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SITTING DAYS—2007

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

- **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
FORTY-FIRST PARLIAMENT
FIRST SESSION—EIGHTH PERIOD

Governor-General

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

Senate Officeholders

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

Senate Party Leaders and Whips

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

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

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

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

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

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

The Hon. John Winston Howard MP
The Hon. Mark Anthony James Vaile MP
The Hon. Peter Howard Costello MP
The Hon. Warren Errol Truss MP
The Hon. Dr Brendan John Nelson MP
The Hon. Alexander John Gosse Downer MP
The Hon. Anthony John Abbott MP
The Hon. Philip Maxwell Ruddock MP
Senator the Hon. Nicholas Hugh Minchin
The Hon. Peter John McGauran MP
The Hon. Kevin James Andrews MP
The Hon. Julie Isabel Bishop MP
The Hon. Malcolm Thomas Brough MP
The Hon. Ian Elgin Macfarlane MP
The Hon. Joseph Benedict Hockey MP
Senator the Hon. Helen Lloyd Coonan
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
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<td>Julia Eileen Gillard MP</td>
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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 Youth and Shadow Minister for Women
Tanya Joan Plibersek MP

Shadow Minister for Health
Nicola Louise Roxon MP

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

Shadow Minister for Education and Training
Stephen Francis Smith MP

Shadow Treasurer
Wayne Maxwