also consistent with the recommendations of the Productiv-
ity Commission report that has been referred to. The government amendments have been adequately outlined by my colleague Senator Barnett. The bill will amend the method for calculating the incapacity benefits for retirees to take account of changes in interest rates. The change in the interest rate provision would result in increased benefits payable to retirees. The bill will also increase the maximum funeral benefits payable under the Military Rehabilitation and Compensation Act 2004. Finally, the bill makes a number of minor technical amendments to the legislation. I commend the bill to the Senate.

Question agreed to.

Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

Senator ABETZ (Tasmania—Minister for Fisheries, Forestry and Conservation) (5.37 pm)—I table a supplementary explanatory memorandum relating to the government amendments to be moved to this bill. The explanatory memorandum was, I assume, circulated in the chamber earlier today. It was circulated on 27 March. I think government amendments (2) to (4) can be considered together.

Senator WONG (South Australia) (5.38 pm)—It might expedite things if I could indicate to the minister our view on moving amendments together. Our preference would be that items (5) and (7) on sheet RC321 be moved separately.

Senator ABETZ (Tasmania—Minister for Fisheries, Forestry and Conservation) (5.38 pm)—Can I indicate, for the benefit of Senator Wong, that it is my intention to move amendments (2) to (4) together, then amendment (5), then amendment (6) and then amendments (1) and (7) together—if that meets with the concurrence of honourable senators. I seek leave to move government amendments (2), (3) and (4) on sheet RC321 together.

Leave granted.

Senator ABETZ—I move:

(2) Schedule 1, item 12, page 7 (after line 26), after paragraph (e), insert:

(ea) while the employee was travelling between the employee’s place of work and a place of education for the purpose of attending that place in accordance with:

(i) a condition of the employee’s employment by the Commonwealth or a licensee; or

(ii) a request or direction of the Commonwealth or a licensee; or

(iii) the approval of the Commonwealth or a licensee; or

(3) Schedule 1, item 12, page 8 (line 7), omit “place.”, substitute “place; or”.

(4) Schedule 1, item 12, page 8 (after line 7), after paragraph (f), insert:

(g) while the employee was travelling between the employee’s place of work and another place for the purpose of:

(i) obtaining a medical certificate for the purposes of this Act; or

(ii) receiving medical treatment for an injury; or

(iii) undergoing a rehabilitation program provided under this Act; or

(iv) undergoing a medical examination or rehabilitation assessment in accordance with a requirement made under this Act.

The government is responsive to the concerns about journey claims raised in a number of submissions to the Senate inquiry into the bill and in representations to my colleague the Minister for Employment and Workplace Relations. The scheme continues to cover employees while they are undertaking work related studies or receiving medical...
treatment or rehabilitation services in connection with a work related injury. The proposed amendments would restore coverage for journeys between work and these places. Amendment (2) would have the effect of extending workers compensation coverage under the SRC Act to any injury sustained in the course of travelling between the employee’s work or place of education in accordance with a condition of the employee’s employment or at the request or direction or with the approval of the employer. The government wishes to continue its support for employees engaged in ongoing learning and education.

Amendment (4) would have the effect of extending workers compensation coverage to any injury sustained in the course of travelling between the employee’s work or place of education in accordance with a condition of the employee’s employment or at the request or direction or with the approval of the employer. The government wishes to continue its support for employees engaged in ongoing learning and education.

Senator WONG (South Australia) (5.40 pm)—I want to make a number of comments in relation to the three amendments being discussed at the moment, which essentially relate to journey accidents. Firstly, we are seeing yet again the government having to put forward some amendments at a reasonably late stage in the debate. I accept the minister’s indication that some of these matters were raised in the Senate committee inquiry. We have a number of amendments and I will comment on these when they are moved, particularly item (7) which deals with changes to the Occupational Health and Safety Act. Yet again we are seeing amendments being moved by the government in relation to a number of issues at a very late stage in the debate. I think these amendments were circulated just after midday. We raise again our concerns in relation to the process by which making legislation is undertaken in this chamber. It appears that, as the government has a majority, some of the good practice associated with making laws has been jettisoned out the window.

Senator Abetz interjecting—

Senator WONG—You may chortle, Minister, but, as I recall it, you introduced 334 amendments, or thereabouts, 35 minutes before your Work Choices bill was put into place, and you have subsequently had to amend the legislation again. It is not a sensible way to approach law making and the detail of legislation. I want to make a couple of comments about the journey accidents issue. As we understand the effect of the amendments and what the government is suggesting in relation to them, the amendments to the journey accidents provisions, for want of a better term, are potentially beneficial. Whilst Labor will not be opposing the amendments, we do not believe they are sufficient to remedy the overall problems with the bill itself.

The minister has tried to utilise some of the examples in the state legislative schemes. He conveniently ignores New South Wales which, as I understand it, continues to cover journey accidents. Having practised in this jurisdiction in South Australia, I know that there are differences between the South Australian legislation and the legislation that is before us in the formulation of entitlement to compensation for journey accidents.

The minister has also tried to use the fact that the Productivity Commission recommended this change as a basis for articulating a justification for it. I want to make one point which is quite interesting. Referring to the
Productivity Commission’s recommendations, the Bills Digest, which is produced for the parliament, makes the point that the commission’s recommendation that coverage for journeys to and from work should not be provided was made on a number of bases. These include lack of employer control, availability of alternative cover in most instances and, presumably, the ability for this issue to be dealt with under enterprise bargaining.

It is interesting, isn’t it? On the one hand we have the government’s industrial relations changes—unfair laws—which essentially put employees in the position of having to go on to AWAs if that is what the employer wants. On the other hand the government tries to use the Productivity Commission’s approach to journey claims, which assumes a right to enterprise bargaining, which is not going to be available as a matter of practicality for a worker on an AWA. So yet again the government are more about spin than substance. They are marshalling facts to suit their own argument and appropriating certain pieces of evidence while ignoring others. The Productivity Commission refers to enterprise bargaining. You are seeking to rely on that as a justification but at the same time you are putting in place laws that make it more difficult for people to enterprise bargain.

Question agreed to.

Senator ABETZ (Tasmania—Minister for Fisheries, Forestry and Conservation) (5.45 pm)—I thank the Senate in committee for agreeing to those sensible government amendments. I now move government amendment (5) on sheet RC321, which deals with Comcare’s functions:

(5) Schedule 1, page 14 (after line 9), after item 31, insert:

31A After paragraph 69(fa) Insert: (fb) such other functions as are conferred on Comcare by the regulations;

This amendment would enable additional functions to be conferred on Comcare by regulation. The existing functions of Comcare are set out in the legislation. These functions are tightly drawn and from time to time Comcare is constrained from performing various functions that are not specifically provided for in the act. The amendment simply provides a mechanism for additional functions to be conferred on Comcare by regulation to provide some much-needed flexibility in this area. Any conferral of these additional functions would of course be subject to parliamentary scrutiny.

Senator WONG (South Australia) (5.47 pm)—I want to raise a couple of issues. This is essentially a regulation-making function, and the minister has outlined, frankly, at a very high level—not much detail—the need to have much-needed flexibility and the suggestion that the various functions prescribed in the act limit important Comcare activities. I wonder if we would be able to get a little more information about that, given that this is a new amendment. Firstly, what are the functions that the government says are unable to be undertaken by Comcare as a result of the current structure of the legislation and the current iteration of the functions that Comcare is entitled to undertake? Secondly, why has the government not sought to limit the regulation-making function in relation to this provision by, for example, making reference to the issues which may be covered rather than having what is a quite open-ended regulation power?

Senator ABETZ (Tasmania—Minister for Fisheries, Forestry and Conservation) (5.47 pm)—In relation to the first question, one area that the honourable senator would be aware of, I assume, is that Comcare has now,
to use a term, inherited certain asbestos claims and those need to be dealt with. In relation to limiting the regulation-making power, the simple fact is that, if this place or the other place believes that the government is overextending itself or making regulations that are inappropriate, the mechanism of a disallowance motion is always available in either place and therefore there is parliamentary scrutiny in any event of the regulations that may come into force in the future.

Senator WONG (South Australia) (5.48 pm)—Nevertheless there may be an argument about whether or not 69(fa) should still be drafted in these terms, but I understand that is the government’s position. The only function that you have identified for which there is some difficulty because of the current structure of the act is in relation to asbestos claims. Surely you could put in a specific provision. Minister, are there any issues, other than what you have identified, that the government sees Comcare being currently unable to deal with as a result of the structure of the legislation?

Senator MURRAY (Western Australia) (5.49 pm)—Before the minister answers that, I wonder if he could also advise us—I do not have the act with me so I don’t know—as to whether functions are defined in the act and are specific. In other words, I am asking whether the functions are already limited or prescribed or are now made completely open-ended by this amendment.

Senator ABETZ (Tasmania—Minister for Fisheries, Forestry and Conservation) (5.49 pm)—I do apologise. Would Senator Murray repeat the question.

Senator MURRAY (Western Australia) (5.49 pm)—I need to apologise to the chamber as well because I do not have a copy of the act with me. I wondered how functions were described in the substantive act and therefore how this amendment relates back to them, because if those functions are already circumscribed in some way then this is less open-ended than it appears on the face of it.

Senator ABETZ (Tasmania—Minister for Fisheries, Forestry and Conservation) (5.50 pm)—I draw the honourable senator’s attention to part 7, section 69 of the act, about functions. There are two-and-a-little-bit pages dealing with the functions, so I will not read out all of those matters that are enumerated or dealt with there. The government’s view is that it would be helpful, and I have mentioned the asbestos example. If honourable senators—or indeed members in the other place—were to consider that the government was doing by regulation things that they disagreed with, then of course the potential for a disallowance motion would always be available to senators.

Question agreed to.

Senator ABETZ (Tasmania—Minister for Fisheries, Forestry and Conservation) (5.51 pm)—I move government amendment (6):

(6) Schedule 1, item 47, page 17 (lines 25 and 26), omit “starting on the day after this Act receives the Royal Assent”, substitute “starting on the day on which item 24 of this Schedule commences”.

This amendment, which has a heading for convenience, ‘Technical correction’, makes a minor technical correction to item 47 of the bill as introduced. Item 47 is a transitional provision which would enable the minister to specify a transitional interest rate for the purposes of new section 21(5) contained in item 24 of the bill. As presently drafted, the specified transitional interest rate would have to take effect from the day after the amendments received the royal assent and before the commencement of the substantive provision on proclamation. This amendment would enable the minister to specify a transitional interest rate before the commencement
of the substantive provision, but that would take effect from the date the substantive provision takes effect.

**Senator WONG** (South Australia) (5.52 pm)—Sorry, Minister, I am not clear exactly how that operates. Does this suggest, therefore, that a retrospective operation could be implemented for the revised rate?

**Senator ABETZ** (Tasmania—Minister for Fisheries, Forestry and Conservation) (5.53 pm)—There is a concern that the original provision will not work as currently drafted. The draftsmen and women who deal with these issues are of the view that this would allow a flexibility which would enable the minister to specify a transitional interest rate and not have to do it on the day that the legislation comes into force.

**Senator Murray**—So it’s prospective.

**Senator ABETZ**—Yes.

**Senator WONG** (South Australia) (5.53 pm)—Are they only prospective?

**Senator ABETZ** (Tasmania—Minister for Fisheries, Forestry and Conservation) (5.53 pm)—I am getting all sorts of nods from the advisers’ box, so I assume that is a yes. I confirm that it is a yes.

**Senator GEORGE CAMPBELL** (New South Wales) (5.54 pm)—Does that mean that the transitional interest rate may be different from the interest rate that is specified in the act?

**Senator ABETZ** (Tasmania—Minister for Fisheries, Forestry and Conservation) (5.54 pm)—The good news is—but I will not wax lyrical about the stable interest rate environment in which the country operates at the moment—that there is the possibility that the transitional rate, say it were to come in in April, might be different to that which would be set. This would be done on an annual basis on 1 July each year. So the transitional interest rate would only apply from when the bill receives the royal assent through to 1 July 2007.

**Senator GEORGE CAMPBELL** (New South Wales) (5.55 pm)—Just for further clarification, does that mean that the intent is that the transitional rate would be the same as the proposed rate in the bill? I understand what you are saying, that it may finish up being a variation if interest rates shift, but the intent is that it will be the same as what is proposed in the bill.

**Senator ABETZ** (Tasmania—Minister for Fisheries, Forestry and Conservation) (5.55 pm)—I think the answer is yes.

**Senator WONG** (South Australia) (5.55 pm)—I am just looking at item 47, which this seeks to amend. Can you explain the concerns to which you have alluded about the provision as previously drafted? I am not clear what you are saying it would not enable, such that this amendment is required. Why doesn’t the original item 47, on page 17 of the bill, deal with the issue that you now seek to cover in the amendment? Can you indicate what the rationale is for this?

**Senator ABETZ** (Tasmania—Minister for Fisheries, Forestry and Conservation) (5.57 pm)—This amendment will allow the government to make a determination between the assent and the proclamation, and that clearly is going to be of benefit to those who would be the beneficiaries under this legislation.

**Senator WONG** (South Australia) (5.57 pm)—Can I just clarify that the intent of the amendment, and the effect of it in terms of the advice the minister is providing to the chamber, is simply to enable the specification of the rate to occur post assent but pre proclamation. Is that right? That would have been an easy way to have said it first up.

**Senator ABETZ** (Tasmania—Minister for Fisheries, Forestry and Conservation) (5.57 pm)—That is right.
Question agreed to.

Senator ABETZ (Tasmania—Minister for Fisheries, Forestry and Conservation) (5.58 pm)—by leave—I move government amendments (1) and (7) together:

(1) Clause 2, page 2 (table item 9), omit “Schedule 2”, substitute “Schedules 2 and 3”.

(7) Page 22 (after line 2), at the end of the bill, add:

Schedule 3—Amendments relating to occupational health and safety

Occupational Health and Safety Act 1991

1 After section 23

Insert:

23A Unlicensed operation of major hazard facility

(1) A person must not operate a major hazard facility if:

(a) the person is required by the regulations to have a licence to operate the facility; and

(b) the person does not have such a licence.

Note: A person who contravenes this provision may be subject to civil action (see Schedule 2).

(2) For the purposes of subsection (1), a major hazard facility means a facility that is a major hazard facility within the meaning of the regulations.

2 Schedule 2 (heading)

Repeal the heading, substitute:

Schedule 2—Civil and criminal proceedings

3 After paragraph 2(1)(f) of Schedule 2

Insert:

(fa) section 23A (unlicensed operation of major hazard facilities);

4 At the end of subclause 2(1) of Schedule 2 (before the note)

Add:

; (o) a provision of the regulations specified in the regulations to be a civil penalty provision.

5 Paragraph 2(3)(c) of Schedule 2

Repeal the paragraph, substitute:

(c) any provision that the person who contravened that subclause breached or was involved in breaching;

6 Subclause 4(2) of Schedule 2 (after table item 7)

Insert:

7A section 23A (unlicensed operation of a major hazard facility)

7 Subclause 4(2) of Schedule 2 (at the end of the table)

Add:

16 a provision of the regulations specified in the regulations to be a civil penalty provision

8 Subclause 13(1) of Schedule 2 (paragraph (a) of the definition of civil penalty proceedings)

After “subclause 2(1)”, insert “(other than a contravention arising because of a breach of a provision of the regulations to which strict liability applies)”.

I thank the Senate for its support of the last amendment. Amendments (1) and (7) relate to occupational health and safety. These amendments would amend the compliance provisions contained in the Occupational Health and Safety Act 1991 in two respects. First, item 1 of amendment (7) inserts a new section 23A that provides that a person must not operate a major hazard facility without a licence if the person is required by regulations to have a licence to operate the facility. Regulations made under the act already impose licensing requirements on major hazard facility operators. The ultimate sanction for a failure to comply with these licensing re-
requirements is suspension or revocation of the licence.

Presently, however, the maximum level of penalties that could be imposed under the regulations for operating a major hazard facility without a licence are substantially less than the costs of complying with the licensing requirements. This may encourage some—we would suspect very few but, nevertheless, some—businesses to continue operating major hazard facilities without meeting their licensing requirements. This would be of concern, given the higher risks posed by major hazard facilities. The amendments address this problem by providing a more appropriate level of penalty for operating a major hazard facility without a licence—a maximum of 2,200 penalty units or $242,000 per offence.

Items 2 to 8 of amendment (7) extend the civil penalty regime in the Occupational Health and Safety Act to breaches of regulations made under the act. The OHS Act contains a dual civil and criminal penalty regime. However, the civil penalty regime applies only to breaches of the act itself and not to breaches of regulations. Currently, the only available sanction for a breach of the regulations is a criminal penalty. This is inconsistent with the scheme of the act, which gives primacy to the civil penalty regime and retains criminal penalties for serious breaches of the act, such as negligent or reckless conduct that may cause or expose an employee to death or serious injury.

Senator MURRAY (Western Australia) (6.00 pm)—Can the minister confirm that these changes are initiated because persons have been operating major hazard facilities without a licence and that therefore this reacts to a problem that exists?

Senator ABETZ (Tasmania—Minister for Fisheries, Forestry and Conservation) (6.01 pm)—The Commonwealth regime has only been operating, as I have been advised, from 14 March of this year, and no such operator has come to our attention. We hope and pray that no such operator will ever come to our attention. We believe that with these amendments it is going to be even less likely that such an operator will come to our attention.

Senator WONG (South Australia) (6.01 pm)—On the basis of what the minister has indicated, obviously, we will support what appears to be the principle behind the amendment, which is ensuring that persons operating a major hazard facility must have a licence to operate and inserting appropriate penalties in the event that they do not.

However, I do again want to make a point about this amendment being introduced at this stage. We have previously seen the government tack on amendments to bills through this chamber—particularly in the last year and a half—where unrelated or only tangentially related amendments to other pieces of legislation are tacked onto a bill that is already in the place. One that comes to mind is the Work Choices amendments to the independent contractors legislation, which were really ‘fixing up your errors’ amendments that you tacked onto a bill that was about independent contractors. What we have here is a bill that was originally dealing with amendments to particular acts—the Military Rehabilitation and Compensation Act 2004 and the Safety, Rehabilitation and Compensation Act 1988—and we now have a new set of amendments in relation to another piece of legislation, the Occupational Health and Safety Act 1991. It would be useful, I think, to the chamber if the government could indicate why it is that this amendment has now been tacked onto the end of this bill—a bill that amends primarily the Safety, Rehabilitation and Compensation Act and also some consequential or minor amendments to the Military Rehabilitation and Compensation Act 2004. Why at this stage in
the debate do we have another set of amendments to the Occupational Health and Safety Act and why were these not provided previously?

Senator ABETZ (Tasmania—Minister for Fisheries, Forestry and Conservation) (6.03 pm)—This amendment, as I understand it, is supported around the chamber. It will provide extra protection. Therefore, there does not seem to be debate about the actual substance. I think for the want of creating some debate on it, the question was, ‘Why are we tacking it onto this particular bill?’ Because—and we make no apology for this—it is convenient. To bring in a separate bill simply for those two amendments we believe would have been a lot of administrative work to deal with a matter that seems to have unanimous support in this chamber.

Senator MURRAY (Western Australia) (6.04 pm)—May I indicate from the point of view of process—because the Democrats sometimes tack on amendments, as it were, to bills—that I take a case-by-case approach to these matters. Since the shadow appears not to have been briefed, might I suggest that a briefing prior to this matter might have assisted. It is a courtesy which is extended by ministers in other departments and probably by this department previously on other issues. That generally resolves issues of urgency effectively in my experience.

Question agreed to.

Senator MARSHALL (Victoria) (6.05 pm)—by leave, I move:

That the House of Representatives be requested to make the following amendments:

(1) Schedule 1, item 47, page 17 (line 24), after “rate”, insert “and the formula for determining the rate”.

(2) Schedule 1, page 17 (after line 26), after item 47, insert:

47A Rate to be applied since 1994

(1) The Minister must specify a rate according to a formula in an instrument made under subsection 21(5) of the Safety, Rehabilitation and Compensation Act 1988 to apply to all eligible claimants since 1994.

(2) The Minister must apply the formula mentioned in subitem (1) to each year since 1994 to determine a rate to be applied (the catch-up rate) for each of those years.

(3) The difference between the rate already paid and the catch-up rate is now due and payable as compensation to all eligible claimants since 1994.

Statement pursuant to the order of the Senate of 26 June 2000

The effect of the amendments would be to allow retrospective increased compensation payments under the Safety, Rehabilitation and Compensation Act 1988 to all eligible claimants since 1994. These payments would be met from the appropriation under the Act from the Consolidated Revenue Fund.

This increase in the amount of the payments to claimants would have the effect of increasing expenditure under a standing appropriation in an Act amended by the bill. The amendments are therefore presented as requests.

Statement by the Clerk of the Senate pursuant to the order of the Senate of 26 June 2000

The Senate has long accepted that an amendment should take the form of a request if it would have the effect of increasing expenditure under a standing appropriation in an Act amended by the bill. These requests are therefore in accordance with the precedents of the Senate.

Senator MARSHALL—Senator Barnett was right when he spoke about some of the complexity of this particular matter to which these amendments go to and how the committee had been engaged in some rather detailed discussions and given some real-life examples. It required a follow-up hearing in
Canberra with Comcare and the department to try and work through some of these issues. My amendments do not go to all the issues of concern, because, while Senator Trood also took keen interest in this matter, I have been advised that, on the bulk of the issues that I have some concerns about, the government is not interested in supporting any changes. That was certainly clearly reflected to me by Comcare and the department. That explains why the amendments go to this issue. They go to this issue because this is the specific issue that is dealt with in this amendment bill.

In my speech in the second reading debate I tabled an example provided by the Law Council of Australia. I have tabled the response from Comcare, which I thought would be useful for senators interested in this debate to have in front of them as I go through the issues, because they are quite complex. This will help the Senate understand the significant disadvantage that has occurred to people who have been effectively superannuated out of the Commonwealth public sector due to ill health or injury through the Comcare scheme.

The object of the act is that people in this situation should be compensated to 75 per cent of normal weekly earnings. The example that has been given and responded to by Comcare is titled ‘Daryl’. Rather than use a real-life example, this is the example that we have been using. Daryl’s normal weekly earnings were $1,038 a week. The amount of compensation, given the objectives of the act, should be 75 per cent of that, which would work out at $778.50. In this scenario, Daryl was paid out a lump sum from his Commonwealth superannuation of $242,399.37. The problem starts at this point.

Up until this legislation, the earnings that that lump sum enabled people to make were taken into consideration in the final calculation of their weekly payments. The deeming rate that has been applied up until now was 10 per cent. That deeming rate is an unrealistic expectation of what you could earn on that lump sum payment and in any case it is applied to the pre-tax amount. So there are two disadvantages that occur at this point. One is that it is a pre-tax amount so even if it were able to get the rate that is deemed, 10 per cent, it is not a real rate and it would not be a real return because the amount that can be invested is an after-tax amount. So we have two disadvantages there. A deeming rate for many years of 10 per cent is totally unrealistic. People would have no opportunity to invest their lump sum earnings and achieve that sort of interest rate.

We then have another disadvantage where Comcare—or maybe it is the superannuation fund, but it is a mixture of the compensation payments—still requires a five per cent superannuation contribution even though the person has been permanently incapacitated and is no longer on the payroll. So it has been a notional five per cent contribution, which adds up to $52.07 in Daryl’s case. That is another disadvantage.

There has been some significant debate about where that money goes. I am still somewhat unclear. There have been statements made that that amount goes to the benefit of the person—Daryl in this case. But there have also been statements that it simply goes into the superannuation scheme. There is another view that it is simply a notional deduction and does not end up going anywhere. But certainly, it does not go into Daryl’s pocket. Clearly, we would say, and many would argue, that if there is going to be a superannuation deduction from someone’s normal weekly payment, even under this compensatory arrangement, it ought to be made to the benefit of that individual. But again, that issue is not dealt with in these amendments. Given the strong advice I have
had from the department and from government senators, the government would not entertain changing those things.

I will just run through the list. Daryl earns $1,038; his 75 per cent would equal $778.50. The amount that is deducted from his payment is the deemed 10 per cent value of the earnings from his lump sum and $52.07, which is the five per cent notional superannuation deduction. That adds up to $518.22, which is then deducted from his $778.50—under the objective of the act, 75 per cent of his normal weekly earnings—leaving him with $260.28 per week. This is opposed to the stated objective of the act where he should have $778.50.

That is an appalling reduction and of course it realistically could not be met in terms of the deeming arrangements. The government and the department have certainly known about the inadequacy of this deeming arrangement for a long time. But Daryl in this case—and it is the same in every other case—has no way to change that. It is purely in the realm of the government to be able to change the deeming rate, and they have refused to do so. They have left it at an artificially high rate. The disadvantage—and I will go through the size of the disadvantage in a minute—has been going on for years.

Under the proposed legislation, let us again use the case study of Daryl and his normal weekly earnings of $1,038 a week. The 75 per cent objective of the act would give him $778.50 per week. There is no change there and no change to his lump sum of $242,399.37. If the interest rate used is what the department tells us the minister will determine, and that is the 10-year bond rate, that would now be 5.56 per cent. There would also be the deduction of $52.07, which is the five per cent notional superannuation contribution. That means that the total deductions from the $778.50 would only be $311.25, which would leave him better off by $206.97. So he would go from $260.28 a week to $467.25 a week, which is a 79.5 per cent increase in his weekly payments.

There is still the argument about whether the 10-year bond rate is the appropriate rate. Other Commonwealth departments use different rates. That is not necessarily an issue here today; it is whether the government will support the principle of these amendments, which I will now get to.

The extent of this disadvantage has been apparent for a decade. Daryl’s case is not unusual, I am advised by the department. People have been disadvantaged because they were removed from the workplace because they were unfit to work due to injury or illness. They were superannuated out because they were unfit to work. These are the most vulnerable people in our community and they are not being looked after appropriately. They have been expected to live on $260.28 a week, in Daryl’s case, plus whatever investment he may have been able to get from his lump sum. By simply making this administrative adjustment today, or allowing the minister to make it annually, the government would rectify the situation in the first instance and increase his payments by $206.97—and many would argue it is not enough, as I have said.

The concern many of us on the committee had was that this is not a new problem that has just dawned on the government; this has been an ongoing battle for the recipients of these payments for a decade or so. There have been enormous amounts of correspondence sent and enormous amounts of advocacy made to the government to try to redress this imbalance.

What do these amendments seek to do? Rather than just giving the minister the ability to determine a rate on an annual basis in
the future, by regulation he should in fact publish that rate in the Senate. He should also publish the rationale for determining the new deeming rate for people in this situation so we can understand it. Once that is done, that same formula ought to be used—and I have said it should go back to 1994; I am happy for some negotiation on this—to determine a new rate to be applied for each year going back to 1994 to compensate those people who ought to have been receiving rates based on the appropriate interest rate at the time, rather than an artificial 10 per cent deeming rate.

I think that is just simple fairness and justice. These people have been disadvantaged over a very long period of time. The government has known about it. The department has known about it. Yet, now, in 2007, the government is actually acting to fix this legislation. Again, we will have all the other arguments about other issues, but we need some indication from the government about whether it is prepared to consider, as a matter of principle, compensating people retrospectively for the disadvantage that has taken place. I am happy to have some discussion about the detail of the amendment if that would assist the government in accepting the principle. That is the position we put. We believe that is a fair and moral position. These people have been disadvantaged over a very long period of time. The government has known about it. The department has known about it. Yet, now, in 2007, the government is actually acting to fix this legislation. Again, we will have all the other arguments about other issues, but we need some indication from the government about whether it is prepared to consider, as a matter of principle, compensating people retrospectively for the disadvantage that has taken place. I am happy to have some discussion about the detail of the amendment if that would assist the government in accepting the principle. That is the position we put. We believe that is a fair and moral position. There are other issues, as I have said, but, if we can get over this hurdle, I think we may get over some of the other hurdles more easily.

Senator ABETZ (Tasmania—Minister for Fisheries, Forestry and Conservation) (6.19 pm)—Briefly in response: I hate to disappoint Senator Marshall, because I know he had every expectation that the government might support his amendment. The government will not be supporting the amendment for a number of reasons. I will talk firstly about the technical one. In the first amendment, references are made to item 47, which is in fact the transitional rate. That will only be in effect from about April until 1 July. But we need not labour on that point, because we disagree with the matter on the administrative complexity. Not only would it cost between $3 million and $5 million a year making it retrospective; chances are it would cost in the vicinity of $40 million to $70 million, just in very round terms, backdating everything. And it begs the question: where would that money come from? I suppose the Future Fund could withstand a few more raids from the Labor Party. I do not think it is in the long-term interest to have this sort of profli- gacy where money is being allegedly committed without any real source for it. But that is what we have come to expect from Labor over the years.

In relation to the administrative difficulties, since 1994 a lot of potential beneficiaries will have, unfortunately, deceased or whatever. Senator Marshall, with his legislation, would give them an entitlement, and we would then need to pursue the estate and the beneficiaries of the estate to somehow allocate the moneys. It would be a huge administrative nightmare for not much benefit. On the advice that I have been given, under our proposed legislation, this so-called Daryl—to whom Senator Marshall refers and to whom the Senate report also refers, and who I think was first used by the Law Society—would in fact be $206.97 a week better off. There is no doubt that people will be better off as a result of our proposal. Senator Marshall’s amendment, whilst I am sure it is well motivated, unfortunately is technically flawed and would be an administrative nightmare to implement.

Senator MARSHALL (Victoria) (6.21 pm)—I should just respond. In terms of the technicality, again, the minister said he is not going to support the principle of the amendment anyway and so it really does not matter whether it is technically correct. I disagree,
because it is about the formula being published. Whether it is a transitional formula and a transitional rate, if the transitional formula is there it can be applied retrospectively. It does not matter that it applies to the transitional rate; it is simply the formula. While I am of course disappointed that the minister has taken that attitude, the people who will really be disappointed are the people who have been artificially disadvantaged in the past.

I acknowledge, Minister, and I said so at the outset, that fixing this problem will make Daryl $206.97 a week better off. But Daryl has been disadvantaged over the last decade or so by the same amount. The amount will differ depending on what the interest rates were and what formula would have been applied. So, for the minister to say, ‘It’s a matter of money—how much it is,’ means he fails to see that the object of the act was that people should be compensated by the amount of 75 per cent of normal weekly earnings. Leaving the deeming rate where it was and at 10 per cent—which could never be achieved in real terms—disadvantaged people and absolutely physically stopped the objective of the act being applied to people who had to leave work through illness or injury. So it is not a matter of giving them a gift or finding the money; this is money that they were entitled to, that the act said they were entitled to. But the way it was interpreted, the way that the lump sum superannuation payouts were treated—simply applying 10 per cent, which the government had known for many years was unrealistic and therefore inappropriate—deprived all the recipients of this benefit of getting what the objective of the act was meant to achieve.

So it is not a matter of me wanting anyone to get a gift. It is not about me wanting to make it administratively difficult for you, Minister. All I am saying is that these people had an entitlement and that, if their estates had it, their estates still have it and it ought to be paid. Those were the objectives of the act in the first place. It was completely the government’s responsibility to change the deeming rate in line with the current returns’ current interest rates. The government failed in that responsibility and therefore stopped the objectives of the act being applied to these people. So the government do have an obligation, in my view, to fix this. I am glad they are fixing it now, even though we could still argue about the appropriateness of the rate, but the fact is that it ought to be fixed and people ought to get what they were entitled to get for the last decade or so.

Senator MURRAY (Western Australia) (6.25 pm)—It seems to me in a sense that the government and the opposition are talking past each other, because the amendment that the government is making to the act in fact recognises that there was a problem. So, if you accept there is a problem and you are dealing with it, that means you are already halfway there.

I would suggest and request that the minister and his department think about an alternative route to resolving this issue of retrospective compensation. As the minister is aware, there is a process for ex gratia payments for individuals who have suffered loss, not as a result of their own circumstances but as a result of particular misadventures with respect to legislation or bureaucratic process, and it falls under the department of finance to make those ex gratia payments—I think there is a particular term for them.

All I am suggesting is that, if the minister and the department and the advisers are not inclined to accept Senator Marshall’s solution, at least a different form of compensation for past injustice should be examined, because I think Senator Marshall has clearly made the case that there was injustice—and, what is more, the government, by changing
the act, has recognised there was injustice. So together you are halfway there, and perhaps the solution needs to be of a different kind.

Debate interrupted.

**MR DAVID HICKS**

Senator LUDWIG (Queensland) (6.27 pm)—I seek leave to make a short statement.

Leave granted.

Senator LUDWIG—I would like to address today’s news that Mr David Hicks has pleaded guilty to the charge of providing material support for terrorism. I have requested a detailed briefing from the Attorney-General regarding Mr Hicks’s guilty plea, and I do not intend to comment on it until I receive an adequate briefing from the government as to the application of the law and the substance of the government’s negotiations with the US authorities. I note also the Prime Minister’s statement today that he will not comment on the matter until the military commission finalises its proceedings in relation to Mr Hicks.

SAFETY, REHABILITATION AND COMPENSATION AND OTHER LEGISLATION AMENDMENT BILL 2006

In Committee

Debate resumed.

The TEMPORARY CHAIRMAN (Senator Moore)—We now return to the discussion of the opposition’s requests (1) and (2) on sheet 5194.

Senator MARSHALL (Victoria) (6.27 pm)—I thank Senator Murray for his contribution. As I said at the outset, it is the principle I want to address. The way it is addressed is something that we are very happy to negotiate around, so in many respects Senator Murray offers a very common-sense approach to dealing with this. I was hoping that the minister might get up and respond, and at least take a further look at this matter.

I am somewhat disappointed that Senator Trood is not in the chamber and has not contributed to this debate at all, because I know he had some very serious concerns about this matter and took this matter up for several individuals throughout the inquiry. But it seems that, when we get to the pointy end of actually doing something to address the ongoing injustice that has happened, people go missing in action, which is somewhat disappointing. However, my requests are there. The minister argues that they may be technically incorrect; I very much doubt that. The offer is there from us to work with the government to address these issues if they accept the principle, but I think the minister has clearly indicated that they do not. We will insist upon these requests.

Sitting suspended from 6.29 pm to 7.30 pm

Senator MARSHALL—I think we have virtually exhausted the process of trying to convince the government to concede to these requests. The minister has indicated that they will not but, now that he has had the opportunity to have a comfortable and relaxed dinner, maybe he has had time to contemplate these serious issues and has changed his mind. It is nice to see Senator Joyce in the chamber, because, from what I understand, he has indicated his support to a number of people who have been disadvantaged by the government’s actions over the last decade and may be here to assist me by offering support for these amendments. I had hoped that Senator Trood would also appear after the dinner break. Anyway, the government now have the opportunity. As I finished saying before the dinner break, we will insist upon these requests.

Question put:
That the requests (Senator Marshall’s) be agreed to.

The Committee divided. [7.36 pm]
(The Chairman—Senator JJ Hogg)

Ayes………… 31
Noes………… 32
Majority……… 1

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

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

PAIRS
Carr, K.J.
Conroy, S.M.
Kirk, L.
Lundy, K.A.
Nettle, K.
Sherry, N.J.
Ferris, I.M.
Boswell, R.L.D.
Colbeck, R.
Lightfoot, P.R.
Minchin, N.H.
Eggleston, A.

Question negatived.
Bill, as amended, agreed to.
Bill reported with amendments; report adopted.

Third Reading

Senator ABETZ (Tasmania—Minister for Fisheries, Forestry and Conservation) (7.39 pm)—I move:

That this bill be now read a third time.

Question put.

The Senate divided. [7.40 pm]
(The President—Senator the Hon. Paul Calvert)

Ayes………. 30
Noes………. 31
Majority…… 1

AYES
Abetz, E.
Barnett, G.
Brandis, G.H.
Campbell, I.G.
Coonan, H.L.
Fierravanti-Wells, C.
Heffernan, W.
Johnston, D.
Kemp, C.R.
Mason, B.J.
Nash, F.
Patterson, K.C.
Ronaldson, M.
Scullion, N.G.
Troeth, J.M.
Vanstone, A.E.

NOES
Allison, L.F.
Bishop, T.M.
Brown, C.L.
Crossin, P.M.
Faulkner, J.P.
Forshaw, M.G.
Hurley, A.
Ludwig, J.W.
McEwen, A.
Milne, C.
Murray, A.J.M.
Polley, H.
Abetz, E.
Barnett, G.
Brandis, G.H.
Campbell, I.G.
Coonan, H.L.
Fierravanti-Wells, C.
Heffernan, W.
Johnston, D.
Kemp, C.R.
Mason, B.J.
Nash, F.
Patterson, K.C.
Ronaldson, M.
Scullion, N.G.
Troeth, J.M.
Vanstone, A.E.

* denotes teller
Tuesday, 27 March 2007

AUSCHECK BILL 2006
Second Reading

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

That this bill be now read a second time.

Senator LUDWIG (Queensland) (7.47 pm)—I rise to speak on the AusCheck Bill 2006. This bill seeks to provide a regulatory framework for the conduct of a centralised background criminal and security checking service. It will be operated by the Attorney-General’s Department for persons requiring access to security zones in the aviation and maritime industries. AusCheck is being established as a service agency. It is intended that it will act as a service provider in its provision of background checking coordination services. It will have a formal provision to extend the operation of the provisions in the bill to all external territories of Australia.

Labor keeps a watchful eye on all bills presented by this government. They too often contain serious oversights or sweep away important freedoms. Who could forget the government’s ‘strip-searching of minors’ legislation, tabled in parliament in 2005? When you look at the mistakes the government has made in some of these bills, you see it is becoming more out of touch with Australia’s concepts of fairness and proportionality.

This is another example of a flawed bill. In the House of Representatives, Labor called for this bill to be examined by the Senate Standing Committee on Legal and Constitutional Affairs. The government’s original plan was for this bill to provide the authority for the department to coordinate background checks on applicants for the Aviation Security Identity Card, more commonly referred to as ASIC, and applicants for the Maritime Security Identity Card, or MSIC, and any subsequent schemes. I underline the phrase ‘and any subsequent

Senator ABETZ (Tasmania—Manager of Government Business in the Senate) (7.45 pm)—by leave—Clearly the result does not reflect what the intention of the Senate would be if the full complement were here. We may need to recommit.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (7.45 pm)—by leave—The result does exactly reflect the vote of the Senate. There is no indication to the contrary. If the government has got into some sort of mess, maybe it can make an appeal to the Senate later, but that was a valid vote of the Senate and the government has lost it.

Senator CHRIS EVANS (Western Australia—Leader of the Opposition in the Senate) (7.46 pm)—by leave—The Labor opposition has a consistent policy of conceding to a resubmission if there has been a mistake and the result does not reflect the Senate. We will do that once the government is able to indicate that it has not had an abstention but has genuinely not had its numbers represented. If it wishes to inquire into the matter and provide an explanation then I am sure the Senate will give it due consideration.

The PRESIDENT—If you recall, Senator, it was a one-minute bell and that may have been the problem.

| Siewert, R. | Stephens, U. |
| Sterle, G. | Stott Despoja, N. |
| Webber, R. | Wong, P. |
| Wortley, D. | |

PAIRS

Boswell, R.L.D. | Sherry, N.J. |
Colbeck, R. | Conroy, S.M. |
Eggleston, A. | Nettle, K. |
Ferris, J.M. | Carr, K.J. |
Lightfoot, P.R. | Kirk, L. |
Minchin, N.H.* | Lundy, K.A. |

* denotes teller

Question negatived.
schemes’. Allowing the arbitrary addition of subsequent schemes by regulation was a warning sign, and because of that we asked the Senate Committee on Legal and Constitutional Affairs to look at the provisions of this bill.

The Senate Legal and Constitutional Affairs Committee subsequently made 10 recommendations. I understand that the government has foreshadowed that it will adopt recommendations 1, 2, 3, 4 and 10, a matter that the minister will deal with in his summing-up speech. This is appropriate and particularly important when you look at recommendations 1 and 2. We think the government has come to that position in a sensible way.

Section 5 of the bill defines a background check as information relating to one or more of the following:

(a) an individual’s criminal history;
(b) matters relevant to a security assessment of the individual;
(c) the individual’s citizenship status, residency status or the individual’s entitlement to work in Australia, including but not limited to, whether the person is an Australian citizen, a permanent resident or an unlawful non-citizen;
(d) such other matters as are prescribed by regulations.

Recommendation 1 is that subclause 5(d) of the bill be removed. It seems that in the making of a regulation you can, with one strike of the pen, add whatever information to what constitutes a background check to regulations. In Labor’s view, that clause lacks accountability and proper oversight. Labor in the other place was critical of this provision. The Senate committee recommended removing that clause. I will not go in detail to the recommendation and the committee’s comments about it. It was a sensible recommendation and I am pleased the government has picked it up.

Section 8(1) of the AusCheck Bill states:
The regulations may provide for the establishment of a background checking scheme (the AusCheck scheme) relating to the conduct and coordination of background checks of individuals:

(a) for the purposes of the Aviation Transport Security Act 2004 or regulations under that Act; and
(b) for the purposes of the Maritime Transport and Offshore Facilities Security Act 2003 or regulations under that Act; and
(c) —

and we see that phrase again— for such other purposes as are prescribed by the regulations.

It seems to me that this scheme was not complete when they put this framework in place. The committee, in recommendation 2, recommended that this provision be removed. Labor raised similar concerns in the other chamber, and I think I can say that it was obvious through the committee process that even the department was not sure what purpose it would be put to ultimately. It is more sensible if there are to be substantive amendments or additions to this bill that they be made in this place and not by regulation. If the government want to extend the scope of the background checking scheme to other bills and occupations it is appropriate that they come to parliament and adopt a process where an amendment can be made to a bill, it can be properly examined and debated and even sent back to the Senate Legal and Constitutional Affairs Committee for examination, if necessary.

The government has not adopted recommendations 6 and 8 of the Senate committee. Recommendation 6 proposed that the government delete information from the AusCheck database that is not relevant to the
background check for which it has been collected, used or disclosed. Recommendation 8 suggested that the bill be amended to impose appropriate conditions and limitations on the use and disclosure of personal information by a third-party agency to which AusCheck has lawfully disclosed that information. Labor believe that these recommendations still have merit but, given the changes agreed to by the government, we might rest on that point and accept that the government has moved some way. It is pleasing to note that, and we will not pursue those matters here.

But, if the government is refusing to adopt recommendations 6 and 8, then recommendation 9 is one that we will recast to the government, asking if it would be amenable to amending the legislation to specifically include the requirements that AusCheck provide periodic reports to parliament. We think it is a sensible approach for there to be periodic reports about matters including the number and type of background checks that it conducts, the average time taken to conduct background checks, the legislative scheme under which background checks have been conducted, the number of individuals who have received adverse background checks and the basis for those assessments, and the agencies with which information obtained by AusCheck has been shared and for what purposes.

It seems logical to provide a report of that order to parliament. It ensures that there is transparency and accountability. If the government thinks the matters covered by that should be broader or have more specificity, the opposition would look at that seriously. The opposition cannot see why that type of information cannot be provided and laid before parliament. The government has a range of bills that provide for that type of information to ensure there is transparency and accountability, and it would be familiar with those. They relate particularly to the use of surveillance devices and the use of various other warrant processes, and the telecommunications legislation provides for that type of information as well. It is summarised and provided in a report that is laid before parliament. That also creates a check and balance to the way this type of information is collected and used.

We do not want to step over privacy principles, of course, and we do not seek to do that. What we seek to do is look at aggregate figures, so those sorts of concerns are not wrapped up in our foreshadowed request. In matters where practical security requires privacy concerns to be balanced against security requirements, statistical reporting of the use of the power is essential. It is essential to be able to ensure that this type of information is collected appropriately. If there are issues we can argue about them at estimates and on the tabling of the report and raise them with government. Without that information we are left to an estimates process to be able to draw it out. As we have seen with AWAs, the government sometimes is not as forthcoming as it should be in respect of the statistics and information that we request. So we are concerned that the government may choose to hide behind the detail of how this scheme will work without reasonable transparency, and it is a concern that we place highly because it is important that this type of information is collected and used for the appropriate purpose for which it was intended. I foreshadow therefore that Labor will move an amendment to give effect to that recommendation.

The best option today would be a full implementation of the bipartisan Senate Legal and Constitutional Affairs Committee recommendations. After all, what Sir John Wheeler intended in his recommendation for a centralised data collection agency was a means to improve aviation security. That is important to Labor. Labor has been critical
of the government’s rollout of the ASIC system and its failure to implement the Wheeler recommendations on aviation security. The ASIC system and aviation security in Australia do need reform. Labor recognises that. In 2005 the minister for transport set an arbitrary cut-off date for ID card applications of 31 December 2005, failing to take into account the time taken for pilots to pay for and receive police checks. That deadline did not take into account ASIO’s Commonwealth Games workload. What happened was that the minister was then forced to change the deadline to 31 March 2006, which still did not fix the problem. Pilots who missed the original December deadline but submitted their applications by the March deadline still have not received their ID cards and will not be able to access their planes.

What about lost and stolen ASICs? In the Joint Committee of Public Accounts and Audit hearing on 23 November 2005 we heard that 384 ASICs were either lost or stolen. On July 2006 the magazine Australian Aviation contained an article referring to a person from the Australian Aircraft Owners and Pilots Association who went to collect his ASIC from Qantas in Canberra. He was shown a box of red plastic cards on their landyards and was left to sort through them in an unsupervised way, as I understand it. He was concerned that he could have pocketed any quantity of ASICs he wanted. The threat to Australians took a step up on September 11, 2001, making the mismanaging of the aviation sector a genuine concern and threat to the public. The government have been in power for 11 years. They must take the issue seriously and address the problems on Australian waterfronts and ports.

The government rolled out a maritime security identification scheme. That involved background checks on Australian maritime workers whilst leaving foreign vessels and crews unchecked. That is a concern when you think what that means. They have ensured that the maritime security identification scheme would be rolled out for Australian maritime workers while leaving foreign vessels completely unchecked.

In April 2005 the Australian Strategic Policy Institute published a damning report on the state of Australia’s security arrangements called ‘Future unknown: the terrorist threat to Australian maritime security.’ That report identified the danger of foreign flagged vessels carrying dangerous goods around the Australian coastline. So too we have warned the government about the dangers of ammonium nitrate being freighted around our coastline by foreign flagged vessels with foreign crews that have not undergone background checks. Labor has also pointed out that a range of groups, such as Abu Sayyaf and Jemaah Islamiyah, have the skills and opportunities to launch these types of maritime threats against Australia. These groups operate in South-East Asian waters and they are near to our coastal regions. Reports from United States intelligence sources indicate that the al-Qaeda group is suspected of owning or having a long-term time charter on a fleet of 15 to 18 bulk and general cargo vessels. These are matters that are known to both Labor and the government.

Let us think about some of the issues that surround that and, of course, the need to ensure that the issue of maritime safety is considered of paramount concern by government and that they actually start doing something about upgrading our maritime security. At the moment it looks like it is moving at a snail’s pace. Turning to the content of this bill, Labor supports centralising the MSIC and ASIC vetting systems, but the government must really get a move on and make urgent upgrades to Australia’s transport security sector. I will also take the opportunity to move a second reading amendment that has been circulated. I will not go into the detail...
of it; it is there for others to read. The fail-
ures of this government are there for the re-
cord.

Concern is not only confined to this area. When you look broadly at the issues that are contained within this bill, you will see that the government is really trying to catch up, after 11 years of trying, to ensure that it can manage security identification cards. It is disappointing that, even with this government trying to centralise by putting a scheme in place in the AG’s portfolio and even with the framework legislation, when you look at the report from the Legal and Constitutional Affairs Committee you see that not enough work was done or attention was paid. Even more damning, I think, is the fact that it is significantly late. This should have been thought through and strategically planned much earlier and been developed and implemented rather than the ad hoc approach that this government has taken to security. I move the second reading amendment standing in my name:

At the end of the motion, add:

“but the Senate condemns the Government for its failure to provide necessary security upgrades to protect Australians, including:

(a) its careless roll-out of the Aviation Security Identification Card (ASIC) scheme, which flawed roll-out included the loss or theft of ASICs and a history of airport security bungling;

(b) its delays in rolling out the Maritime Security Identification Card scheme and its careless and widespread use of single and continuing voyage permits for foreign vessels with foreign crew who do not undergo appropriate security checks;

(c) permitting foreign flag of conven-
ience ships to carry dangerous goods on coastal shipping routes without appropriate security checks; and

(d) failing to:

(i) ensure ships provide details of crew and cargo 48 hours before arrival,

(ii) x-ray or inspect 90 per cent of containers,

(iii) establish and properly fund an Australian Coastguard, and

(iv) establish a Department of Home-
land Security to better coordinate security in Australia”.

Senator STOTT DESPOJA (South Aus-
tralia) (8.05 pm)—I rise on behalf of the Australian Democrats to address the AusCheck Bill 2006. I begin by acknowledg-
ing those amendments that the government has put forward that take on board some of the concerns and indeed the recommenda-
tions in the Senate committee report. The Democrats will be supporting those amend-
ments. The Democrats will also be support-
ning Senator Ludwig’s amendment to the leg-
islation on periodic reporting. However, the Democrats are, certainly at this stage, not convinced by the second reading amendment that has been put forward by the Labor Party. That specifically relates to part (d) of that second reading amendment. Although we have some support and sympathy for the criticisms or comments contained in the sec-
ond reading amendment, it is not Democrat policy at this stage to establish a department of homeland security.

The Australian Democrats do support a strengthened system for probative checks in the aviation and maritime areas. However, we have strong concerns about a system that does not necessarily improve on current ar-
rangements for background checking nor necessarily balance important security em-
ployment, sentencing and privacy principles. It is in wearing my privacy spokesperson hat for the Democrats today that I make most of my comments.
The system fails to adequately protect Australians’ criminal history information sufficiently to warrant such a disproportionate intrusion into Australian workplaces. There is no question that security threats have contributed to a dramatic increase in criminal record checks. Advances in technology have also made criminal history checks faster, less expensive and easier to obtain from a variety of sources. Add to this the requirement for criminal checks for public sector employees, as well as the numerous state and federal laws that require criminal background checks for certain categories of work, and the result is that an applicant for nearly any job will face a criminal background check which looks for a multitude of different offences.

In his 2006 report to the Victorian Attorney-General, entitled Controlled disclosure of criminal record data, the Victorian Privacy Commissioner, Paul Chadwick, highlighted this boom in criminal record checking. He said:

Statistics indicate an enormous increase in criminal record checks carried out in Victoria from 3,456 in 1992/93 to 221,236 in 2003/04—more than a 60-fold increase over 10 years. Use of the national criminal record checking service offered by the CrimTrac Agency by accredited agencies (such as the Victorian Institute of Teaching) is also on the rise. CrimTrac reports almost a doubling in the number of checks carried out nationally, increasing from 617,000 in 2003/04 to 1.1 million in 2004/05.

While this bill is essentially about establishing the architecture of the AusCheck scheme, the Democrats note that it is also part of this wider trend in employment to make mandatory the checking of criminal records. In its submission to the Senate inquiry, the New South Wales Council for Civil Liberties talked about the continuation of the trend towards a centralised database at a national level. Under this proposal AusCheck is to be the preferred background, criminal and security checking service for persons requiring an aviation or maritime security identity card. Cardholders are able to access security zones in the aviation and maritime industries, which are not generally accessible to members of the public. As recommended by the Wheeler inquiry into airport security and policing, AusCheck will replace the 188 separate agencies and entities that have issued ASICs and MSICs until now.

The key driver for the establishment of AusCheck is the national security imperative to protect the aviation and maritime sectors from terrorist threats and attacks—and we understand and support that particular motivation. But there are several issues with this bill, most of which Senator Ludwig has already pointed out. The Senate committee, chaired by Senator Marise Payne, should be congratulated for highlighting the deficiencies in this bill, particularly with regard to the breadth of the regulation-making powers, the handling of privacy issues and the lack of transparency, natural justice and independent review mechanisms.

It is worth noting that the same criticisms were levelled at the government less than two weeks ago in relation to another identity system—the proposed access card—and similar criticisms have been made of the government for its anti-money-laundering legislation. I am particularly concerned that much of the important detail as to how this scheme will operate has been left to regulation—again, emulating the concerns of the Senate committee and, indeed, the previous speaker. The Democrats advocate that, wherever practicable and feasible, the scope and purpose of legislation should be clearly articulated and limited in primary legislation but not in secondary or delegated legislation.

In its submission to the Senate inquiry into the bill, the Australian and International
Pilots Association stated that there is an increasing trend of utilising regulation-making powers to extend the scope and purpose of legislation. The Democrats agree with the sentiments of the Australian and International Pilots Associations. In an area as important and delicate as background security checking, there is a danger that a regulation-making power poses a risk that fundamental rights may be sidestepped without recourse to parliamentary debate.

I turn to the definitions within the bill. There is no definition of 'criminal history' in this legislation. It would be helpful if the relevant offences which would bar a person from being granted access to specified information or a specified place under this bill were provided for in this legislation. I note that the definition of 'background check' includes a security assessment of an individual. I am curious as to whether any background check, by virtue of this particular provision, would extend checks into any associations an applicant might have that would preclude the issue of clearance to a controlled or limited area. Such associations, I imagine, would include, for example, membership of a gang, having a spouse or a close relative who is involved in crime or having an address that is associated with criminal activity. So how far will this check extend? Will innocent households, for example, be caught up in this process?

More importantly, I would argue that, no matter what state they reside in, every Australian who has been convicted of a minor offence should have the right to have their criminal records forgotten in very clear and specific circumstances. Not all types of criminal offence will necessarily be relevant for background criminal checking, nor should a criminal offence necessarily bar a person from working in the aviation and maritime industries. Divulging records in relation to minor offences can shatter the newly found respectability of former offenders and may ruin their future and cause their friends and relatives to shun them. It is part of the recognised general principles of sentencing law that the public has an interest not only in punishing and deterring criminal behaviour but also in rehabilitating offenders and returning them to society as productive and law-abiding citizens. So how we handle such questions in relation to, for example, background checks on an employment application or a job interview is of real concern.

More importantly, the nature of criminal history information released through the AusCheck program is likely to vary depending on the legislative provisions in each state. AusCheck will be able to access information under three general release categories based on the Commonwealth spent conviction legislation and those states that have chosen to mirror the Commonwealth scheme. Categories include no exclusion, partial exclusion and full exclusion. On this basis, agencies can access information ranging from disclosable court outcomes only to a full criminal history. There are varying spent conviction schemes together with the differential information release policies that we are seeing across jurisdictions. Surely these will also have an impact on the type of information and the amount of information that can be released to agencies.

I think that as a matter of urgency the Commonwealth should be encouraging, presumably through the Standing Committee of Attorneys-General, moves to ensure that there is some kind of uniform, universal definition of criminal history and a uniform approach to the disclosure of criminal history information. The minister might want to give us an idea as to whether or not that is something that is on the government's agenda. I think it is not only germane to this legislation but actually a fundamentally important principle. This is imperative in the information
age, when courts grant mercy and leniency yet records are being placed online and effectively individuals are forever being resentenced every time they change jobs or apply for a particular job interview.

In the context of privacy concerns, as we all know, the federal Privacy Act has an exemption for employee records. It is particularly shameful that, while federal and state employees have privacy rights, those workers who happen to be in the private sector continue to be denied some fundamental privacy protections. As we in this place all know, an ALRC review is being conducted at the moment into the Privacy Act, which I am sure will expose a number of loopholes and areas that could be improved in relation to that light-touch regulatory framework that we have for privacy protection in Australia, particularly as it relates to the private sector. This bill demonstrates, for example, how that is problematic for certain workers but not for others.

In the context of AusCheck, the employee records exemption means that Australian employees and contractors in the aviation and maritime industries will have less privacy protection in employment matters. While arguably criminal record checks conducted in the pre-employment context may still be subject to the Privacy Act, it is not clear under this legislation whether this check will be conducted pre or post employment or where the result will end up. In situations where criminal record checks form part of the personnel files of current or former employees of the aviation and maritime industries, almost certainly, surely, their privacy will be exposed.

The real possibility exists that privacy protections afforded to sensitive criminal record information may indeed fall away. There is no requirement under the legislation for AusCheck to give prior notice to the person being checked of the purpose of that particular check or to give, for example, the usual disclosures to third parties or to give the scope of the check and the consequences for an individual of such a check. There is no requirement to indicate whether the applicant is entitled not to disclose convictions for old or minor offences such as summary or traffic offences, for example. Where pre-employment vetting is carried out, there should be an obligation on AusCheck to inform applicants at the time that applications are sought of the fact and the extent of the proposed check. This lets an applicant decide whether to proceed with their application. It is the 'no surprises' approach.

Nothing in the bill would guide AusCheck staff as to how to handle an adverse background check. In the same context, I wonder whether the scheme envisages notifying applicants’ employers of the outcome of a background check before the applicant has had an opportunity to make submissions to the secretary. The bill is silent on the complex relationship between AusCheck, an employer and an applicant. I certainly believe that the opportunity to review adverse data should come before or at least at the same time as the information is provided to an employer or any other decision maker, such as the secretary. The subject’s ability to identify problems before or at the same time as an adverse decision is reached is fundamentally fair, given the variance in state reporting requirements as well as the serious concerns about the completeness and accuracy of data reported to similar central federal criminal record repositories like CrimTrac. Some review right is particularly important given that employees generally do not have access to information about the security assessment that ASIO makes in relation to the person which will form part of the background check.
On the matter of CrimTrac, it is important to note that, in order to administer background checking in the aviation and maritime industries, it is necessary for AusCheck to become an accredited CrimTrac agency. I note that CrimTrac, in its submission to the Senate inquiry, said:

The ever increasing incidence in identity theft and fabrication within the community encourages and allows criminal behaviour to circumvent the checking process. The fundamental deficiency is the reliance on limited biodata, comprising name, date of birth and gender, as the sole mechanism for determining if the person the subject of the check is a “person of interest” and has a criminal record.

CrimTrac further states that it is taking a number of steps to address these deficiencies, including consideration of introducing an optional more stringent biometric check—fingerprints—effectively to eliminate the issue of ID fraud, and introducing a continuous monitoring capability based on fingerprints. As anyone in this chamber would know, the Australian Democrats, on a number of occasions, have expressed our concern over this kind of information or data gathering. Any move by government to collect the biometric information of its citizens is something we should be very wary of. As mentioned earlier, the sheer proliferation of criminal record checks will mean that at some time or another the government will be holding a rich source of very sensitive information about Australians. People in this place know just how hard I have fought to ensure that genetic privacy is protected in law. Of course, we need to go to the next step, which is ensuring that we prohibit discrimination on the basis of genetic information. But when we are talking about databases containing this kind of sensitive, personal data about citizens, we need to examine it very clearly.

At the very least, the only valid reason to maintain fingerprint submissions is to verify the accuracy of searches. Even this purpose should have a time limit for when searches must be verified. Presumably many of the searches will be a ‘no hit’—that is, a law-abiding citizen’s fingerprints are routed to federal criminal authorities for the purposes of a routine employment background check. Through AusCheck or CrimTrac it would be inappropriate for the government to incorporate fingerprints of law-abiding citizens into a background-checking process.

The Democrats strongly urge the department not to be influenced to retain fingerprints. A nationwide data file of fingerprints submitted by law-abiding citizens obviously raises serious privacy and due-process concerns. Under such a system, one arrested but never convicted could face loss of a long-time job. Sufficient procedures are already in place to allow employers to periodically review a worker’s background, including criminal records checks.

Some jobs obviously require employees to report an incident, but for the government to maintain a permanent file of submitted fingerprints raises the possibility that at some time those fingerprints will be used for a secondary purpose that has no bearing on the original purpose for which the fingerprints were originally submitted. Such use would violate basic privacy principles. I think it would take us into Big Brother territory, the likes of which the Australian people have yet to see. The strong criticism by the Australian community about having a photograph on the surface of a so-called access card should surely give the government an idea of the kind of concern with which it would be met if they proceeded along the lines of holding biometric data of the citizens of a country.

Finally, the Australian Democrats are concerned that the secretary of the Attorney-
General’s Department can give directions to an applicant for a background check or to a person who is authorised to take action relating to matters connected with background information by virtue of the words ‘relating to matters connected with a background check’. It has to be admitted that this is a very broad directive power. At the very least, such directions should relate specifically or directly to those matters connected to a background check pursuant to the regulation.

This process involves an adverse effect on privacy. It may result in lasting damage to the reputations, livelihood and relationships of individuals—damage which may be completely disproportionate to the seriousness of their prior convictions or even their unrecorded findings of guilt and disproportionate to the risk that they may pose to our airports, ports and secure zones. It is important that there should be advance warning, a narrow range of disclosable criminal offences, clear definitions and an opportunity to explain and review rights, and the government should not seek to overreach in this area.

The Democrats have broad-ranging concerns. Many of those specific concerns were addressed in the Senate committee. We will support those amendments before the Senate that seek to implement some of the recommendations proposed by the Senate committee. Again, we will be supporting one of the two amendments proposed by the Labor Party in relation to this legislation.

Senator JOHNSTON (Western Australia—Minister for Justice and Customs) (8.26 pm)—I thank senators for their contributions to the second reading debate and commence my speech in reply by noting that the opposition and the Democrats support the AusCheck Bill 2006, notwithstanding that they require some amendments. In late 2005 the government agreed to establish a centralised background-checking agency as a division of the Attorney-General’s Department. The division referred to as AusCheck is required to commence operations on 1 July this year. It will be responsible for coordinating background criminal and security checks on people who, because of their work requirements, need to hold an aviation or maritime security identification card. The bill we have before us today gives AusCheck the authority to conduct background checks and maintain a database of cardholders; to collect, use and disclose information; and to recover costs for conducting background checks.

On 8 February 2007 the Senate referred provisions of the bill to the Senate Standing Committee on Legal and Constitutional Affairs. In its report of 14 March the Senate committee made nine recommendations for amendments. It also recommended that subject to those recommendations the Senate pass the bill. The Senate committee acknowledged the general in-principle support for the bill expressed by the majority of submissions and witnesses. However, it expressed concern about the breadth of the bill’s regulation-making power, privacy issues relating to the functions described in the bill and accountability mechanisms set out in the bill.

As a result of these recommendations and further advice the department obtained from the Australian Government Solicitor, I will be moving government amendments to the bill during the committee stage. The amendments will give effect to those Senate recommendations that require legislative amendment—a number of recommendations dealing with retention periods for information, deletion of irrelevant information and further use of information lawfully disclosed to third parties; and matters presently provided for in the department’s records disposal authority approved by the National Archives of Australia and in the Privacy Act 1988.
In particular, information privacy principle 10 restricts the use of personal information to the purpose for which it was collected. In its report the Senate committee accepted the Attorney-General’s Department’s assurances that it is obliged to act in accordance with the Privacy Act. So, while the government agrees with the intention of the recommendations, we do not consider it necessary to make amendments that replicate provisions contained in the other relevant legislation. The committee also recommended that AusCheck provide periodic statements to parliament. AusCheck is a division in the Attorney-General’s Department and the department is already required to provide annual reports in respect of all of its functions. It is therefore unnecessary to amend the legislation to respond to this recommendation.

The majority of the Senate recommendations will be implemented through the government amendments I intend to move tonight or tomorrow. In effect, these amendments restrict AusCheck to coordinating the current background-checking elements of the aviation and maritime security identification card schemes. In addition, the new background schemes, such as checks on people who are responsible for the care of the elderly or of children, will need to be made by amendment to the act and not by regulations as originally set out in the bill.

The amendments also tighten provisions relating to AusCheck’s ability to retain and share personal information. The Senate committee recommended that access to the AusCheck database be confined to three listed agencies: ASIO, the Australian Federal Police and the Australian Crime Commission. There is no question that what is intended is that law enforcement and security agencies can access the database for legitimate law enforcement and security purposes. However, it would be difficult to list the agencies that would have a lawful entitlement to access the information, because the act would have to be amended each time a new organisation is created or an existing agency changes its name or administrative structure. This is a problem we have encountered in relation to other legislation where a list approach has been adopted.

As an alternative, the government will move amendments to more closely specify the purposes for which the information in the database can be used in relation to criminal and security intelligence rather than listing specific agencies authorised to have access to the information for those purposes. This amendment gives effect to the intent of the Senate committee recommendation—an intent which the government agrees with.

The government will also move amendments designed to clarify the original intention of the bill and to remove any doubts about the way in which AusCheck will operate. The definition of ‘personal information’ has been expanded to clarify the original intention and expected operation of the scheme. Personal information includes the card number of the ASIC or MSIC issued to an individual and the photograph of the individual that appears on the card. It would be of little value to issue MSICs and ASICs if providers could not verify whether a card had been issued, to whom and the currency of that card.

Provision has also been made for the collection of identity information for verification purposes. This will commence when a suitable identity verification system—namely, the document verification system, DVS—becomes available. AusCheck has advised industry not to collect identity information for the purposes of the AusCheck scheme until such time that AusCheck is in a position to make use of the information in
accordance with the information privacy principles.

A final amendment to clause 17 of the bill is proposed to ensure the constitutional validity of clause 17, which authorises the use by the Commonwealth of the name of AusCheck in providing background checks under the provisions of the bill. The provision gives legislative authority for the name to be used in this context, regardless of any other usage of the name. However, there is a small chance that a person may have some property in the name that would be affected by the Commonwealth gaining authority to also use it. Such a situation could result in the technical acquisition of property. This amendment is included as a precaution to ensure that that provision does not fail.

I would like to thank the Senate Legal and Constitutional Affairs Committee for their considered inquiry. I look forward to outlining the government’s implementation of the committee’s recommendations in the Committee of the Whole stage. Before I complete my summary, I just want to turn briefly, as did Senator Ludwig, to some of the matters contained in the opposition’s second reading amendment.

With respect to the complaints about the flawed rollout of the ASICs and references to lost ASICs, the commencement of the AusCheck and its centralisation of background checking should improve the ability to monitor the cards. It is of concern when cards are unaccounted for, but the number of non-returned cards compares favourably with the non-return rate for other identity documents—by way of example, drivers licences and passports. Of the 1.2 million Australian passports issued each year, some 25,000 are reported lost or stolen, representing about 2.1 per cent of all Australian passports issued annually. The comparison with identity cards—ASICs—is a favourable one: about 1.5 per cent are reported lost or stolen.

We are working with industry—and this is where the government is light-years ahead of the opposition; we work with industry; we do not mandate things for industry to be dragged into adhering to legislation—to implement best practice measures to manage issues relating to lost, stolen or expired cards. Industry members have advised the government that they have established practices to do so. They include confirming the identity of the holder with a photograph at manned access points; disabling any electronic access rights that may have been included on the ASIC as soon as it has been reported lost or stolen; reporting the loss of a card to police; routinely auditing irregular card use at points not authorised for the holder; and routinely reviewing ASICs with unusual characteristics, such as those that have not been used for some time or those with an unusual expiry date.

A further complaint in the opposition amendment is that there have been delays in rolling out the maritime security identification card scheme. In relation to these cards, the rollout began on 1 January 2007 and commenced very smoothly. I say that again for the benefit of senators on the opposition side: it commenced very smoothly. The first round of temporary cards was issued from the end of December 2006 to those people who applied for them before 27 October 2006. These temporary cards expired on 31 January 2007. The government has been actively working with industry to urge those who had not applied to take action and to do so at their earliest convenience. The government and the issuing bodies are continuing to process applications as promptly as possible. However, some delays may occur depending upon individual circumstances—particularly, for instance, if an applicant has a criminal history. In that case we would hope that there
would be some delay. Obviously processing can take longer in those circumstances.

I will turn now to the complaint about foreign ship security. In relation to those foreign ships, as I have mentioned, there is pre-entry reporting. Every ship seeking entry to Australia is subject to a comprehensive security assessment, regardless of the flag it flies. This includes every ship carrying ammonium nitrate to an Australian port—obviously a very important consideration. The security risk assessment takes into account all relevant information about the ship, including the nature of the ship’s cargo and its operations. This information is collected from mandatory ship and crew reports, which are required within certain time frames, depending upon the length of the voyage. Any ship failing to comply with pre-entry reporting requirements or identified as posing an unacceptable risk can be refused entry into Australia or into an Australian port. Any ship so identified as posing a security risk, whether because of crew, cargo or other factors, would not be allowed entry into Australia.

Lastly I want to talk about an old chestnut from the opposition—and that, of course, is the department of homeland security, which I think is set out in the second reading amendment clause (d)(iv). There the opposition seeks to ‘establish a Department of Homeland Security to better coordinate security in Australia’. Like most opposition proposals when it comes to national security, it is moribund and bound in bureaucracy. We only have to look at what happened with respect to the coastguard, where we had a sniper strapped to the side of a helicopter to shoot out the controls of a fishing boat.

**Senator Ludwig interjecting**—

**Senator JOHNSTON**—Coastguard mark 3! It is always entertaining when the opposition dabble in areas of national security. Of course, homeland security in terms of AusCheck is utterly irrelevant. I have not had the opportunity to talk about this recently, but I am interested that the idea is still being pushed here in the Senate, having received the reception it did in the House of Representatives. The assumption that we might not look at what happens abroad and see what could be learnt would obviously be a flawed assumption. The opposition go ahead notwithstanding the experience of other countries. We have always looked at what is happening over there, and there are a couple of very good examples, particularly with respect to Hurricane Katrina.

The government have come to the view, having revisited all the arrangements that we need to, that a reorganisation of the type suggested by the opposition would be very problematic. It would have the effect of lessening our efforts in relation to security while we had people focusing on looking at what their tasks might be, re-establishing appropriate linkages and relearning their relationships. As I have said, you only have to look at what happened in the United States with respect to the tragedy of Hurricane Katrina, where the Department of Homeland Security was, not to put it too finely, a failure. That contributed greatly to the ongoing problems that exist even today in New Orleans with respect to the rebuilding of that city.

As always, the opposition has come up with a very grandiose, bureaucracy-laden proposal which in reality has nothing to commend it. I come back to the point that the opposition actually supports this bill but seeks to obtain some political leverage off this point-scoring second reading amendment. I commend the bill to the Senate.

Question negatived.

Original question agreed to.

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

SAFETY, REHABILITATION AND COMPENSATION AND OTHER LEGISLATION AMENDMENT BILL 2006

Third Reading

Recommittal

Senator PARRY (Tasmania) (8.40 pm)—by leave—I would like to make a statement to the Senate indicating the complication the government had in relation to the division on the third reading of the Safety, Rehabilitation and Compensation and Other Legislation Amendment Bill 2006. The amendment to the bill was put and there was a division, and the Hansard will record that the government defeated the amendment. Immediately that division concluded, two senators from the government side, Senator Ellison and Senator Santoro, left the chamber. I have ascertained that it was between one and two minutes from the conclusion of the division on the amendment and the announcement being made by the President. The division bells were rung again for the third reading of the bill, and we divided. The division bells were rung for one minute. The two senators in question attempted to return to the chamber under the impression it was a four-minute division bell. Of course, they did not make it in time for the division. Hence, the government lost the third reading division. With that explanation, I seek leave to move that the third reading of the Safety, Rehabilitation and Compensation and Other Legislation Amendment Bill 2006 be recommitted.

The ACTING DEPUTY PRESIDENT (Senator Marshall)—Before I ask whether leave is granted for Senator Parry to move that the question be put again, are there other senators who wish to seek leave to make a statement?

Senator GEORGE CAMPBELL (New South Wales) (8.42 pm)—by leave—I accept the explanation that Senator Parry has made with respect to the two senators in question. At the end of my comments we will grant leave for the third reading to be recommitted to the chamber. It is an unusual set of circumstances. It is not unusual for senators to miss divisions in this place but it is certainly unusual for three senators to miss a division on the one occasion. It is difficult to judge whether people are abstaining or whether they have genuinely, for whatever reasons, missed the division. It is disruptive to the work of the Senate to have to recommit motions and to have a recount. We are already working to a tight timetable, at the government’s insistence. We sat long hours last week and we are sitting long hours this week in order to get through a fairly substantial legislative program. We can do without these sorts of disruptions.

It has always been Labor’s position that any votes taken in this chamber should express the will and the make-up of the chamber. That is why we will grant the recommittal of the motion to the Senate. But it is up to the government to ensure that its members are disciplined and attend the chamber when required. At the end of the day, it is the responsibility of the government to manage the chamber; it is not our responsibility. It lies with the government to ensure that its members are disciplined enough to attend the chamber and be in attendance when votes are required. Having said those few words, I am happy to grant leave for the motion on the third reading to be recommitted.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (8.44 pm)—by leave—The government has control of the Senate, but it does not have control of itself. That is the problem tonight. Senator Parry said a minister and an ex-minister left the chamber—I would say in a
mighty hurry—and found themselves a minute or so away from the chamber with a minute to get back here and did not make it. Nobody else missed that deadline; everybody else listened to the proceedings that were afoot. But these two senior members of the government left and therefore the government lost its essential control of the Senate. It is very sloppy. It is embarrassing for the government. As we have just heard, it will delay the proceedings of the Senate inevitably in a week in which the government has used its numbers to have us sitting late—that is what we are doing here tonight—and to have us sit possibly even later on Thursday night.

The only thing I would say to the government is: get your act in order. This is an important year. We are headed for an election and you need to be in control of what your members are doing, particularly ministers. If you cannot do it on a simple thing like getting members in here for a vote, which everybody else was here for, then there is something seriously amiss within the ranks. Have a good look at what is going on there and see if you can rectify it, and we would all be better off. With that, I add that the Greens will be granting leave for a recommittal of the third reading as well.

The ACTING DEPUTY PRESIDENT—Is leave granted for the recommittal of the vote on the third reading of the Safety, Rehabilitation and Compensation and Other Legislation Amendment Bill 2006? There being no objection, leave is granted.

Question put:
That this bill be now read a third time.

The Senate divided. [8.51 pm]

(The President—Senator the Hon. Paul Calvert)

Ayes............. 33
Noes............. 31
Majority........ 2

AYES
Abetz, E. Adams, J.
Barnett, G. Bernardi, C.
Brandis, G.H. Calvert, P.H.
Campbell, I.G. Chapman, H.G.P.
Coonan, H.L. 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.* Payne, M.A.
Patterson, K.C. Santoro, S.
Ronaldson, M. Troeth, J.M.
Scullion, N.G. Vanstone, A.E.
Troid, R.B.
Watson, J.O.W.

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

PAIRS
Boswell, R.L.D. Conroy, S.M.
Colbeck, R. Carr, K.J.
Eggleston, A. Nettle, K.
Ferris, J.M. Sherry, N.J.
Lightfoot, P.R. Kirk, L.
Minchin, N.H. Lundy, K.A.

* denotes teller

Question agreed to.
Bill read a third time.

NOTICES
Presentation

Senator Bartlett to move on two sitting days hence:

That the following matter be referred to the Rural and Regional Affairs and Transport Committee for inquiry and report by 10 May 2007:

The impacts of the Trade Practices (Horticulture Code of Conduct) Regulations 2006 on growers, wholesalers, retailers and consumers, and whether the regulations should be amended, disallowed or retained.

AUSCHECK BILL 2006
In Committee

Bill—by leave—taken as a whole.

Senator JOHNSTON (Western Australia—Minister for Justice and Customs) (8.54 pm)—by leave—I move government amendments (2), (3) and (8) on sheet PJ361:

(2) Clause 4, page 2 (line 8), before “In”, insert “(1)”.

(3) Clause 4, page 3 (after line 4), at the end of the clause, add:

(2) To avoid doubt:

personal information, in relation to an individual, includes the following:

(a) the number of an aviation security identification card or a maritime security identification card issued to the individual;

(b) a photograph of the individual that appears on an aviation security identification card or a maritime security identification card issued to the individual.

(8) Clause 13, page 9 (line 9), after “purposes”, insert “directly”.

These are amendments to clause 4 and clause 13. I table the supplementary explanatory memorandum relating to the government amendments to be moved to this bill. The memorandum was circulated in the chamber on 27 March 2007.

Senator LUDWIG (Queensland) (8.55 pm)—I will not speak at length in respect of these government amendments. They deal with personal information, I understand. I did want to take the opportunity to talk about some of the matters that the minister raised in his speech in reply to the second reading debate. The minister commented that, when you look at the overall scheme provided for these identification cards and the way that the information will be kept, it is entirely appropriate, and there are many other schemes where cards are unaccounted for. But these types of identification cards are critical and they are tracked. It is critical that both ASICs and MSICs are accounted for with a very high degree of accuracy. Given that they are also subject to both ASIO and AFP checks, they have to be put into a different category where there has to be proper handling and accountability all the way through to ensure the cards do not go astray.

This bill is an opportunity for Labor to point out to the government that it is not really a response to the issue to say that, in comparison to others, this scheme is better. It is like saying, ‘I have done a wrong, but yours is worse than mine.’ In all instances, cards should be accounted for. It is disappointing that they were not accounted for appropriately and properly. There is, as I think the minister pointed out, broad agreement between the parties in supporting the bill—at least the Democrats and the opposition, and the Greens, I think, too, or am I wrong about that?

Senator Bob Brown—No; you’re right.

Senator LUDWIG—I am right about that. That is because there is a need for appropriate legislation to be put in place. It is necessary that there be an improvement to the scheme to ensure proper handling of
these types of cards, because, when the scheme is up and running in a short while and becomes effective, it will ensure improved security. That is why Labor fundamentally agree with the legislation: it is about improving the scheme.

What we have been critical of and will continue to be critical if is the government’s tardiness in tidying up some of the loose ends—its failure to do so at an earlier stage—and, overall, its slowness to act. It is difficult, I think, for the government to escape that criticism. My view is that the government should take it on the chin and get on with the job, quite frankly.

I had the opportunity to participate in the committee inquiry into this bill, and what struck me was that there was an overall desire to improve the scheme. By the range of issues that the government has picked up in its amendments (2), (3) and (8) on sheet PJ361, dealing with personal information, there is also a desire to improve the operation of the bill to ensure that it does handle things in an appropriate way.

There is a question that arises, though, where the government says that the information will be provided periodically. I know this might be out of order, but perhaps we can get some of the questions dealt with early. The point of it all is that, in our fore-shadowed recommendation (9), the committee looked at the commitment to ‘provide periodic reports’. What I fail to understand is how AusCheck will ensure transparency and accountability—how it will ensure that, in meeting the necessary privacy principles, it will be able to provide periodic reports; where those reports will go; how they will be stored; how they will be able to be accessed by the opposition or other parties; whether they will be available through freedom of information legislation. We are not interested in the individual nature of those records, but, overall, we want to ensure that there are appropriate checks and that, in fact, these things do not go missing—that information is stored appropriately. We are interested in the types and range of information.

It is a framework bill. In the minister’s second reading contribution he talked about the difficulty with the number of departments that might access the information and with including those agencies in a bill. He indicated that he might deal with it by regulation, in a way whereby we can see which agencies can access it and which agencies can enter a memorandum of understanding, or that the information might be collected and held in such a way that there is reasonable opportunity for the opposition or other interested parties, not busybodies, to access it; that it is done in a way to ensure that information is kept appropriately and is available. I will pause at that point and give the minister an opportunity to respond.

Senator JOHNSTON (Western Australia—Minister for Justice and Customs) (9.01 pm)—I thank senators for their support for this amendment. I anticipate that Senator Ludwig has jumped forward to deal with the opposition amendment. I simply say, in the hope of expediency in dealing with that amendment, that, as a division of the Attorney-General’s Department, AusCheck is required to publish information on its performance in the Attorney-General’s Department annual report and the portfolio budget statements. It is subject to scrutiny in the annual report, as a published document, and portfolio budget statements are open to the three estimates sittings every year. In this way, the oversight function and its performance can be monitored very extensively by the parliament. This information will include application numbers and processing times, as well as any significant issues that have arisen in the delivery of background checking services.
I am happy to indicate that the Attorney-General’s Department annual report will include information of the type listed in the opposition amendments to the extent consistent with the privacy constraint. I trust that goes some way towards satisfying the issues raised by Senator Ludwig, to some extent in anticipation of the principal area of concern of the opposition.

Question agreed to.

Senator JOHNSTON (Western Australia—Minister for Justice and Customs) (9.03 pm)—by leave—I move government amendments (4) and (5) on sheet PJ361 together:

(4) Clause 5, page 3 (line 14), omit paragraph (d), substitute:

(d) verification checks of documents relating to the identity of the individual.

(5) Clause 8, page 4 (line 4) to page 6 (line 2), omit the clause, substitute:

8 Establishment of AusCheck scheme

The regulations may provide for the establishment of a scheme (the AusCheck scheme) relating to the conduct and coordination of background checks of individuals, and the verification of documents:

(a) for the purposes of the Aviation Transport Security Act 2004 or regulations under that Act; and

(b) for the purposes of the Maritime Transport and Offshore Facilities Security Act 2003 or regulations under that Act.

Senator LUDWIG (Queensland) (9.03 pm)—I will not go into any great detail. The government has done well in examining the Senate committee report. I was perhaps remiss. I do appreciate the effort of the government in looking at the report, taking the recommendations into account and reflecting them in the legislation in such a quick way. I should not let that pass, because I have been disappointed with the government many times before. When the Senate Legal and Constitutional Affairs Committee has made substantive recommendations, they have not been, in my view, properly scrutinised or considered in any detailed way, nor moved by the government. They were left to the opposition to move, debate and argue. In this instance, I do not have to do that. The government has seen fit to pick up the recommendations. I thank the government for that. I sit on that committee, and it is appreciated by the committee that these recommendations have been examined and picked up by the government.

If there is some movement, it reflects upon the opposition to not stand by all the other recommendations. We consider that, on balance, there has been a significant shift by the government to improve the legislation, although we do not think they have gone far enough. The minister is correct in saying that we do support the bill and its ability to improve the ability to check more generally in this area.

Senator JOHNSTON (Western Australia—Minister for Justice and Customs) (9.05 pm)—I thank the chamber.

Question agreed to.

Senator JOHNSTON (Western Australia—Minister for Justice and Customs) (9.06 pm)—The government opposes clause 10 in the following terms:

(7) Clause 10, page 7 (lines 1 to 16), to be opposed.

The TEMPORARY CHAIRMAN (Senator Watson)—The question before the chamber is that clause 10 stand as printed.

Senator LUDWIG (Queensland) (9.06 pm)—I just wish to indicate support for the legislation, which in fact means that we will be voting that the clause stands as printed. In fact, we will be supporting the amendments. We thank the government for diligently ex-
amining the issues that were raised in the Senate Legal and Constitutional Affairs Committee report.

Question negatived.

Senator JOHNSTON (Western Australia—Minister for Justice and Customs) (9.07 pm)—by leave—I move amendments (6), (9), (10) and (11) on sheet PJ361 together:

(6) Clause 9, page 6 (after line 23), at the end of subclause (1), add:

; (i) matters relating to the establishment and provision of an online verification service that will enable verification:

(ii) that an aviation security identification card or a maritime security identification card has been issued to a particular individual and is in effect at a particular time; or

(ii) that an individual who is in possession of an aviation security identification card or a maritime security identification card is the person to whom the card was issued.

(9) Clause 13, page 9 (line 15), at the end of the clause, add:

; or (c) the collection, use or disclosure is for the purposes of providing an online verification service that will enable verification:

(i) that an aviation security identification card or a maritime security identification card has been issued to a particular individual and is in effect at a particular time; or

(ii) that an individual who is in possession of an aviation security identification card or a maritime security identification card is the person to whom the card was issued.

(10) Clause 14, page 9 (lines 27 to 28), omit subparagraph (2)(b)(iii), substitute:

(iii) the collection, correlation, analysis or dissemination of criminal intelligence or security intelligence by the Commonwealth, or by a Commonwealth authority that has functions relating to law enforcement or national security, for purposes relating to law enforcement or national security.

(11) Clause 14, page 9 (after line 28), after subclause (2), insert:

(2A) AusCheck scheme personal information about an individual may be used or disclosed for the purpose of verifying:

(a) that an aviation security identification card or a maritime security identification card has been issued to a particular individual and is in effect at a particular time; or

(b) that an individual who is in possession of such an identification card is the person to whom the card was issued.

(2B) AusCheck scheme personal information used or disclosed for the purpose mentioned in subsection (2A) must be limited to personal information of a kind directly necessary for that purpose, and must only be used or disclosed to the extent necessary for that purpose.

Senator LUDWIG (Queensland) (9.07 pm)—I only wish to indicate our support for these amendments. It does still concern me that the government could have spent a little more time examining the bill prior to bringing it before parliament. Ultimately, the committee is not supposed to be the catch-all if the government fails, as we tried to explain once before. It is probably worth reminding the minister, now that he has moved on to being a minister rather than a committee member: the role of the committee is not a catch-all, as a final check to ensure that the government has dotted its i’s and crossed its t’s; it should have done that before bringing the bill to the Senate Legal and Constitu-
tional Affairs Committee. The committee’s role is much broader than that. One part of its role is to be a check on the executive—to examine bills and to be a house of review. That is the real role, and the committee process gives an opportunity to participants to make submissions and raise substantive policy issues about the bill, rather than to try to improve it in a technical sense. However, the Senate Legal and Constitutional Affairs Committee finds itself in that role too often, and I would like to encourage the minister, in bringing forward new bills that he has control over, to look more closely at dotting the i’s and crossing the t’s.

Question agreed to.

Senator JOHNSTON (Western Australia—Minister for Justice and Customs) (9.09 pm)—by leave—I move amendments (12) and (13) on sheet PJ361 together:

(12) Clause 17, page 14 (line 5), before “The”, insert “(1)”.

(13) Clause 17, page 14 (after line 6), at the end of the clause, add:

(2) If the operation of this section would result in an acquisition of property from a person otherwise than on just terms, the Commonwealth is liable to pay a reasonable amount of compensation to the person.

(3) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in a court of competent jurisdiction for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

(4) In this section:

*acquisition of property* has the same meaning as in paragraph 51(xxxi) of the Constitution.

*just terms* has the same meaning as in paragraph 51(xxxi) of the Constitution.

Senator LUDWIG (Queensland) (9.10 pm)—This seems to be one of those clauses which should have been put in right from the beginning and it is an example of what I mentioned before—but I will not labour the point, so to speak. We support the amendment. We think it does help in the scheme of how this bill will operate.

Question agreed to.

Senator LUDWIG (Queensland) (9.10 pm)—I move opposition amendment (1) on sheet 5225:

(1) Page 14 (after line 6), after clause 17, insert:

**17A Periodic reporting**

(1) The Secretary must before the end of June and November in each year, give to the Minister a written report on the operation of AusCheck which includes the following specific details:

(a) the number and type of background checks conducted by AusCheck;

(b) the average time taken to conduct background checks;

(c) the specific provision(s) in legislation under which background checks have been conducted;

(d) the number of individuals who have received adverse background checks and the basis for those adverse assessments; and

(e) the agencies to which information obtained by AusCheck has been shared and for what purposes.

(2) The Minister must cause a copy of the report provided to the Minister under subsection (1) to be tabled in each House of the Parliament within 5 sitting days of that House after the Minister receives the report.

I know that in the summary during the debate on the second reading the minister did address this issue. He also did it in committee as well. I will belabour the point. It is, I think, more important for the reporting to be done in such a way that a lot of this material
is provided to the relevant committee, not only at estimates but also through the parliamentary process. It can be envisaged that within the Attorney-General’s Department they could provide a separate report about the operation of this scheme. It is within their purview. It is possible. It is done in other instruments which fall within the control or within the administrative orders of the Attorney-General’s Department.

Labor will insist on this amendment—we will not divide on it but we do ask you to reconsider it. If you need the time, then, of course, this matter will come back. There is an opportunity to look at it again, should this legislation need further amending down the track and we would ask you to at least not rule it out completely.

What is important to Labor is not the information contained within it specifically but the general thrust of the amendment. That is, there is a desire to have information provided to the public, through parliament, about the operation of this scheme. It is an important scheme. We think that the information as to how that scheme will operate should be collated by the department and provided through parliament to the public. It will hold sensitive information of a personal nature about people. We accept that privacy principles will apply and that will be maintained. We do think, though, that the public have a greater need to understand how that information will be collected and used and that the public will have that scrutiny through such a report to parliament. Therefore we urge the government to accept amendment (1), clause 17A, relating to periodic reporting.

Question negatived.

Senator JOHNSTON (Western Australia—Minister for Justice and Customs) (9.13 pm)—I move amendment (1) on sheet PJ361, to insert definitions:

(1) Clause 4, page 2 (line 7) to page 3 (line 4), insert:

aviation security identification card means an identification card issued under the Aviation Transport Security Act 2004 or regulations under that Act.

Commonwealth authority means a body corporate established for a public purpose by or under a law of the Commonwealth.

maritime security identification card means an identification card issued under the Maritime Transport and Offshore Facilities Security Act 2003 or regulations under that Act.

Senator LUDWIG (Queensland) (9.13 pm)—I indicate our support for this government amendment. Perhaps the minister could reflect on the type of amendment that is being made by the government here, where it is inserting definitions for ‘aviation security identification card’, ‘Commonwealth authority’ and ‘maritime security identification card’. I think it makes the point that I have been perhaps belabouring through the evening: that the government had not turned its mind properly to the legislation to ensure fundamental things like definitions were included within the legislation. And they are now finding that they have to include them to make sense of how the legislation will work.

That should not be a matter we are addressing now. That should have been addressed very early on in the legislative drafting stage with the checking of the bill by the department. Those issues should have been picked up long before the bill went to the Senate Legal and Constitutional Affairs Committee. I can only express disappointment that the government is doing it on the run. It should have been more diligent in ensuring these matters were dealt with.

This will be the last amendment for the evening and the bill will then gain support.
and pass with the government’s amendments. I will conclude by saying that the Senate Standing Committee on Legal and Constitutional Affairs did expose many of the shortcomings of this bill. The government has taken the opportunity to accept the recommendations of the committee and improve the bill’s overall operation. I thank the Senate.

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) (9.16 pm)—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

**AIRPORTS AMENDMENT BILL 2006**

**Second Reading**

Debate resumed from 21 March, on motion by Senator Johnston:

That this bill be now read a second time.

Senator O’BRIEN (Tasmania) (9.17 pm)—I rise this evening to speak on the Airports Amendment Bill 2006. The privatisation of Australia’s 22 federal airports has indeed fostered a vibrant and dynamic industry and enabled these airports to provide improved services with minimal call for public investment. The rapid growth in non-aviation development is very welcome to generate the funds needed for future expansion and replacement of aviation infrastructure and improved quality of service at Australian airports.

The funds generated from commercial development at airports will certainly remove what would otherwise be an enormous burden on taxpayers to deliver the essential aviation services that underpin our national economy. But this development has not come without its problems, many of which have been unnecessarily created through the poor implementation of the planning and approvals process by the Minister for Transport and Regional Services. Local communities, particularly around Essendon, Adelaide and Perth, are very sensitive to some of the commercial development at airports—and rightly so. It is difficult to explain to a local community why on earth they should trust the planning regime for airports when the minister has delivered a decision to place a brickworks in Perth on airport land opposite a residential development.

The problem is not so much with the planning regime but with the poor judgement of the minister in failing to consider surrounding land uses and plans when he makes decisions about commercial development at airports. And he has paid the price for that, having had to amend this bill even before the debate in the House of Representatives was complete. His own colleagues clearly do not trust him with responsible decision making and the exercise of due process. They are reflecting the concerns and frustrations of their constituencies. A few weeks ago Mr Vaile said:

I have received a number of representations from Government MPs and Senators asking me to extend the 45 working day period for consultation to 60 working days.

If there were historical evidence of the minister having due regard for community and local government concerns when it came to sensitive airport development, I believe the revised time lines, which would have brought the planning regime into line with state and territory planning processes, may well have been accepted, but the unwillingness to reduce consultation time lines is a manifestation of distrust in the implementation of the process.
My colleagues are equally concerned and so are their constituencies. The government’s record on airport development, with the brickworks at Perth and retail developments at Adelaide and Essendon, means that we in the Labor Party are not prepared to accept any reductions in the consultation or approval time lines. This is about distrust of the process and of the will of the minister and the government to have due regard to the concerns of local communities and the land uses and infrastructure plans of local government authorities.

Perhaps the minister, from his experiences with Harbour Town in Adelaide and the DFO at Essendon, has finally learned that he also has to take into account the impact of commercial development on surrounding infrastructure such as roads. I say this because he did reach the right decision a few weeks ago with respect to the proposed Sydney airport retail development. That development would have required somewhere between $1 billion and $2 billion worth of road infrastructure investment by the state and adjacent local authorities. Clearly it is totally inappropriate to expect that kind of contribution from government and equally inappropriate to clog up the existing road infrastructure without it.

I will give the minister a bit of a break here. It is time some of the airport lessee companies also woke up to their responsibilities. It is not acceptable to treat state and local government authorities and local communities with the arrogance and disdain that some have when it comes to airport development. And it is also time that some state and local government authorities demonstrated a capacity to negotiate in good faith with airport developers for reasonable rate equivalent payments and contributions to off-airport infrastructure. Airport developers are too readily seen by some councils as the goose that laid the golden egg. But they must also recognise that the benefits of airport development flow on to their local communities. They provide jobs. And in some cases it may well be reasonable for the state and local government authorities to also contribute to surrounding infrastructure, particularly when they are in receipt of substantial rate equivalent payments.

The Gateway upgrade project in Brisbane is a wonderful example of what can be achieved when infrastructure owners and all levels of government are prepared to work together to get the right outcomes for regional infrastructure. The Brisbane port and airport precinct is not only important for the region; it is of strategic economic importance for the nation. So if we want to rebuild community trust in the planning regime for airports it is time for all parties to lift their game. It is time for the minister to be more mindful of state and local government planning schemes, to consider the impact of developments on off-airport infrastructure and to make sure that airport lessees are meeting their obligations to make rate equivalent payments and contribute to off-airport infrastructure where that is reasonable. It is time for airport lessees to engage properly and fairly with all levels of government and community stakeholders, to propose developments that have due regard and respect for surrounding land uses and to pay their way when it comes to associated infrastructure.

When it comes to planning control itself, it is clearly in the national interest that strategic economic infrastructure such as our major airports remains under Commonwealth control. At the end of the day, I do not believe and the shadow minister, Mr Ferguson, does not believe that state and local government authorities really want ownership of controversial airport decisions. Airport development is a contentious community issue, and both state and local governments remain far more exposed to the elec-
toral pressure of short-term expediency than the Commonwealth. It is the role of the Commonwealth to take a long-term view when it comes to national strategic infrastructure developments such as airports, and it is the level of government best placed to do this. Therefore, it is our view that airport land must remain in Commonwealth ownership and control for the long-term development of airport infrastructure that is vital to the future success of the Australian economy.

Many of the concerns about this bill relate to bad historical experience, with fault on the part of some local government authorities and planning authorities and some airport lessee companies from time to time. However, the minister has the power to ensure good planning outcomes at airports for all parties and must be held to account in this regard. Poor implementation of planning processes has been a problem at state and local government level as well, and changing the jurisdiction would not solve the problem. As I said, airport development is contentious; it is the role of the Commonwealth to take a long-term view on such national strategic infrastructure developments and it is the level of government best placed to do this. But the approvals processes for airport development clearly need improvement. In particular, the airport development consultation guidelines released by the Department of Transport and Regional Services in December last year are very welcome. The guidelines clearly set out the Australian government’s expectation of all the stakeholder groups when it comes to consultation about airport development. They also outline a suggested approach to effective consultation. While they are non-binding, it is our hope that all parties will seek to implement them in the future.

The member for Hindmarsh in the other place is to be congratulated for his proposal by way of a private member’s bill for the appointment of an ombudsman. The member for Hindmarsh knows only too well about conflict between the greater public good that airports provide and the inconvenience that comes with them for some residents. The residents he represents have experienced significant disruption to their lives as a result of noise. They know the airport is there to stay, but they want to be able to show someone other than those with a vested interest that from a resident’s perspective there is still a lot to be done to achieve better airport planning. They want to be able to direct their concerns through an independent umpire. They can access an ombudsman to hear their concerns regarding the Defence Force, immigration or taxation—even the postal industry. There are complaints bodies to receive representations regarding banking, financial services, telecommunications, energy and insurance. But, when it comes to airports and the impact they have on the community, there is no independent umpire. I might also say that had this government been more active in paying attention over the last decade to the conflicts that have arisen between new airport lessee companies and their neighbours—businesses, residents and local government authorities—the Australian public might have more confidence in the airport planning regime and we would not be where we are today.

That brings me to some of the other issues that need to be raised this evening with respect to this bill. Firstly, I note the Senate Rural and Regional Affairs and Transport Committee report which was tabled some little time ago. The opposition fully supports the two recommendations in it and will be moving amendments during consideration in the committee stage to give effect to those recommendations. They will, firstly, add the requirement that airport lessee companies advise state and territory and local government organisations of the commencement of
public consultation processes so that they have full awareness and the opportunity to comment and be engaged early in the process rather than simply reading about it in the newspaper. Secondly, they will provide for all public consultation submissions received by the airport lessee company to be forwarded to the minister as the decision maker, together with the written statement already required. There are a number of other amendments, however, that the opposition will propose to improve the integrity of airport planning and the approval process. Should those amendments be defeated, the Labor Party will, in government, revisit these amendments in the context of a broader review of legislation to reduce the impact on local communities.

Having said that, might I also say that airports not only are key parts of the nation’s economic infrastructure but are unique in that there is only one per capital city. We cannot build more of them because the community simply will not allow it. They are the social, tourism, business, government and trade gateways to our regions. I suppose the exception to that proposition is Avalon in Victoria; it is perhaps an emerging rather than an established multi-user airport at the moment. But these airports connect us with each other, with the rest of Australia and with the rest of the world.

I also remind the Senate that it was a federal Labor government that privatised airports, and for very good reasons. The community simply could not afford to keep pace with the investment needed to maintain and grow our airports. That is now being done by the private sector—and it is a good thing that it is—but investment in the airport facilities and services that business and the community at large expect and demand will not continue if we undermine the regulatory regime that is the foundation for the viability of airport businesses and their expansion. So our review of legislation will focus not only on local community impacts of airports but on the greater public good that they bring and on continuing to provide the investment certainty that airport owners need to grow these vital infrastructure assets for the 21st century and beyond.

In the meantime, I will outline the additional amendments the opposition will be moving. Firstly, while we note the comments of the Senate committee with respect to the deemed approval provision, the need for investment certainty by airports, the view that the deemed approval places some pressure on the minister and the department to meet their obligations under the act in a timely manner and the fact that this provision has never been used remain of concern to us.

I remind the Senate of Mr Costello’s non-decision of 22 May last year when, at midnight, the National Competition Council’s recommendation to declare BHP Billiton’s Newman railway under the Trade Practices Act was deemed rejected. That was the right outcome but it came only because the Treasurer was too gutless to make a decision. No-one would argue against an effective and efficient access regime for rail haulage for all Pilbara iron ore producers, but the National Competition Council’s recommendation failed to protect the initial investment of BHP Billiton and its billion dollar export industry. In effect, it favoured access seekers over the operations of existing owners who have borne the risk of investment, who maintain the infrastructure and who operate a sophisticated logistics chain to supply their export markets. Instead of doing the right thing and clearly articulating the national interest, Peter Costello went missing in action. As a result, there remains no investment certainty for BHP Billiton and Rio Tinto in the Pilbara. The parties are now embroiled in legal disputation and the future investment in Australia’s export supply chains is at serious
risk as a result. Deeming provisions can and do go wrong and this is an issue we want addressed in this legislation.

The second issue we would like to see addressed is an explicit provision that the department have qualified town planners as one of the many disciplines involved in the assessment of airport development plans. This seems a fair and reasonable requirement to address the concerns of local government authorities when it comes to the integration of town plans with airport plans. I understand that the Department of Transport and Regional Services does have town planners on staff and that their advice is utilised in airport development assessments. However, I can see no reason why there should not be an explicit requirement in the act to provide additional confidence to state and local government planning authorities when it comes to the capacity of the department to properly assess airport developments.

The third issue relates to the provision of an explicit statement of reasons if the minister decides not to adopt the recommendations contained in submissions from state or territory planning agencies and local government authorities. While I understand that the minister’s decision is already reviewable through the administrative appeals process and that aggrieved parties have the right to obtain a statement of reasons from the minister, I can see no reason why this should not be an explicit requirement of the minister in the decision-making process. This is about providing the community and state and local government authorities with more confidence in the process and requiring better accountability of the minister. I remind the Senate that, but for recent decisions like the Perth brickworks, we might not have been here asking for this today. The fact is that there is a history of disregard for due planning processes and due consideration of the concerns of communities and local governments.

The fourth issue would require the minister to specify in approval conditions whether a proposal will have any impact on off-airport infrastructure and, taking into account rate equivalent contributions, whether there is a reasonable requirement for the lessee to negotiate in good faith with state and/or local government authorities to reach agreement for appropriate contributions to specific off-airport infrastructure. I know that the act already has a broad conditions power and that the minister has addressed road infrastructure impacts and contributions in previous decisions. However, I am not so sure that that was the case when it comes to the Essendon Airport and the DFO development there. I am not convinced that the minister has done enough to address the conflicts between airport lessees and local councils when it comes to rate equivalent payments and the interpretation of the obligations in this regard when it comes to airport leases.

Regarding the important issue of lifting the threshold for major developments from $10 million to $20 million, we simply say that this is fair and reasonable given that construction costs have increased significantly since 1997 and site works must now be included in total costs. By way of comparison, the Joint Standing Committee on Public Works recently increased its threshold for project consideration from $6 million to $15 million. Building costs in south-east Queensland last year increased by 13.8 per cent compared to 2005, following a six per cent increase in 2005 and a 9.6 per cent increase in 2004. This suggests that a cost inflation index is quite appropriate. There will also now be the capacity for the minister to require consecutive or concurrent developments to be included in the total cost. The opposition will be moving an amendment to make sure that this is done and is not simply optional for the minister. It is about transparency and it is about providing greater confi-
dence to the community that the right thing will be done when it comes to airport development processes.

There are two other issues which will not be addressed through amendment but which I would like to place on the record. Firstly, the opposition would not like to see Bankstown Airport become one of the non-core regulated airports subject to the lifting of the five per cent airline ownership cap, and we will be addressing this issue should regulations be introduced in this regard. Secondly, we have some concerns about the accreditation by CASA of parties other than Airservices Australia and the Australian Defence Force to provide airspace and fire and rescue services at Australian airports. I note that, to date, these provisions apply only to Townsville Airport and the accredited service provider, Delta. We will be addressing this issue on a case-by-case basis should additional airports or service providers be added to the schedule by way of regulation.

We will be supporting this bill but, as I have outlined, we will be moving a number of amendments during consideration in committee and I hope that the government will give careful consideration to those amendments in the interests of restoring the integrity of the airport planning regime, improving community confidence in it and providing for greater accountability on the part of the minister when it comes to airport development decisions. I move the second reading amendment standing in my name:

At the end of the motion, add:

“but the Senate condemns the Government for undermining public confidence in the Airports Act through planning approval decisions, such as that relating to the Perth brickworks site, located opposite a residential area, and the Essendon direct factory outlet, proposed without regard to the impact on local road infrastructure”.

Senator MARSHALL (Victoria) (9.37 pm)—I seek leave to incorporate Senator Allison’s speech.

Leave granted.

Senator ALLISON (Victoria—Leader of the Australian Democrats) (9.37 pm)—The incorporated speech read as follows—

The Bill before us today does not revolutionise the Airports Act but it does provide some minor amendments that will improve some elements of the Act, which is why the Democrats will support the Bill.

The proposed amendments are designed to relax restrictions on airlines owning smaller airports, to institute changes to land use, planning, building controls and environment management provisions, and to confirm the availability of the Australian Competition and Consumer Commission to monitor and evaluate the quality of airport services and facilities.

These are not controversial changes in and of themselves – with the exception of the changes to the time allowed for public consultation.

I will expand on this later but I note the Government has responded to criticisms of these changes and has introduced amendments to the legislation to alter the original reduction in the time for public consultation.

However this Bill does little to address the major issue that concerns most people - and that is how airport developments affect local residents and the community more broadly.

Airport development will always be a contentious community issue.

It is clearly in the national interest that infrastructure such as airports are subject to proper planning processes.

But this is where the problem arises – and it arises in particular with regard to the non-aviation development on airports.

Since the privatisation of Australia's airports there has been rapid growth in this non-aviation development.

We have seen vast shopping complexes built on airport land. We have seen commercial parking and office developments.
The Sydney airport development proposal contained a substantial cinema complex.

There's even been a recent suggestion by the Brisbane Airport Corporation that their airport be opened up to include online keno, pub-TAB and poker machines. No doubt casinos on airport land will not be far away.

As it stands airport development does not have to meet city or state planning laws – laws which apply to any other development.

It is up to the federal Minister to make the final call on any proposed development.

But this retail and commercial development has enormous implications for off-airport infrastructure such as roads, public transport, electricity and water networks.

It is local and state governments that bear the costs of providing this necessary infrastructure.

There are also consequences for local shops and businesses which may suffer economically because of these developments.

And of course airport noise and breaking of curfews continues to be a problem for local residents. As does the increased traffic congestion that can result from these developments.

Many complaints have been raised about the failure of the federal Minister to consider surrounding land uses and plans when decisions are made about commercial developments at airports.

Local communities in Perth and Adelaide have been unhappy with decisions that have been made, as have the relevant state and local governments.

People understand that airports are important in allowing us to travel around Australia and in and out of Australia – whether it is for work or leisure.

They understand that we need airports to move freight around and that airports provide jobs.

No-one is arguing that we should get rid of airports but they want confidence in the development process.

They want to know that the concerns of the local community are being taken into account and that any development will not have an adverse effect on the broader community.

We need to keep in mind the primary purpose of these pieces of Commonwealth land.

This land is supposed to be predominantly there for aviation purposes – not for commercial enterprises around shopping.

It is interesting to note that in the last year Sydney airport got half of its revenue from retail and shopping and property development.

More than it got from airlines and passengers as passengers.

It is promising that the Federal minister has rejected the enormously out-of-scale proposals that were recently put forward by the Sydney Airport Corporation.

A proposal that generated an enormous level of opposition at all levels.

Of course Sydney airport will not stop submitting future plans that may impact negatively on the community and I have to wonder what decision might be made on those plans in a non-election year.

Airports are part of communities and as such any development—whether aeronautical or non-aviation related—must be evaluated within that context—balancing the needs of the community with the benefits of expansion.

Unfortunately it is the case that Minister has not always been mindful of community concerns or the concerns of state and local governments.

And this legislation does nothing to change the situation.

Airport land is still exempt from local and state planning controls and there is nothing in the legislation to ensure that airport operators contribute to the financing of the infrastructure required to support these developments.

At a minimum the Bill should make it a requirement that in any development the airport lessee has considered the impacts on off-airport infrastructure and negotiated in good faith with state and local governments to contribute to any changes required.

Some airport management does do this. Brisbane Airport has contributed large sums of money to support infrastructure development around the Brisbane Airport.
But as it stands there is no real requirement for them to do so.

It is not enough that the Government is simply requiring in its amendments that the airport lessee let the relevant state and territory and local government authorities know they are submitting a draft master plan before they do so.

For a start there’s nothing to say how long before they submit they have to let people know – just the day before?

And I can’t see how this meets the Senate Inquiry recommendation to amend the bill to require that the airport lessee companies advise state/territory and local government organisations at the commencement of the public consultation process.

I would also like to comment specifically on the Government’s original proposal to slash the time for community consultation and public comment – the time in which people would have to respond to amendments to airport master plans, major and minor development plans and environment strategies found in parts 5 and 6 of the Airports Act.

Originally the Government intended to slash the consultation period currently required from 90 calendar days to 45 working days.

People were rightly outraged by this.

The Minister for Transport and Regional Services conceded that this reduction was a mistake and the Government has now settled on 60 working days.

It is still a reduction but a much less severe one.

If we are serious about involving the community there must be sufficient time for the public to be consulted and to provide feedback on these development proposals.

We should not be reducing the timelines for this to occur, particularly given the complexity of airport planning documents.

Unfortunately the Government has not seen fit to undo all of the reductions in the public consultation times.

There is still a reduction in the consultation period for minor variations to plans and environment strategies. The consultation for this has been reduced from 30 calendar days to 15 business days. Some might argue that this is not a big change but for public groups trying to have their say this can make a big difference.

It is disappointing that we have not seen the Government re-consider this decision.

It is also disappointing that the bill is doubling the threshold for developments not requiring ministerial approval from $10 million to $20 million.

Any airport development below $20 million will not need to be accompanied by a major development plan.

The Government has argued that this is to reflect increases in building costs.

The value of construction costs is one of the major considerations for whether a major development plan actually needs to be submitted. So this amendment has the effect of increasing the amount of development that can occur without the need for a major development plan.

It is clear that this severely limits the opportunity for the plans to be exhibited publicly and for the public to comment.

Essentially we are now looking at a situation where we are no longer talking simply about airports but about zones that involve airports, retail and commercial developments. We need to be developing legislation that reflects that reality.

Senator MILNE (Tasmania) (9.37 pm)—I rise to make a few comments on the Airports Amendment Bill 2006. My focus was drawn to this legislation because of the proposed megastore development at Hobart airport, which I have followed with considerable interest because it highlights my concerns about non-aviation developments on airport land. It is very difficult for people who are unfamiliar with Hobart airport to understand what has gone on there. It is worth putting on the record that the proposed development includes 77,000 square metres of new shops and is 50 per cent bigger than the development that was proposed for Sydney airport—all of this in a city with fewer than 250,000 people. That defies logic and it is going to mean that existing shops are forced out of business.
I want to repeat that. We are talking about a retail development for Hobart airport that is 50 per cent bigger than the development that was proposed for Sydney airport. Naturally, people in the city are very concerned, because it is estimated that a quarter of all shopping activity will be sucked from the Hobart city centre if this new $100 million retail development goes ahead. Several objections have been raised by local government—in particular, Clarence Council and Hobart City Council—such that a study was conducted by the Property Council of Australia to look at this issue. It concluded that the massive direct factory outlet, bulky goods store and homemaker centre proposed for Commonwealth land was too large for the city of Hobart. The economic survey was conducted by Gary Pratley, the national planning director of Sydney based consultancy MacroPlan Australia. His report concluded that the adverse economic impacts of the development would be significant. Many shops in the city centre and its suburbs would be forced to close, and trade in Glenorchy, Kingston, Sorell and other regional centres would be decimated.

The proposal to commercialise empty paddocks near Hobart airport which are not subject to the normal state and council planning laws was backed by Hobart International Airport Pty Ltd, which is 100 per cent owned by the state government. That was the first major deception. When this proposal was put forward, the people of Hobart had no idea that the land was 100 per cent owned by the state government and that the government was in fact acting for, and with, the developers in relation to this. At the same time, the state government was repeatedly refusing to release the full economic assessment that it received. Eventually it was forced to release, under pressure from the parliament, a short summary, but to this day we still do not have the full economic and social assessment of this development. That is what concerns me about what is going on with this legislation.

Today it has been revealed in one of the national dailies that the Labor premiers have written to the Prime Minister demanding that the federal government hand powers to the states for planning retail malls and other non-aviation developments at airports. The Labor leaders have reportedly told the Prime Minister they are worried about plans being approved under the Airports Act, which lets the federal government rule on proposed developments at 22 privatised airports. The states want the laws revised so that controversial non-aviation proposals on airport land are controlled by state planning laws and policies. It is reported—and I would like the minister to indicate whether this is the case—that the state premiers have written to the Prime Minister saying that the current approval regime for proposed non-aviation related development does not adequately take into account whether a proposed development is consistent with land uses in surrounding areas or the potential impact of a proposed development on existing metropolitan centres, public transport and other state provided infrastructure servicing the airport. That letter goes on to talk about the various activities that are currently being proposed as the nation’s biggest airports take on big expansions ranging from the direct factory outlet proposed for Hobart to golf courses and even brickworks. The premiers fear that non-aviation developments will undermine airfreight and passenger traffic in the longer term, arguing that dedicating core aviation land for non-aviation uses exposes states and territories to risks of lost aviation related economic growth, including tourism, employment and regional access. It is reported that that letter to the Prime Minister was written by the Premier of South Australia, Mike Rann, who currently chairs the
Council for the Australian Federation, representing the premiers and chief ministers.

In Canberra, airport operators have attempted legal action to prevent a competing discount factory outlet centre from being set up. The ACT government argues that this legal manoeuvring could discourage investment in the territory, but they have no power to stop it. The New South Wales government has argued that airport operators have a history of allocating as little land as they can to aviation activity while expanding the amount of land dedicated to lucrative non-aviation developments such as shops. The government has warned that this means there may not be enough airport land available for future aviation related expansions.

What I am concerned about, in talking about this legislation tonight, is Hobart’s proposed megastore, and I note that Senator O’Brien, in his contribution, did not talk at all about the Hobart megastore development. I suppose that is not surprising as I have discovered that in fact the state government is the proponent of this development, so the other developments around the country have caught his attention but not the one in Hobart. The issue surrounding the one in Hobart is that we have members of the state parliament, including members of the government, going out and saying to the people of Tasmania, ‘This is terrible as it breaches local planning laws and the Commonwealth is imposing its will on Tasmania,’ but then we find the state government itself in there being the proponent of this development, quite happy in fact to evade the state’s planning laws when it comes to a development of this kind. That highlights the big problem here.

From my point of view, having looked at this, the proposed development for Hobart is completely unsustainable. We do not have a population base that can sustain a city CBD, several of the existing shopping centres around the city plus this major development. I do not know how anyone could justify building such a megadevelopment. Then you have the issue of who is going to pay for upgrading the roads and for all of the infrastructure that will have to be there to support this development and the issue that businesses in the development will not have to pay the council rates that other businesses in competing shopping malls in other city areas have to pay. You have a situation where, because they will be evading the state’s planning regulations and the rates that other businesses have to pay, Tasmanian businesses are going to be disadvantaged vis-a-vis the businesses that set up in this proposed megadevelopment, this megastore precedent.

Clarence City Council is saying it has already approved a homemaker centre across the road from the airport proposal, but now an adjacent landowner, the Commonwealth, can arbitrarily and without reference to any planning authority do whatever it likes. You have the situation of unfair competition being set up between local Tasmanian owned businesses, who are paying their rates and living with restrictions under local planning schemes, and these developers coming in under the megastore proposal, who will be evading state planning laws and state taxes in order to get a competitive advantage against the locals. What we are going to see in the case of the Hobart Direct Factory Outlets—or, as it is known, the big box development—is a serious crunch for the viability of businesses in and around Hobart.

One of the things that we have argued for throughout consideration of this development is that the economic and social impact study that was conducted by Essential Economics, at the behest of the developer, be released publicly. Why shouldn’t the community see the social and economic impact statement before making its submissions to
the federal government to consider? But at no stage was that social and economic impact statement released. One can only assume that the reason it was not released is it confirms what I am saying: that the size of the development is unsustainable given the Tasmanian population base. It is disgusting that this is going before the federal minister for decision when the community is still being denied the social and economic impact statement that would have informed many of the submissions. Take Hobart City Council and Clarence City Council: neither, even though they oppose the development, has seen the statement of this particular study conducted on behalf of the developer.

Then you have the planning system for these developments whereby submissions from the public are sent to the developer and then the developer summarises those and provides the federal minister with a summary of the objections. You can hardly expect that summary to be a true and adequate reflection of the submissions, especially if they are adverse to the developer’s interests. That is why there was the proposal of the Senate committee that all of the submissions be forwarded and made public so that at least the full range of submissions could be known to the minister, not just a summary of them from the proponent. That is a very significant matter. That is why I will be moving an amendment to this bill that will say:

... It is the intention of the Parliament that State, Territory and local laws or by-laws relating to planning, development and the assessment and payment of rates are to apply to any major airport development of a kind specified in paragraph 89—

et cetera—

unless a development of a kind specified ... is for an aviation purpose.

I am trying to make sure that these developments come under state and local government planning laws and that the rates that are required of local developments apply to these developments, otherwise you are setting up unfair competition; you are giving to these megastores a significant advantage by their being able to set up on Commonwealth land such that they avoid local and state planning schemes. That is what the premiers and chief ministers have reportedly asked of the Commonwealth in their letter to the Prime Minister today—and I will be interested to hear what the minister has to say about that letter because I have seen reports of it but have not seen a copy of it.

I ask the minister to comment on this to the parliament, letting us know where the Hobart megastore development is up to in the current planning process. I ask the minister to indicate why the social and economic impact statement as to the megastore development proposed for Hobart has not been made public and whether the minister thinks that is fair. So I would appreciate an update from the minister on where the megastore development is in the current planning process and when we can expect the minister to make a decision on that particular project. Also, I would like to hear from the minister the government’s response to the letter from the state and territory governments today.

Surely he would appreciate that the concerns they have are valid in terms of losing planning control over the aviation land, which, of course, was only ceded to the Commonwealth for aviation purposes. Now that has changed to non-aviation services, which changes the whole nature of it. I am sure that if the states had been aware that it was going to be used for non-aviation purposes when it was first ceded different arrangements would have been entered into, particularly in relation to rates, because rates and charges need to be applied to provide water and transport infrastructure and other services to those areas. It is only appropriate that the costs of providing those services are
adequately and fairly shared between all developments and that a discriminatory regime is not set up which favours these large developments simply because there is a loophole in legislation resulting in a change in the use of land around airport sites.

Senator SIEWERT (Western Australia) (9.53 pm)—The Airports Amendment Bill 2006 is essentially about maintaining the status quo as far as some of our most important airports are concerned. Airports are amongst the most important assets in our cities and regional centres. The people who planned them recognised that, as they are a strategic and hazardous land use, they need to be surrounded by broad buffer zones to protect people in adjacent areas. However, a side effect of these large buffer areas is that in many cases airports have become de facto nature reserves. This is particularly because large areas of our capital cities have been cleared of their native vegetation and these areas have not been. I am going to talk particularly about the impacts this proposal may have on Perth Airport.

Perth Airport bushland is a very important area of bushland. It is highly biodiverse and one of the largest areas of uncleared bushland left in the metropolitan area, particularly in the part of the city in which it is located. A large part of it has been listed under the WA Bush Forever plan. That looks at all the different areas of native vegetation left in Perth and lists the most important so that they are protected. Unfortunately, the state government is not a long way through that list in terms of protecting it; however, it is slowly working its way through to protect those areas of bushland.

It holds all the remains of the once vast Five Mile Swamp, one of the last habitats for the much endangered Western Swamp Tortoise. While fragmented, it also holds some valuable Indigenous heritage sites. This area is an extremely important bit of bushland that is slowly being whittled away. As I said, it is one of the largest tracts of fairly intact remnant vegetation on the Swan coastal plain. Around 85 per cent of our coastal wetlands have been lost, hence the importance also of the Five Mile Swamp.

Because urban growth has accelerated in recent years, there are now unprecedented demands to develop these buffer zones around airports, leading to a proliferation of proposals for incompatible land uses. In Hobart and Sydney it is large-scale retail development, and in Perth there are a number of proposals to develop the Perth Airport. The objective of the Westralia Airports Corporation, according to the plan, is ‘the development of industrial non-aeronautical land uses on a large land parcel identified as part of precinct 3A’. So there are a number of proposals planned for this area that are of the industrial, non-aeronautical variety.

Stage 1 of this development is a 20-hectare brickworks, one of the largest in the state. There are probably more projects coming down the line that we do not know about yet. If past developments are any indication, there will be a number of them, probably including some sort of retail development as well. The whole concept of an airport buffer zone is being eaten away by incremental developments of this kind. Privatising the airports over time has accelerated the trend. We have created a situation where private airport operators are holding long-term leases over large tracts of valuable Commonwealth land— in many cases, very valuable native bushland. The government is enabling and encouraging further commercial development of this land.

All of this is happening outside state government planning and environmental and heritage approval processes. This government has developed an ad hoc process for
signing off on these developments, and the bill we are debating is part of this strategy. There are a number of clauses in this bill which make it easier for this kind of ad hoc development to proceed more rapidly. After the furore which greeted the government approval of the brickworks in 2006, it is telling that this bill narrows the amount of time for public submissions from approximately 13 weeks to 9 weeks. The justification for this is beautifully captured in the second reading speech of 30 November 2006 by the Parliamentary Secretary to the Minister for Transport and Regional Services:

The changes to the public consultation periods are consistent with the government’s commitment to reduce regulatory burdens on business, mirror the streamlining processes embraced by other jurisdictions and recognise the maturing of both the airports in preparing these documents and the public in assessing them.

I am sure the community at large really appreciate that their maturity is being used to shorten and curtail public consultation processes. We have shortened public consultation processes because the public now has a mature attitude toward assessing these projects. There are a large number of people in the eastern suburbs of Perth who have been campaigning against the brickworks, trying to have it located in a properly regulated industrial zone. I am sure they will be very heartened and surprised to hear that their maturity is being given as a justification for making it harder to properly scrutinise projects of this type.

Item 72 doubles the threshold for what will be subject to a major development plan to $20 million. Raising the bar in this way means a $15 million project which would have been subject to an admittedly minimal obligation to prepare a major development plan will now be exempt from doing so. Item 77 provides that if a proposed development could potentially impact on a flight path there should be some detail of what the impacts would be. Surely any development that has an impact on a flight path should be disqualified by definition. Are these airports or not? Some development may impact on a flight path, so you had better list what that impact might be.

The bill does not make the kinds of major changes to the Airports Act which would be necessary if the Commonwealth were serious about taking over control of such large and strategically important parcels of land. Instead it appears to smooth the way for ever larger numbers of poorly integrated and incompatible projects shoehorned into buffer zones which were never intended for this use or to be developed in this manner.

Last August I submitted a fairly detailed list of questions on notice about the brickworks to the Minister for Transport and Regional Services.

Debate interrupted.

ADJOURNMENT

The ACTING DEPUTY PRESIDENT (Senator Sandy Macdonald)—Order! It being 10.00 pm, I propose the question:

That the Senate do now adjourn.

Workplace Relations

Senator McGAURAN (Victoria) (10.00 pm)—Tonight I would like to acknowledge the introduction of the government’s Work Choices legislation 12 months ago. We know that this week it has been a source of debate in this chamber and we know that the premiers, after last week’s New South Wales state election and the previous Victorian election, late last year, are ritualistically getting up there to say that it was Work Choices, the government’s industrial relations legislation, that led to their glorious victories. We know Labor is going to make this a centrepiece of the forthcoming federal election. When we first introduced this legislation 12
months ago the opposition declared that basically the sky would fall in. Just listen to some of the comments that were made when we first introduced this legislation. Sharan Barrows, the ACTU President—

Senator McLucas—Sharan Burrow.

Senator McGauran—Burrow. She is one of the most insignificant presidents of the ACTU. Bob Hawke, of course, was the most high-profile, but the current one is one of the most insignificant ones. Is it any wonder when she makes comments like, ‘Parents will not be home for Christmas because of the Work Choices legislation’? There were others foolishly making comments such as, ‘Children will be going to school without shoes.’ We had members on the other side—the former leader—saying that it would be a green light for mass dismissals. There were even more foolish comments by Bill Shorten and other union leaders. We also know that the unions have levied their members to the tune of $30 million—a war chest for the forthcoming federal election—to run dishonest ads. I say ‘dishonest ads’ because we have already seen the types of ads placed on television last year and running in the early part of this year. So bad and so dishonest were some of those advertisements that they were pulled off the television.

Having laid that foundation, I stand up here to acknowledge the 12 months of Work Choices legislation—perhaps one of the government’s boldest reforms. This government has never stepped back from introducing reforms. We started reforming in our first term, and the Work Choices legislation was 10 years into this government. So from the first day we came into government through to our 10th year we have not stop reforming. Let us look at some of those reforms. Within our first term we introduced an independent Reserve Bank. Why did we do that? Because the former Prime Minister boasted how he had the Reserve Bank in his pocket, compromising their very work. We introduced an independent Reserve Bank. You did not like that. You voted and stood against it.

We introduced a Charter of Budget Honesty in our first term. Why did we do that? Because you went to the last election lying about the budget situation. When we came in we found a $10 billion deficit. That is why we introduced that. In our first term we introduced very courageous and tough cuts to the budget. Why? To lay the foundations for producing budget surpluses. You voted against that. We also in our first term and throughout our whole 11 years have put in place a debt reduction strategy. You were against that.

The Acting Deputy President (Senator Sandy Macdonald)—Order! You have to direct your comments through the chair, Senator McGauran.

Senator McGauran—Let me go through just a few more reforms. In our first and second terms and right through to now there has been the sale of Telstra. It took us three tranches to get rid of Telstra. On each occasion you did not support it. Of course there was tax reform in our first term—the bold introduction of the GST. Try and take the GST away from the economy now. You were against that. What is more, you were against personal income tax cuts.

I mention all this in the light of the fact that this government has been a reforming government. We have introduced bold reform and we have stuck by it. There has not been one occasion that the other side have supported us. Mr Acting Deputy President, you would be quite surprised if I were to tell you that, while on each occasion they opposed each of those reforms that I mentioned—the independence of the Reserve Bank, the Charter of Budget Honesty, budget surpluses, tax reform, the cleaning up of the
waterfront, debt reduction, and the sale of Telstra, no less—the opposition now support every single one. They are going to the next election—wisely, I should add; common sense has finally come to them—supporting every single one of those reforms.

But there is one reform they will not change on, I bet, and that is the government’s Work Choices legislation. When we introduced it they said it would be a disaster for the workers and a disaster for the economy. The verdict is in and we have the result. I rise tonight to acknowledge that after 12 months—a fair time to see whether the Work Choices would meet all expectations of the government or for that matter of the opposition—the verdict is in.

Senator Carol Brown—Tell us what it is.

Senator McGauran—You have heard it throughout the course of the day. I can tell you there is a long line of speakers from the government side to match your speakers—who are no doubt going to give a different story full of con and delusion—because the facts are here. The facts are that within the 12 months of Work Choices there have been 263,700 jobs created, and wages have increased. It is not just the creation of jobs; wages have increased because they are linked to productivity. That is the whole purpose of the introduction of these industrial relations laws. They have been introduced so as to make the economy stronger and to keep it productive and competitive internationally.

What is more, not only have wages and employment increased, but the number of industrial disputes has now reached an all-time low—the lowest since Federation. We no longer have these national strikes where the waterfront goes out and the transport union goes out in sympathy. When was the last time we had a national strike in this country? We have reached a point where industrial disputes are at their lowest ever.

What is the alternative? The alternative is a return to the old centralised system. What will we get? Small business will get a return of the Labor unfair dismissal laws. Nothing sends a shiver up the spine of small business more than the return of Labor’s idea of what unfair dismissal is. What is more, and what has not been said, is that section 45D of the Trade Practices Act will be abolished—the secondary boycott rules. Nothing has prevented national strikes in this country more than the government’s toughening of the secondary boycott rules. Under Labor we will get a return to that. Under Labor we will also get the abolition of AWAs. Over one million people on AWAs will have them abolished. That is a certainty. We know that goes to the heart of the mining industry. The Western Australian boom will come to a grinding halt in no time flat.

You can bet a few other things. You can bet that the building and construction legislation—a product of the Cole royal commission report that was tabled in this parliament—will also be abolished. What is more, you will see independent contractors got at. That will also be on your hit list. You will have the return of the unfair dismissal laws, the abolition of AWAs, the attack on independent contractors, the abolition of section 45D of the Trade Practices Act, a return of the building industry union’s power, regardless of what the Cole royal commission has laid down—(Time expired)

Defence Equipment

Senator Faulkner (New South Wales) (10.10 pm)—I rise to speak tonight on the continuing failure of this government to effectively support the equipment on which the men and women of the ADF rely. The government’s record on major acquisitions is poor—there is no better immediate example than the Seasprite. The government has a similarly poor record on major upgrade
projects, including Navy’s frigate upgrade. Money wasted on these projects potentially reduces funds available for support. It is not good enough to have such massive investments and not get the best use of them because of inadequate support arrangements. Inadequate support, through funding shortfalls or poor systems and processes affects serviceability and availability and can adversely impact on both training and mission success.

The real problem is that the ADF’s capability may suffer. That is why it is so important that government gets on top of these major purchases. The Defence Materiel Organisation delivers support services for platforms and weapons systems through 46 systems program offices, or SPOs. These SPOs become involved during the acquisition period, maintain a role in subsequent upgrade projects and conduct the routine maintenance and minor additional works intended to keep the equipment ready to do the job. To be effective the DMO needs the right mix of funds, personnel with skills and experience, as well as effective systems and processes.

How effective are the SPOs? It is a tough question to answer. The government does not keep the taxpayer up to date on major project acquisition and the government is unwilling to say how many of these platforms might be sitting in workshops or are otherwise unavailable. We depend on what limited information we can find in the occasional performance audit by the Auditor-General and the annual reports of the DMO and of Defence.

However, recent audit reports do reveal a concern. Take for example the 2005 report by the Auditor-General Management of Selected Defence System Program Offices. The report states:

In 2003, DMO’s Maintenance Advisory Service audited the Army’s 1st Division logistic support and found that only four per cent of the vehicles sampled by the audit were considered fully functional, and only 22 per cent of all equipment sampled was regarded as fully functional.

I acknowledge that this situation may well have improved, so let me quote again from the same report:

The audit found that TFSPO’s F/A-18 Hornet and Hawk 127 logistics support arrangements are based on well-developed logistics support policy, plans and key performance indicators. Also, indications are that TFSPO is adequately maintaining the technical integrity of the Hornet and Hawk fleets. Hornet and Hawk fleet operations data indicate TFSPO is managing effectively its in-service support role.

Why highlight an apparently successful operation, the TFSPO? Because I want to emphasise that the DMO knows how to run a good SPO. It is reasonable to expect that most of the SPOs will fall somewhere on the continuum between the two cases that I have just highlighted. The question is: why has the government allowed so many SPOs to continue to underperform?

Efficiency in utilisation of capital equipment does not come about by accident. I suggest it is a function of two elements: buying right in the first place and having the systems and processes of the whole enterprise supporting the capability that asset provides.

In my response to the tabling of the ANAO report on the remediation of the standard defence supply system, the SDSS, I commented that the government had a clear choice: to build in hope on the current outdated platform or to adopt a contemporary integrated approach. Decisions about the future of these systems—for example, in project JP2077 and the myriad other minor, logistic information systems—are not just about the money to be spent on those programs; these decisions need to take account
of the value of investments that are under-utilised.

Let me be clear, Commonwealth agencies are required to select providers of goods and services primarily on the basis of value for money. What is needed is a government committed to realising value for money, not just using it as a selection tool. That means buying well and supporting well to give our forces the capability edge they deserve by making every dollar count. In September 2003, former Minister for Defence Robert Hill, with regard to reducing project failures, said:

What you do is you try to put in place a structure and a process and the people that give you the best chance in our instance of achieving projects on time, within price and have the capability that’s been predetermined.

Then Senator Hill, now Mr Hill, regrettably followed these remarks by asserting, falsely as events turned out, that:

... the evidence is we’re already doing a lot better in that regard. And I think with these—

DMO—

reforms we’ll do even better ... So I can be even more than reasonably confident I think it’ll lead to even yet further improvements.

How quaint and clever that the former minister’s statements contain so many qualifiers.

The government’s own Kinnaird report recognised that defence capability is the combination of people, organisation, equipment, systems and facilities to achieve a desired operational effect, and it acknowledged ‘the importance of considering the entire process’. The government embraced the Kinnaird report, but that is nowhere near enough. It is time for the government to lift its game on both acquisitions and support.

Workplace Relations

Senator HUMPHRIES (Australian Capital Territory) (10.18 pm)—I rise to speak tonight on the first anniversary of the Work Choices legislation and to comment partly on the legislation itself and partly on what we have observed since it was introduced and before it was introduced. We have seen a massive and unprecedented campaign of fear on the part of those who seem to be threatened by the substantial economic reform which Work Choices represents. Looking at the campaign of fear launched against this piece of legislation, which the coalition government has taken to four successive elections as the centrepiece of its promises to the Australian community on reform of the workplace and the economy, we have seen a series of moves reminiscent of the smear and fear campaign launched a number of years ago against the GST. There are a number of similarities between the two campaigns. As it was with the GST campaign, Labor pinned its hopes on this campaign to defeat the legislation.

The problems predicted by Labor over the GST of course never eventuated. The term ‘roll-back’ these days is usually confined to supermarkets. The reality of what actually happened with the GST blew Labor’s scare campaign out of the water. I remember the day when the GST finally occurred in 2000. People were expecting a thunderbolt in their shops and supermarkets, and they came away saying, ‘That wasn’t as bad as we were led to believe.’ I think that the same thing is happening today with respect to Work Choices. Not every citizen of Australia gets to experience firsthand the changes in the industrial landscape: people not in the workforce, people whose employment has not changed, people who have not had any change in their industrial circumstances or work conditions—none of these people are actually directly affected by these changes.

The fact is that when you scratch below the surface—or when you dig deep below the surface—you have to go a long way before you find people who have been adversely
affected by these changes. We are told relentlessly in Labor's smear campaign—in their ads and the ads of their fellow travellers, the trade union movement—that there are whole cohorts of Australian citizens who have been badly affected by these changes. Where are they?

Let us go back to the start of the anti WorkChoices campaign. There were ads running in newspapers and on television—ads featuring citizens who had been chewed up and spat out by this vile new system of industrial relations which took people's rights away. The Office of Workplace Services, as part of its charter, conducted investigations into those cases. It found that the cases were for the most part exaggerated. It found that those people had in fact been dismissed for other reasons in some cases. It found that there was no substance to the claims that had been made in most cases.

So the ACTU moved on to a different sort of ad campaign, one that did not make the mistake of featuring real cases and real people; it featured actors. In the cases that we have seen on television recently, the people who are supposedly being abused by the system are in fact actors. That very expressive woman, holding the child, whose face appeared in the ads in the New South Wales election campaign, if I am not mistaken, is an actor. The fact of the matter is that it is very hard for Labor and the trade union movement to find real people prepared to say, 'I have lost something by virtue of these changes in the industrial landscape.'

The hard evidence of what has occurred in the Australian community is basically positive. We have seen a growth in employment. In my territory, unemployment over the last 12 months has fallen from 3.1 per cent to 2.8 per cent; 2.8 per cent of people seeking work are unable to find work. At the same time there has been an increase of five per cent in the number of residents who are actually involved in the workforce, to 189,500. Most of those jobs that have been created are full time. Twelve thousand people in the ACT have signed AWAs since Work Choices was introduced, and it is no coincidence that that flexibility in the ACT workplace has been accompanied by a decrease in unemployment and an increase in participation in the workforce.

The raw evidence is very strong: a rise in real wages by 1.5 per cent, falling unemployment, rising job opportunities and falling industrial disputation since Work Choices was introduced. Doesn't that suggest that there is something wrong with a campaign that focuses only on what has gone wrong? Something has gone right over the last 12 months with these changes. Something has created opportunities for 263,000 Australians who have a reason to get up in the morning—to go to work—a reason they did not have 12 months ago. The fact is that the macro picture is very good, but I accept that there are others who will focus on the micro picture, on individual cases, and try to find fault.

I mentioned the ad campaign that has shifted from real cases to cases presented by actors. A few months ago we had unions portraying the redundancy dispute at Tristar in Sydney as being caused by Work Choices. It was looked at more closely and it was discovered that the law that was applied by Tristar to take the steps that it took in the cases against those workers was a law which predated not only Work Choices but also the Howard government. It was a law that was decades old which presumably operated during the life of the previous Labor government.

In the ACT’s case, there were examples found last year of workers in the hospitality
industry who were being underpaid. Senator Lundy came out and said this was due to Work Choices. Those cases were examined by the Office of Workplace Services and it was discovered that, first of all, there was a fairly widespread problem with underpayment in the hospitality industry in the ACT and, second, that those patterns of underpayment long preceded the beginning of Work Choices. In fact, they go back quite a few years. It is regrettable, but it clearly does not relate to Work Choices. Senator Lundy then made the claim that these were examples of people abusing the 457 visa system to bring in migrant workers and underpay them. It is true that some such cases have been discovered, and prosecutions have been launched in at least one or two of these cases. But, again, the number of people being underpaid greatly extends beyond those who are migrant workers under 457 visas. Again claims about Work Choices were not borne out.

We know that it is a strong economy that underpins jobs growth and increased investment in social services. Economic reform is not only compatible with social justice; it is essential for social justice. It is essential to create opportunities. We believe that the best form of assistance we can give to people who are in economic difficulty is to provide them, first of all, with jobs and, secondly, with jobs where real wages are growing—that is, where their capacity to buy things as a result of having those jobs exceeds the rate at which the general cost of living rises. That is what we have delivered. We have delivered it very particularly with Work Choices.

If the unions have a case to make against Work Choices, let them bring it forward. Let them give us chapter and verse on who has been hurt by this process. The fact that some individuals no longer have certain conditions, such as holidays, in their employment contracts is beside the point. Some people do not want those conditions in their agreements. Some people want flexibility in their arrangements. They do not want a template that is applied irrespective of their personal position or the nature and circumstances of their workplace. They want the ability to say, ‘This is what suits me,’ and work towards that. That has been the case particularly, I might say, in the ACT, where workers have a high degree of sophistication and have been able to engineer very good outcomes in their contracts. This of course is a marketplace that understands that. But, if there are other marketplaces where people have been disadvantaged, again, let those cases be brought forward. The fact is that we have seen a revolution—{(Time expired)}

Diabetes

Senator STEPHENS (New South Wales—Parliamentary Secretary to the Leader of the Opposition) (10.28 pm)—I rise tonight to speak about a very important issue—certainly not a scare campaign but an epidemic nevertheless—and that is diabetes in this country, and the importance of providing support and resources for research and awareness-raising activities for this chronic and debilitating disease. Two hundred and seventy-five Australians develop diabetes every day. It is Australia’s fastest growing chronic disease. Diabetes, as we all know, is the name given to a group of incurable conditions in which there is too much glucose in the blood. In fact, this disease is the sixth leading cause of death in Australia, so it is critical that we as a nation continue to take action to deal with it.

About 1.5 million Australians are living with types of diabetes and are still unaware of their condition. In fact, each year Diabetes Australia invests over $3.5 million in research into the disease. Type 1 diabetes—formerly known as juvenile diabetes—is an autoimmune disease that occurs when the
pancreas cannot produce enough insulin because the cells that make insulin have been destroyed by the body’s own immune system. The missing insulin has to be replaced, resulting in lifelong daily insulin injections. Type 2 diabetes—formerly known as mature age onset diabetes—is the most common form of diabetes. More than 85 per cent of persons with diabetes in Australia have type 2 diabetes. With type 2 diabetes, the pancreas makes the insulin but the insulin does not work as well as it should, so the body makes more and eventually it cannot make enough to keep the glucose balance right.

In 2003, the average annual per person cost of type 2 diabetes in Australia was $5,360. With an astonishing overall Australian diabetes prevalence in our population of 7.4 per cent, the total annual cost for people aged over 40 with type 2 diabetes is estimated at $2.2 billion. If the cost of carers were included, this figure rises to $3.1 billion annually. Also, people with type 2 diabetes receive an average of $5,540 a year in Commonwealth benefits, increasing the total annual cost of diabetes to about $6 billion a year. These costs are not inclusive of any loss of productivity, from either days lost through illness or premature death.

A recent US study estimated that the indirect costs of lost productivity accounted for 30 per cent of diabetes costs, and when this formula is applied to Australian data it suggests that the total cost of diabetes is $7 billion each year. Australians with type 2 diabetes also have significantly lower workforce participation and productivity rates than the general population. The annual cost of lost earnings due to workplace separation and early retirement due to type 2 diabetes was estimated at $3.96 billion in 2005. Increased workplace absenteeism as a result of type 2 diabetes was estimated to cost $53.1 million in 2005.

Many of us were fortunate enough to meet children from the Kids in the House delegations. They brought to us personal accounts of their experiences in living with type 1 diabetes at home and at school. They highlighted the devastating life-altering impact of this disease and explained in their own words why a cure is so desperately needed.

Research is demonstrating that complications are the major drivers of all costs in diabetes care. For those who have been diagnosed with diabetes, strategies that minimise the development or progression of complications will also reduce the burden of diabetes on the health system and the economy. The health and financial burden of chronic diseases such as diabetes has the potential to create unsustainable pressure on our health system and the national economy. Investment in awareness raising and interventions that successfully prevent or delay the onset of type 2 diabetes will of course be cost-effective in the long run.

A reduction in the prevalence of type 2 diabetes will result in cost savings in the health budget, increased participation and productivity in the workforce and, most importantly, better health and quality of life for Australians. Through the national reform agenda’s desire to build the nation’s human capital, there is a focus on reducing the prevalence of key risk factors contributing to chronic disease, ultimately working towards a reduction in the proportion of the working age population not participating in the paid workforce.

In 2006, the Council of Australian Governments committed to the national reform agenda, the cornerstone of which is the relationship between the health of the community, workforce participation and the nation’s future productivity and living standards. The size, urgency and complexity of the type 2 diabetes epidemic in Australia was recog-
nised in 2006 when type 2 diabetes was identified as a foundation area with the potential to provide critical local, state and national platforms upon which broader chronic disease strategies can be built. This debilitating disease was chosen because of the magnitude of the epidemic of type 2 diabetes, estimated at an astounding 3.3 million Australians by the year 2031.

The key risk factors which contribute to type 2 diabetes and are able to be modified include obesity, poor diet and lack of physical activity. These modifiable risk factors also underpin a number of other chronic diseases, including heart disease, stroke, bowel cancer, depression and asthma. National action on type 2 diabetes has the potential to make a significant contribution to reducing the burden of chronic disease.

Diabetes Australia research tells us that the escalating health and financial costs of the type 2 diabetes epidemic is serious enough to provide an imperative for policymakers at all levels to focus resources on raising awareness of the disease, prevention methods, identifying those at risk of developing the disease and diagnosing those with previously undiagnosed type 2 diabetes. This can be achieved through improving access to appropriate standards of management and care to prevent or delay the onset of complications for all types of diabetes.

The National Reform Agenda under the Council of Australian Governments provides the ideal vehicle for Australian governments to agree on priorities, strategies and outcomes and then to cooperate and deliver those outcomes across all levels of government. The Council of Australian Governments framework allows policy responses that are tailored to national and local needs, and recognises the federal and state responsibilities for service provision that exist under our federal system. This framework also encourages diversity, innovation, flexibility and responsiveness, and shares the costs of major initiatives.

Therefore, I urge the government to maintain diabetes research as a major priority within the Council of Australian Government’s national reform agenda and, particularly, keep it on the agenda when COAG meets next month so that the resources can be committed to the implementation of population based awareness and prevention strategies for type 1 and type 2 diabetes. I encourage honourable senators to attend the function being organised by Diabetes Australia on Thursday this week to highlight the progress it has been making in its research and development program.

**Workplace Relations**

Senator JOYCE (Queensland) (10.37 pm)—I would like to speak tonight about Work Choices. I think it is important that, when you vote for a piece of legislation, you believe in it. I certainly voted for Work Choices and I certainly believe in it.

I think it is very important that we deal with the issue, so rightly put forward by Senator Humphries, of Labor’s scare campaign. A scare campaign is one of the poorest forms of politics around. I acknowledge that the Labor Party is doing a very good job of its scare campaign—they are doing it completely without fact, but doing a very good job. They are doing a very good job of peddling a rumour, because they are good at peddling rumours.

It is interesting though that, in the blue-collar areas of such places as the Hunter Valley, the vote actually went against them. The real problem that the working men and women of places like the Hunter Valley and Central Queensland have with the Labor Party is that they know it is a fair dinkum threat to the coal industry and that it is going to be a problem into the future.
When I was first knocking around trying to get a job in about 1990, it was very hard, because we had this thing called ‘unemployment’. It was under the great stewardship of that beacon of light, Paul Keating. I can remember that beacon of light, Paul Keating—he just about sent the place broke. And you could not get a job; it was impossible. I noticed that in Queensland at that time the unemployment rate was around 10.9 per cent. Today it is at four per cent. And the only difference between now and then is: no Labor Party. In 1996 unemployment was at 8.7 per cent and today it is at four per cent.

This is really what the problem is: if we get a Labor Party federally we are going to have a situation where they will have absolute power: in every state, every territory and federally—absolute power. Australians do not like absolute power. They have a concern about absolute power. I would have to acknowledge that, at times, here, there has been a lot of traffic into my office because people want a Senate that is a balance, and I think we in the National Party have offered Australians a sense of balance. But people hate absolute power and they know that that is what will be delivered with a Labor Party government.

What this issue is really about is union party cash flow. It is not about workers’ rights or workers’ choices; it is about managing to get the money to fill up the coffers of the union movement so that they can pay for the Labor Party. Well, we are going to welcome you guys to the real market—the market that every other political party has to go to, and that is the market of being relevant.

But I challenge you: if there are issues with Work Choices, you must be able to come into the Senate and clearly identify those issues. But you will not. You will just talk about Work Choices like you are talking about Scottish people or—and I am one—Catholics. It is: ‘Let’s take this issue and just focus on it and make everybody terribly angry about Work Choices’. But they are not really going to know why; they are just going to know that people have said, ‘Be scared of Work Choices.’ It is on every telegraph pole you see: ‘Be scared of Work Choices’. They never say, ‘This is why’, because they cannot prove why there is a problem with Work Choices. They just know that it is the only way they are going to win their argument. That will save the cash flow so that every worker in Australia will get their pay packet and get that absolutely nauseating feeling of seeing PDC to some spurious union—the representative of which they will never ever see, but they will know that the money will filter its way down to Canberra.

And, ultimately, what are we going to have? We have some star recruits turning up for the Labor Party. We have Mr Combet, and Mr Dougie Cameron, and Mr Shorten, and Mr Marles—they are all turning up here. And where do they all come from? They come from the union movement. It is just as if you were to say, ‘The only way you can get anywhere in the National Party is if you are a member of the CWA.’ This is the absolute pinnacle of the lack of relevance. And now they are trying to fool the Australian public. They get a front-page story: ‘The Labor Party is going to take on the left wing.’ This is how they are going to take on the left wing: they are going to give them all a job so they all end up down here!

This is the sort of scare campaign that they ran with the GST and with Telstra, and now they are going to run it with Work Choices. I hope that they stick to it. I hope that they go to the Australian people and say, ‘Our only relevance is that we make you feel scared about something that has brought the lowest level of unemployment in our nation’s history and one of the highest real growths in
wages’—because that is what Work Choices has actually delivered.

But what the Australian people really should be scared of, what they really should be concerned about, is the absolute power—the tyrannical, totalitarian regime—that we will have in this nation if we get a Labor Party in government federally. It always irks me to look across the chamber and see that the Labor members always vote in a bloc—they always stick together. It is that union solidarity—one in, all in. ‘Let’s all go!’ They always vote as a bloc. They sometimes even have to vote against their own motions, which is surprising. I have seen that happen here before. That is the sort of totalitarian control that the union movement demands of its people. That is what it will deliver to the Australian people. And there will be no checks and no balances—all states, all territories, all money in this nation will be controlled by Sussex Street in Sydney; it will be running the show. And all the time we see the real power of the Labor Party in this chamber sitting up the back there—Mr Faulkner, keeping his eye on the show, keeping control, making sure everybody is in line. And now the only thing they have to work out is how to keep that cash flow going.

The other thing the Labor Party is trying to espouse is that we have had the same industrial relations package since Barton—that things never change. This is a package for its times. It is a package to deal with the fact that we have virtual full employment and a growing economy. It is a package for its times because it is dealing with the fact that if you have labour for sale then you have a product that everybody wants. The hardest thing to keep in this economy is your labour force. There are so many opportunities out there and ever-increasing wages that people can go to. The biggest fear any business has is losing its labour because there is such an active market out there buying it up.

But the opposition are trying to sell the idea that the reason you should vote for the Labor Party is that the Labor Party believes you are scared. The Labor Party are pitching to fear. They are going to pitch an argument of fear to the Australian people. But there is no substance to it. They cannot find the detail of the policy. They cannot find the exemplars of this major issue. In fact, as we have already heard tonight, to prove their point they find actors—no doubt they are in a union—to act out what they hope the Australian people will understand as the thing they should be scared of: what is outside in the real world. But the Australian people are out in the real world and they are enjoying one of the highest rates of real wage growth, among the lowest rates of unemployment and huge opportunities, especially in the coal industry.

What the Australian people should really fear is absolute power—the absolute power that will come when the Labor Party are in every state and every territory, and when they are in the lower house and up here. That is what they should be scared of: a time when Mr Swan is the Treasurer and Mr Garrett has the power of veto over the coal industry. They should be scared of Mr Anthony Albanese.

Those opposite should be scared when Dougie Cameron turns up here. They will have to give him a job because he is one of their bosses. When Dougie Cameron turns up here, he will have to get a plum job because he runs the show and you have to respect that. When Mr Shorten and Mr Marles and Mr Combet turn up here they will expect to run the show. It is their right. In the meantime, they must be given back their cashflow because they are worried about that. Those PDCs are running out the door. That money that just ran into their coffers is running out the door. And they would hate the idea of having to go to the marketplace to actually
be relevant to the Australian people and to get a reason for the Australian people to put money in their pockets. You go up to Central Queensland and they pay something like $1,000—(Time expired)

**Workplace Relations**

**Senator FORSHAW** (New South Wales) (10.47 pm)—I had intended to be generous of spirit tonight, which I will be in two or three minutes when I get onto what I really wanted to speak about in the adjournment debate. But I cannot let some of the comments of Senator Joyce go without a response. It would probably take longer than 10 minutes to respond to all of the nonsense we have just heard, but I will not delay the Senate tonight. I will make two points.

Firstly, Senator Joyce represents the greatest exponents of the ‘two-job mentality’ that we have ever seen. The Nationals are people who come to this parliament Monday to Friday, get paid by the taxpayers and then go back to their farms on the weekend. They spend most of their time—when they are not out on polling booths pinching how-to-votes—totting up how many subsidies and tax deductions they can claim from the government. So let us not hear any of this nonsense from Senator Joyce about Work Choices.

The second point is a serious point. Senator Joyce talked about people on this side of the Senate being from a union background. I say to Senator Joyce: we are proud of it, because we get to meet and talk to many more workers than you would dream of. Senator Joyce used the phrase ‘tyrannical, dictatorial power’ tonight to describe what might happen under a Labor government. I remind the senator that the groups who historically have stood up to dictatorial and tyrannical power in the world have been the churches and the unions.

Who was it in Poland that led the battle to bring down the Soviet Union? It was the Solidarity trade union movement and the Catholic Church. Senator Joyce proudly claims to be a believer, and I note that. It was not the capitalists and it was not the businesses. Who is standing up to the genocidal dictator in Zimbabwe at the moment? It is Morgan Tsvangirai, the leader of the Zimbabwe trade union movement and also the leader of the political opposition.

So when you are going to attack the trade union movement and attack the Labor Party, understand this: there are many millions of people, not just in this country but around the world, who are decent people, who represent decent values, who are trade unionists and who stand up to dictators. Do not come into this place and traduce the reputation of fine Australians simply because they happen to be union officials who go on to take up political office. Senator Joyce wants to ban union leaders from being political representatives in this country. That is what he is on about. Yet you can stack the frontbench of this government with as many lawyers as you like.

**Senator Joyce**—A point of order, Mr President: I never said that they should be banned.

**Senator McLucas**—That is not a point of order. What is your point of order?

**Senator Joyce**—Misleading the Senate, because I never said that.

**The PRESIDENT**—I think we will have a look at the *Hansard* tomorrow. There is no point of order, really.

**Senator FORSHAW**—Senator Joyce did talk about how we were all going to be lackeys of these union leaders who were coming into this parliament. But that is not what I
wanted to talk about tonight, Mr President. What I wanted to do, as I said, was be generous of spirit.

I want to recognise the contribution of people in this parliament, workers in this parliament, who ensure that we can do our job—that is, the staff of this parliament and particularly the staff of the Senate committees. We all rely upon them. We could not do our job without them. Those of us who serve as members of Senate committees—and I think all of us do except the ministers, who are prevented from doing that because of their ministerial responsibilities—know the contribution that the staff make. I have had the privilege over 13 years now in the Senate to have been an active member of many committees—standing committees, statutory committees and select committees. I know, as I think all senators know, the valuable contribution made by the staff of the secretariats of those committees.

Tonight I want to pay particular tribute to Mr Alistair Sands, the Secretary of the Senate Finance and Public Administration Committee. Tonight is probably the only opportunity for me to do this because the Senate will adjourn on Thursday and not come back till the budget session in May. I understand Alistair finishes his employment with the Senate committee this week to go on to another important position within public administration. I have been privileged to have known Alistair, to have watched him work and seen his contribution over a number of years. I understand that he has been employed in the parliament since 1992, except for a short break in the late 1990s. I know there are many senators who will join with me, some of whom are in the chamber tonight, in paying tribute to him.

I have always found that Alistair was not only a hardworking, true professional and a thorough and courteous gentleman but, to use an old adage, the person who kept his head when all the senators about him were losing theirs. As we all know, there have been many occasions when in the heat of political battle Senate committees, particularly estimates committees, can get quite volatile. Alistair served not only as the Secretary of the Senate Finance and Public Administration References Committee, which I chaired, and now the Senate Finance and Public Administration Committee, chaired until recently by Senator Mason and now by Senator Fifield, but also as the secretary of a number of select committees. One of those was what is known as the ‘children overboard’ committee, a highly contentious committee that certainly needed a cool head in the secretary’s position, given the politics and emotion associated with its inquiry.

I want to take this opportunity tonight to place on the record my personal thanks to Alistair for all his assistance, for his advice, for his courteous nature, for his friendship and also for the opportunity to have the occasional coffee at Aussie’s when we discussed the progress of our committee reports. The Finance and Public Administration Committee is a committee like all other committees, where the staff work long hours, often to impossible deadlines the Senate gives them—and that was shown recently when this committee delivered its report on the access card. They work late into the night and work on weekends, without any complaint and always in a professional manner. Alistair Sands will be missed by this parliament. I want to put on the record, and I am sure I speak for many other senators, that we wish him well in his new position.

**New South Wales State Election**

*Senator Fierravanti-Wells (New South Wales) (10.57 pm)—I would like to take this opportunity to make some comments about the recent New South Wales*
Tuesday, 27 March 2007  SENATE  135

CHAMBER

election. First of all I would like to congratulate many of the people for their dedicated commitment throughout this campaign. In particular, I would like to acknowledge the role of many dedicated party members who worked very, very hard in what I have to say was one of the most ferocious and personally scurrilous campaigns ever launched by the Labor Party and their union mates. Despite the overall outcome I think there were some very, very good gains by the Liberal Party. Of course, the Labor Party will not tell us about that because in many, many seats across New South Wales there was a consistent message, and that was the swing against the Labor Party. I would like to bring some of those to the attention of the Senate.

For example, Chris Patterson, who ran for the seat of Camden and is mayor of Camden Council and family owner of the local public, faced an uphill battle against a sitting member. He faced a very great margin, and I was very pleased to see that he was able to achieve an over five per cent swing to the Liberal Party. Jonathon Flegg in the seat of Coogee: a swing of over six per cent. Greg Smith in the seat of Epping, I was very pleased to see, had a swing of over 10 per cent. Ray Williams: over eight per cent in the seat of Hawkesbury.

Senator Forshaw—What about Debnam?

Senator FIERRAVANTI-WELLS—What about Mount Druitt, Senator Forshaw? I do not know how long it has been since you have been out to Mount Druitt.

Senator Forshaw—How many seats did the Liberal Party take?

Senator FIERRAVANTI-WELLS—Well, Senator Forshaw, you do not particularly like the fact that right across New South Wales there was a swing, and there was a swing against the Labor Party in their own heartland. Mount Druitt for example: almost 1½ per cent. In Mulgoa, Karen Chijoff: a swing of almost eight per cent. Andy Rohan in the seat of Smithfield: almost 10½ per cent to the Liberal Party. And I have to say: how pleasing was it in the seats, in the Illawarra, of Wollongong and Keira to see, after preferences were distributed, the ALP suffer a swing against them.

As Peter Debnam said on election night, the people of New South Wales chose to give the Labor Party one last chance even though this government is so grossly incompetent at many, many levels. The assumption of course, Senator Forshaw, is that just because a government is incompetent and unpopular the electorate will not throw them out. You have to have an effective opposition—and I would remember that, Senator Forshaw, in the months to come.

There have been some quite ridiculous claims made in the media recently about how the New South Wales opposition lost the election because of the Work Choices legislation introduced by the Howard government. I strongly support Work Choices. It is an important piece of legislation for continued growth and prosperity in Australia. If Work Choices were to be reversed, it would be the first reversal in 25 years of a major economic reform in this country. I think it is important that we stand firm against the Labor and union onslaught in this area. It would otherwise send a message to the international community that we have given up on economic reform—in particular, continued reform—and, in the process, say to the international community, ‘It is too hard to continue.’

I believe Work Choices is good for the future of this country. There have been some unfair allegations that it is unfair. What on earth is unfair about the fact that we have the lowest unemployment level in 32 years? What is unfair about the fact that we have the lowest level of industrial disputation since
1913? What is unfair about the growth in real wages?

Senator Parry—Nothing.

Senator FIERRAVANTI-WELLS—Thank you, Senator Parry. The opposition to Work Choices is not driven out of concern for workers and their families, although this is the label used by those who attack us; it is driven out of a desire to re-establish union power over the industrial relations system of this nation. If Labor are elected at the end of the year, there will be wall-to-wall Labor governments in Australia. There will be no checks and balances. There will be a union dominated government.

But, of course, that is what the Labor Party want. Greg Combet let it out when he made the comment that what the Labor Party want to see in Australia is a return to union domination. How many former presidents of the ACTU do we have in federal parliament? There is Jennie George, Martin Ferguson and Simon Crean. We now have Mr Shorten joining us and Doug Cameron, and I am sure that Mr Combet wants to abandon the union movement because he wants a cosy little seat in parliament. One by one, they are coming into federal parliament. This is at a time when less than 20 per cent of the private workforce is a member of the union.

Senator Forshaw—What percentage are lawyers?

Senator FIERRAVANTI-WELLS—Senator Forshaw, all of you over there are ex-union people.

Senator Forshaw—I am a lawyer as well.

Senator FIERRAVANTI-WELLS—You are a lawyer as well! Let us just be clear about this: the criticism of Work Choices has absolutely nothing to do with a so-called compassion for the workers but more to do with a desire to re-establish union power over the industrial relations system of this country.

I do not believe that Work Choices played a major role in the election result, despite the obvious scare campaign that was run by the New South Wales Labor Party and their union backers. The Australian Labor Party would like to roll back this highly successful legislation. As I have said, this is a dangerous prospect. Of course, the reason for this roll-back is that the ALP is hopelessly beholden to the trade union movement. There is little wonder at that since the trade union movement has donated over $47 million to the ALP since 1995. As I said, at a time when union membership comprises barely 17 per cent of the private sector workforce, unions now have more control over the Labor Party than ever before. Of the 86 ALP caucus members, 41 are former union officials. Of the 32 members of the ALP frontbench, 17 are former union officials. Of the 28 ALP senators in this place, 18 are former union officials. The record speaks for itself. Thankfully, the diversity of the backgrounds on this side of the Senate ensures that we bring a much broader experience to the debate.

Senator Parry—Absolutely.

Senator FIERRAVANTI-WELLS—Yes, of course, Senator Parry brings a very diverse experience to the Senate. I conclude by saying that I am sure that the Labor Party—

Senator Forshaw interjecting—

Senator FIERRAVANTI-WELLS—Yes, of course, Senator Forshaw. Would you like me to continue about the other seats that suffered swings against the Labor Party? You just have to go down the list to see that in all seats right across New South Wales there was a swing against the Labor Party. In the end, Labor might take comfort by coming in here and saying that it was all about Work Choices, but I think that they have to seriously look at just how successful this policy
has been. In the end, it had absolutely nothing to do with their so-called concern about the workers of Australia and a lot more to do with their job in parliament.

**Tasmania: Ten Days on the Island**

**Senator CAROL BROWN** (Tasmania) (11.05 pm)—Before I start on the subject that I wish to talk about, I would like to congratulate the Labor Party on winning the New South Wales state election last Saturday because, from what we have heard, you would actually think that we did not win.

I rise tonight to highlight to the Senate Tasmania’s premier cultural event, Ten Days on the Island, which is unfolding as I speak. I had much pleasure in attending the launch of the event back in November of last year, with the official program of events kicking off last Friday and running through until 1 April. This year marks the fourth instalment of the biennial event and promises to be the most far-reaching and exciting yet, boasting a host of new commissions and world and Australian premieres to be held in 50 cities and regional sites across Tasmania.

The festival, which includes public displays of various different forms of artistic and cultural expression, such as dance, theatre and music, is to be a celebration of island culture and the uniqueness associated with living on an island such as Tasmania. The festival’s program includes performances and contributions from performers and artists from islands all around the globe, such as Cape Verde, Sardinia, Ireland, Newfoundland, Manhattan and New Zealand—people who have shared the unique experience of living and working on an island.

The festival is aimed at celebrating and exploring the uniqueness of island life by showcasing an array of local, national and international forms of cultural expression, all of which have been developed within the context of ‘the island’. The Tasmanian government has provided $2 million in funding for the festival, demonstrating its commitment to the arts, local communities and tourism in the state. During the last festival, in 2005, over 100,000 people attended the events in over 82 different venues around the state. Over 60 per cent of the audiences during that festival came from outside the towns in which the events were held, with 19 per cent coming from interstate and three per cent from overseas. Thus, the festival not only takes various performances and artists to local communities around the state; it also stimulates tourism and investment in such areas.

With ‘getting off the beaten track’ being the focus of this year’s festival, it promises to be bigger and better than ever with events scheduled in 50 towns across the state in all 29 local government areas. What an achievement! Events have been scheduled to take place in picturesque towns all over the state, such as Cygnet in the south, Bridport in the north-east and the lovely town of Stanley in the north-west of the state, which is Senator’s Parry’s area.

Anyone who has had the pleasure of visiting such places will know what a fantastic backdrop they provide for the scheduled events. Stanley, for example, with its rich geographical and historical landscape, provides the perfect setting in which to experience and explore the cultural and artistic elements associated with island life. The festival’s director, Elizabeth Walsh, said that one of her aims in organising this year’s festival was to ‘shine a light on Tasmania and its creative spirit, promoting our treasures across the globe and inviting artists from other islands to share their stories’. Indeed, guest international artists will join hundreds of local and interstate singers, actors, musicians, writers, filmmakers, dancers, puppeteers and visual artists whose stories of island culture, both modern and ancient, promise to
inspire, challenge and delight audiences throughout Ten Days on the Island.

The festival opened on Friday with audiences in their thousands attending events all over the island. An estimated 10,000 people have already crowded into Salamanca Place to witness the Salamanca Arts Centre celebrate its 30th birthday with the world premiere season of the theatre spectacular ‘Dream Masons’. The decadent performing arts centre Crystal Palace, which was a hit at the last festival with 9,000 people watching performances in its lavish interior, is back again. However, this time it has been erected in the Princes Wharf area—instead of Parliament House Lawns, as has been the case in previous years—to cater for a bigger program of events. The Crystal Palace, which comes from New Zealand, has an interior that showcases Pacific Islander designs. It contains intimate booths, a circular dance floor and ornate glass designs. It will host performances by artists such as Christine Anu, David Walters, Paul Capsis, Mikelangelo and local artists such as Fabio Chivhanda, Cary Lewincamp, Esuko Sakai and the Red Hot Roosters.

The festival has attracted a number of superior quality international acts, such as Duane Andrews and Simona Salis. Duane Andrews, a jazz-folk guitarist from the island of Newfoundland, was named the instrumental artist of the year at Canada’s 2006 East Coast Music Awards. Singer-songwriter Simona Salis, from the Mediterranean island of Sardinia, will perform in her Australian debut.

Local acts such as the Tasmanian Symphony Orchestra and Tasdance will demonstrate the immense artistic talent that continues to emerge from my home state. Tasdance, which has been described by Dance Australia as the ‘best dance ensemble in Australia’, and New Zealand contemporary dance choreographer Raewyn Hill have been involved in the creation of Ten Days on the Island’s first international dance co-commission, ‘Mercy: a dance for the forgotten’, which explores the universal themes of imprisonment and death, which are deeply rooted in Tasmania’s convict past and in the many repressive regimes that continue to exist around the world.

There will be other events and displays as part of the festival, including the project ‘Isle of Plenty’, which comprises site specific landscape installations of some scale, in the regional towns of Lillico, Cygnet and Bridport, which reflect and celebrate identity, people and place. For example, Hut Culture, by Nicholas Goodwolf, in the traditional apple-growing town of Cygnet, reconstructs an apple pickers’ village and celebrates the people, produce and tradition. Cygnet recently held a re-enactment of the culturally pivotal Apple Festival and the iconic Apple Queen float and parade as part of Ten Days on the Island.

These types of events allow the locals, as well as visitors to regional towns such as Cygnet, the opportunity to explore the unique cultural heritage of the towns. The Knitting Room exhibition, which opened in Moonah on Saturday, is another good example. Depicting memories from the 1950s, the exhibition involves remembering the elements of daily life from the era by converting them into domestic objects, large and small, through the traditional skills of knitting. The ‘waste nothing’ philosophy attributed to the era has led to the production of colourful floor rugs and an assortment of wall coverings, all made from odds and ends of scrap wool. The Knitting Room is the result of a four-year collaborative project and has evolved into one of the country’s leading community arts projects. It involves residents of residential care homes, their fami-
lies, their friends and regional community groups.

In essence, the festival is all about bringing members of the community together to share in celebrating the island’s cultural heritage and uniqueness. It allows locals to be drawn together to acknowledge their common ties. It also allows interstate and overseas visitors to admire and associate with the Tasmanian experience. With rapid globalisation bringing a sense of sameness and universality to modern life, festivals and events such as Ten Days on the Island remind and encourage people to celebrate the aspects of their lives and experiences that make them different.

Ten Days on the Island prompts people to acknowledge and recognise as part of their experience the remoteness, the intense community bonds—for better or for worse—and the rich geographical and historical heritage of island life. Tasmania, I am proud to say, is fast establishing itself as an artistic and cultural mecca. Other events, such as the Taste of Tasmania, are drawing increasing crowds of visitors—local, interstate and overseas.

Events including national and international talent are becoming a regular feature on the Tasmanian events calendar. Large-scale music festivals, such as the Falls Festival and the up-and-coming Southern Roots Festival, are attracting a number of national and international artists. Such events cater for and fulfill the entertainment needs of Tasmania’s younger population. Judging by the Falls Festival attendance figures over the last couple of years, such events have provided a welcome change for the state’s youth.

Things are going ahead, and the state is beginning to acknowledge and embrace its isolation from mainland Australia as a positive rather than a negative. This turnaround is reflected in the ever-increasing number of tourists visiting the state and the increasing number of people looking to invest in its future. Most importantly, it is reflected in the generally positive attitude of the Tasmanian people, who are proud of their state and optimistic about the future. Festivals such as Ten Days on the Island have very much facilitated such an attitude and contributed to the state’s increasing prosperity. The festival is running until 1 April, and I would encourage all Tasmanians to get involved with the activities and events taking place in their local areas. I would also encourage interstate visitors to take advantage of the unique experiences on offer.

Workplace Relations

Senator RONALDSON (Victoria) (11.15 pm)—The first thing I would like to say is to any of my children who are still awake: would you please go to bed; it is way past your bedtime. As to the other matter, I think this has been a fascinating day. There were great threats today from the Labor Party about their charge against Work Choices after its first 12 months—and it has fizzled out in six hours. Where are they lined up tonight to attack this ogre? It has gone. I rather suspect that the reason this has happened is that the Australian Labor Party are now in the mode of having what I would call hit-and-run attacks on various government policies. I am afraid that is a fair indication of where the Labor Party are at. Indeed, the fact that this chamber is not filled in the adjournment debate tonight with people talking about Work Choices is an example of this utterly duplicitous behaviour of the Australian Labor Party.

I want to talk about the things that I think are really important to the Australian community. Clearly, what we have seen over the last 12 months is a partnership that the Labor Party will simply not acknowledge. It is a partnership between employers and employ-
ees. The trouble with the Australian Labor Party is that they hate employers. They have always hated employers and they have done everything possible to make sure there is a divide between employees and employers. What the last 12 months has shown quite clearly is that it is a partnership based on mutual respect and trust. When the shackles were lifted from that relationship between employees and employers, guess what happened: we started to see the very thing we told you would happen. When the yoke of the unfair dismissal laws was lifted from employers, small business employers in particular, what happened? They started delivering more jobs.

But what are you saying to the small business community? You are going to wind it back. You talk about a change from the member for Brand to the present Leader of the Opposition. But this man is a greater wind-back expert than Kim Beazley ever was, and you will wind back that relationship to the detriment of one group of people only: the working men and women of Australia. They are the group that will suffer from your wind-back. They are the group who have benefited most from the changes we made 12 months ago, changes not based on any philosophical view about a relationship between employees and employers but on an understanding—which you will never have and you have never had—that the absolute fundamental relationship for the development of this country is between employers and employees. Until you recognise that—

Senator McLucas interjecting—

Senator RONALDSON—I will take my lead from the President. You are not going to be President, and I will take my lead from the President. Until the Australian Labor Party appreciates the fact that you have completely destroyed that relationship over 15 years, then you will not be suitable for government. I think the very interesting part of what we have seen over the last 12 months—if not the last 15 years, and this is what the Australian people will finally put two and two together on—is the union movement, through the ACTU, acknowledging the fact that they must admit defeat in relation to their level of influence outside this place. I come to what that has now meant. I like Senator George Campbell, but I am going to mention in a second a name that he does not particularly like, so I apologise for that because I do like Senator Campbell and I would like to see him back here. The person who wants his job is another example of what we are seeing. The trade union movement now has under 20 per cent coverage of the private sector, and it is under 30 per cent for the public sector. What has happened is that we have seen the union bosses make the decision that their level of influence outside parliament has completely gone, so you will now see a massive shift from outside into this place because the only way the trade union movement can retain its power in this country is to make sure that it runs the Australian Labor Party both here and in the other place. I do not need to go through the names of those that have been so articulately mentioned tonight by others.

Senator Crossin—Go on!

Senator RONALDSON—But I will. That is very generous of you. It must be because of the late hour that I have actually been invited to submit these matters. If you look at the Doug Camerons and the Bill Shortens of this world—I am just keeping a very close eye on Senator George Campbell; he is getting far too close for comfort—you are seeing a rapid movement out of the trade union movement into the—

Senator Crossin—Name 30!

Senator RONALDSON—These are the people coming in. So there are 30 more com-
ing in, are there? I have just had an admission that there are 30 more trade union people coming in after the next election. I did not think it was as many as that, but I thank you most sincerely, Senator Crossin, for indicating to the chamber that there are another 30 trade union people coming in. I am a bit gobsmacked about that.

We are seeing movement from a now irrelevant ACTU, with minimal coverage in the Australian workforce, into here. The Australian people are going to be left with a very clear choice in about eight months time as to whether they are prepared to trust the invasion of the ACTU into this place and the other place. I think they will vote with their feet. For those of you in the Labor Party who are not as manic or high profile as some of those coming in, I think you should be extremely nervous because, quite frankly, your chances of promotion—those of you who are still here—will be absolutely minimal. And when Doug Cameron takes over from this man, Senator George Campbell, do you think, as Senator Fierravanti-Wells said, he will come in here expecting to sit on the back bench for six years? I do not think so. You know as well as I do, through you, Mr President, that those trade union leaders will come in here and will be running the ALP within 12 months. I enjoy Senator Forshaw’s company, but he was almost apologising tonight for his trade union roots.

Senator McLucas—No, he wasn’t!

Senator RONALDSON—I was listening intently to him, and he was apologising for his trade union roots and saying, ‘We should not be bringing to the attention of the Australian people the fact that the ALP within 12 months will be totally dominated by the former ACTU leadership.’

Before I was so rudely interrupted by the clock this afternoon during taking note of answers, where I thought that five minutes was not nearly long enough, I was in the process of going through an article in the Australian today. Unfortunately, I have left myself very little time again to go through this article. I am very pleased that other opportunities will present themselves before the break. I might leave my reference to that very good article, which is about what has happened over the last 12 months, to another day. In finishing, the greatest threat to this country is the influx of these former union leaders into the Labor Party. The greatest risk for the Australian Labor Party is that the Australian community will quite rightly view this as a shift from outside to inside and will vote accordingly. (Time expired)

Workplace Relations

Senator CROSSIN (Northern Territory) (11.25 pm)—I thank Senator Ronaldson for that minuscule contribution to this debate. I rise to talk about Aboriginal Hostels, but I want to just start by saying that I come from a trade union background and I am damned proud that I do, considering the number of people I assisted in my eight years as a trade union official. I am pretty pleased to have come from that background. That leads me to talk to Aboriginal Hostels Ltd and its place in the world of Work Choices.

Aboriginal Hostels was set up in 1973 and has provided temporary accommodation for Indigenous people ever since. AHL currently operates 49 company hostels and funds 71 community hostels in over 100 sites across this country. They provide over 3,000 beds a night in various categories: transient, medical, students living away from home, homeless people and aged care. This accommodation is provided Australia-wide.

Aboriginal Hostels Ltd has an Aboriginal and Torres Strait Islander recruitment and career policy. Under this policy Aboriginal and Torres Strait Islander people make up some 82 per cent of staff, making it one of
the largest single employers of Aboriginal and Torres Strait Islander people in the nation. Aboriginal Hostels Ltd employs nearly 500 people in two categories: predominantly they are either administrative or industrial staff, the latter being, of course, the cooks, cleaners, nightwatchmen and so on—the salt-of-the-earth workers in this country. On its website, Aboriginal Hostels Ltd says it:

... provides the opportunities that improve the lives of Aboriginal and Torres Strait Islander people. The company provides an appropriate hostel environment that helps Indigenous people gain access to services like hospitals and schools.

While Aboriginal Hostels Ltd may be helping others, it is at present doing very little to help its own employees, taking a hardline approach and offering workers Australian workplace agreements which diminish their pay and conditions.

Previously, Aboriginal Hostels Ltd has negotiated three collective agreements that have been reached between AHL and their workers. But now in this current round of wage negotiations—if you could in fact call it that—it is offering staff the choice between staying on their existing terms and conditions, on the now expired enterprise bargaining agreement, an agreement which actually expired on 16 December last year, or signing an Australian workplace agreement, which offers a wage increase: 12 per cent over three years. Let us get this really clear as I start this debate—Aboriginal Hostels Ltd is offering to all of its staff, of which 82 per cent are Indigenous people, a choice of staying on their enterprise agreement, which they will not deregister, or taking a wage increase that comes with the requirement that you must sign an AWA—and it also comes at the cost of giving up some conditions, such as maternity leave, and with reduced conditions, such as annual leave.

I sat in my office this evening and listened to Senator Fierravanti-Wells espouse the wonders of Work Choices and AWAs. So I hope she is still around to listen to this contribution. The management of AHL have refused to negotiate a new enterprise bargaining agreement. They are forcing their staff to accept an AWA in order to access a wage increase. AHL will say that they are not forcing staff to sign an AWA at all. No, they are probably not. Staff have a choice to stay under the enterprise agreement that expired on 16 December last year. But if that is the case, they will not be getting a wage increase over the next three years. There is nothing legally stopping them negotiating a new enterprise agreement. It has been a management decision not to do so. This is another great example of the Howard government’s Work Choices legislation at work—where workers, in effect, have no real choice at all; where employers can put workers between a rock and hard place. For an organisation that claims to have a caring environment and provide good accommodation and services for its Indigenous clients, they are certainly not showing the same care towards their Indigenous staff.

In estimates in February, when I had very little time to question AHL about their direction, I asked whether in fact they had been directed to do this by the federal government—was there some prescriptive requirement by the federal government to do this. We have seen it in universities, where universities can only accept certain funding on the basis that they offer their employees AWAs. Let us bear in mind here that the CEO, Mr Keith Clarke, has provided me with some answers, and I will certainly be pursuing this in the coming weeks. Mr Clarke advised me in estimates:

The government did not give us any direction, according to the bargaining we were doing for our staff, no.

He went on to say:
We as a management of the organisation decided to make a business decision because we wanted to offer an agreement that gives us a bit of flexibility to run the business. We have had three certified agreements in the past. We believe that the AWA gave us a little bit more flexibility in trying to run the business.

But I get out of estimates and I discover that in fact there has been an exchange of letters between AHL and the Liquor, Hospitality and Miscellaneous Union, the union representing the workers at AHL. What does it actually say? In a letter to Mr Ferrari, the Assistant National Secretary, AHL had this to say:

The Board meets on five different occasions each year in different States/Territories.
The AHL Board does not get involved in the day to day management of the organisation...
It is:
... a decision that is being made by AHL management in accordance with Australian Government policy and the AHL Board fully supports their decision.

Whoops! So AWAs are actually now being pushed onto workers at Aboriginal Hostels Ltd in accordance with Australian government policy. What policy might that be? In another letter to the LHMU, signed by Mr Keith Clarke on 5 September 2006, he writes:

Aboriginal Hostels Limited (AHL) has decided to offer Australian Workplace Agreements (AWA’s) to all eligible employees rather than a collective agreement. This decision is in line with current Government Policy.

One might ask: what policy is that? I asked Aboriginal Hostels Ltd through the Senate committee to clarify on the record why there was some confusion, perhaps dishonesty, at estimates when I later found out that in an exchange of letters with the union they actually referred to a direction of government policy. In the letter that was then sent to the community affairs committee on 21 February this year, signed by Mr Clarke, Aboriginal Hostels Ltd had this to say:

... in no way did I mean this—
that is, the answer they gave me in estimates that it was not in line with government policy; but their decision was in line with government policy if you look at the letters—
to imply that AHL had received any directives or pressure from the Australian Government to offer AWAs rather than a collective agreement. I simply meant that AHL’s choice of opting for AWAs was in keeping with or ‘in line’ with the policy parameters for agreement making in the Australian Public Service.

I suppose the next question we will be asking is exactly what are those policy parameters for agreement making in the Australian Public Service? One might say that that is akin to perhaps covering your tracks. He then goes on to say:
The decision to offer AWAs was a decision by AHL’s management because AWA’s offer more flexibility ...

Wait on. I thought that back on 9 November last year AHL actually said, in a letter from Elaine McKeon:
The AHL Board does not get involved in the day to day management of the organisation ...

So one has got to ask: exactly what is happening here? I know what is happening here. What is being offered under the AWAs is a reduction in annual leave from six weeks to four weeks. They claim that AHL went to six weeks annual leave in an attempt to allow more staff time off and to reduce absenteeism, but that it had not worked. The management argues that this step therefore brings AHL back into line with most other Commonwealth agencies. They further argue that many staff asked for more pay but less leave and that money saved by a reduction in leave would be passed on in pay rises under the AWA. Let us be really clear about this: Aboriginal Hostels workers will remain amongst
the worst off. Management say that no workers will be forced to sign an AWA. What choice is that? Stay on the expired workplace agreement with no pay rise over the next three years or sign an AWA. No choice under Work Choices.

Relay for Life

Senator MOORE (Queensland) (11.36 pm)—This evening I want to make some comments about last Saturday’s Relay for Life, which the Pine Rivers Shire Council sponsored with their committee in that wonderful part of Queensland around Strathpine. The Relay for Life, as so many people know, is a tradition which was started in 1985 in America by a gentleman who decided he wanted to bring awareness about issues of cancer to his community. He came up with the idea of running around a track over an extended period of time. Sometimes you wonder where these ideas come from, but in fact since Dr Klatt came up with this process it has expanded across the globe. It is an incredibly important part of the American Cancer Society’s fundraising for research, and certainly in Australia. Since it was taken up by the Cancer Council of Victoria in 1999, when it was first brought into this country, it has raised hundreds of thousands of dollars for cancer research in Australia.

When we started in Queensland in 2001 we had our first event at the Sunshine Coast, and with the community up there we raised over $70,000. That has given us the hope that we will be able to do better and be able to raise much more money across our community. This year, we are hoping that across Queensland alone we will raise several hundred thousand dollars, and across Australia over $3 million for cancer research. Those figures are so impressive; unfortunately, that money is very much needed—we can see exactly where people’s enthusiasm and money goes.

The Relay for Life process has formed into quite an impressive community activity where people from across the board can play a role and we are able to encourage people to be involved. The experience of people is so impressive. I want to talk a little about what happened at Pine Rivers. We had over 48 teams that walked over the night—over 18 hours was scheduled for the activity. Over 550 people of all ages took part, from one little boy who was 36 hours old and in his mother’s arms—his mother is a cancer survivor and was there with her mother and her new baby as part of the process—through to people whose ages will not be identified but who were well into their senior years. They came together to show their community that cancer can be fought and that the money raised by engaging with the community can be used for effective research.

The team of which I was a proud member was a combined team from the National Union of Workers, the NUW, and the ALP. This is our second year. Last year this team raised over $15,000 and that went towards last year’s outstanding contribution in Pine Rivers of over $120,000 from the community. In 2007 our contribution from the NUW-ALP team is over $16,000.

I want to put on record a deep appreciation to those team members, coordinated nobly by Michelle McJanet and Mark Furner, who is the state secretary of the NUW in Queensland. They raised money from the businesses in the local community, and from the organisations and the work places where NUW have members. They also came together to say that they wanted to be part of the community and part of the Relay for Life.

One of the most impressive parts of the Relay for Life tradition is the remembrance of people who have gone before us. There is always a candlelight ceremony that people
are able to be part of and put forward the names of people they have lost. The moment the sun sets the people gather around, maintaining the constant walking, which is in memory of the work that Dr Klatt did to start this off. We keep walking around the track because you must keep that relay going. While that is happening and the sun is setting, there is a moment of silence and with the candles we remember the lives that have gone before us, and keep the hope strong that we will be able to beat this disease.

I want to thank the Pine Rivers community because they came together so strongly under Councillor Bob Miller, the local chairman of the council, and his group of volunteers, in particular the young people who took on the role of keeping it going. Erin, Katrina and Deborah and many others were there. There was also the work of the compères. There was so much local activity and entertainment gathered there. We could see that this was not just another fundraising activity. This is something that engages the community. We can be part of the over 30 events in Queensland that were part of the Relay for Life banner.

In my last couple of minutes tonight I want to make some comments about a mate who was part of our team on Sunday. Lee McCartney with her daughter Cassie was a member of our team, and on Sunday night Lee died. I was laughing with her on Sunday morning when we completed our part of the relay. We were sharing how much fun we had had and how impressive it was for her and her daughter to be there together at the event. Then on Monday morning we got the phone call to say that she would not be sharing the 2008 Relay for Life with us. But she will be because her contribution to our team and to the whole Albany Creek community will not be forgotten. I want to put this on record tonight for Lee’s family, in particular Tom and the twins, Cassie and Trent. We know how much they will miss their mother. We know that there is deep grief in that family, and we want to share that with them. Also Lee’s mum and dad are working through the process of losing their child. The community is coming together around Lee’s family.

I think she would like to know that the people who knew and remember her will keep her message strong. We all know her contribution to the school community, the local community and the local ALP. Lee has been an active member of our local ALP and that particular decision has been followed by her kids. We will miss you, Lee, and we enjoyed that Relay for Life with you last weekend. I am here to say that we will continue the hard work that you started. Many people will be celebrating the contributions that you made and your relay and your hope for the future.

Senate adjourned at 11.43 pm

DOCUMENTS

Indexed List of Files

The following document was tabled pursuant to the order of the Senate of 30 May 1996, as amended:

Indexed lists of departmental and agency files for the period 1 July to 31 December 2006—Statement of compliance—Transport and Regional Services 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 Safety Regulations—Airworthiness Directives—Part 105—AD/A320/203 Amdt 1—Forward Engine Mount Bolts [F2007L00753]*.
AD/B737/174 Amdt 2—Shoulder Restraint of Attendant or Observers Seat [F2007L00752]*.
AD/B737/201 Amdt 1—Rudder Control System [F2007L00751]*.
AD/BAe 146/54 Amdt 1—Elevator Drain Holes [F2007L00750]*.
AD/ECUREUIL/8 Amdt 2—Starflex Star to Main Rotor Shaft Securing Bolts [F2007L00749]*.
AD/ERJ-170/1—Cargo Doors [F2007L00797]*.
AD/GENERAL/84 Amdt 2—Thermal/Acoustic Insulation Materials [F2007L00754]*.
AD/HU 369/116—Lateral Mixer Output Link Assembly [F2007L00748]*.
AD/PA-25/42—Horizontal Stabiliser Forward and Aft Supports [F2007L00747]*.
AD/TB10/37—Engine and Nose Landing Gear Mounts [F2007L00745]*.
AD/TB 200/10—Engine and Nose Landing Gear Mounts [F2007L00746]*.
AD/TBM 700/38 Amdt 1—Flap Carriage Roller Pins [F2007L00744]*.

Corporations Act—ASIC Class Order [CO 07/166] [F2007L00779]*.

Crimes Act—Select Legislative Instrument 2007 No. 38—Crimes Amendment Regulations 2007 (No. 1) [F2007L00755]*.


Customs Act—

Tariff Concession Orders—
0618762 [F2007L00675]*.
0618922 [F2007L00676]*.
0618958 [F2007L00677]*.
0618988 [F2007L00678]*.
0619262 [F2007L00679]*.
0619305 [F2007L00680]*.
0619324 [F2007L00681]*.
0619387 [F2007L00682]*.
0619396 [F2007L00683]*.
0619719 [F2007L00738]*.
0619743 [F2007L00733]*.
0619971 [F2007L00736]*.
0619972 [F2007L00737]*.

Tariff Concession Revocation Instruments—
44/2007 [F2007L00686]*.
45/2007 [F2007L00687]*.
46/2007 [F2007L00688]*.

Tariff Concession Revocation Instruments and Explanatory Statement—


Defence Act—Determination under section 58B—Defence Determination 2007/10—Overseas conditions—amendment.


Fringe Benefits Tax Assessment Act—Select Legislative Instrument 2007 No. 43—Fringe Benefits Tax Amendment Regulations 2007 (No. 1) [F2007L00664]*.


Lands Acquisition Act—Statements describing property acquired by agreement for specified public purposes under sections—125.


Primary Industries (Excise) Levies Act—Select Legislative Instrument 2007 No. 35—Primary Industries (Excise) Levies Amendment Regulations 2007 (No. 2) [F2007L00740]*.

Primary Industries Levies and Charges Collection Act—Select Legislative Instrument 2007 No. 37—Primary Industries Levies and Charges Collection Amendment Regulations 2007 (No. 2) [F2007L00742]*.

* Explanatory statement tabled with legislative instrument.

Table
The following government documents were tabled:
Superannuation (Government Co-contribution for Low Income Earners) Act 2003—Quarterly report on the Govern-
ment co-contribution scheme for the period 1 October to 31 December 2006.

*Sydney Airport Demand Management Act 1997*—Quarterly report on the maximum movement limit for Sydney Airport for the period 1 October to 31 December 2006.

Treaty—*Multilateral*—Text, together with national interest analysis, regulation impact statement and annexures—Agreement concerning the Establishing of Global Technical Regulations for Wheeled Vehicles, Equipment and Parts which can be Fitted and/or be Used on Wheeled Vehicles, done at Geneva on 28 June 1998.
QUESTIONS ON NOTICE

The following answers to questions were circulated:

Proposed Pulp Mill
(Question No. 2967)

Senator Milne asked the Minister for Fisheries, Forestry and Conservation, upon notice, on 23 January 2007:

With reference to the Minister’s announcement on 4 December 2006 that Gunns Limited will be paid $2.6 million to assist in the development of a pulp mill feasibility study and preliminary engineering works:

(1) How much of the $2.6 million will go towards: (a) funding the study; and (b) the preliminary engineering works.

(2) Has the study been completed; if not, when will the study be completed.

(3) When will the study be made available to the public.

(4) What is involved in the preliminary engineering works.

(5) Have the preliminary engineering works begun; if not, when will they commence.

(6) Why has the Minister agreed to provide funding for preliminary engineering works for the pulp mill when the construction of the pulp mill has not been approved.

(7) Will the Minister request that the funding for the preliminary engineering works be re-funded if the pulp mill is not approved; if not, why not.

Senator Abetz—The answer to the honourable senator’s question is as follows:

(1) (a) The release of the $5m in Commonwealth funding for the preliminary engineering works was dependant on a feasibility study concluding that a pulp mill was feasible. The Commonwealth funds were not to fund the feasibility study itself. None of the $2.6 million went towards the feasibility study. The first $2.4 million tranche of funding was used by Gunns Ltd for initial feasibility engineering works.

(b) The $2.6 million in question is to fund the preliminary engineering work.

(2) Yes.

(3) The study was commissioned, paid for and is owned by Gunns Limited. Any decision to release this report to the public is a matter for Gunns Limited.

(4) The preliminary engineering works included:- Preparatory Engineering; Project Management; Procurement; Planning and Scheduling; Process Engineering; Mechanical Engineering; Electrical Engineering; Process Control Engineering; Civil Engineering ; HVAC Engineering (Heating, Ventilation and Air Conditioning); Architectural Design; Building Permit; Implementation Plan; Investment Estimate

(5) All the preliminary engineering works have commenced.

(6) The majority of the preliminary engineering work for the pulp mill is not dependant on the site of the mill. If and when the site of the mill is approved, the majority of the preliminary engineering work will have been completed.

(7) No. A world class pulp mill would significantly add to Australia’s balance of trade in forest and wood products, and ensure that our sustainably harvested timber resource is value-added at home rather than abroad.

QUESTIONS ON NOTICE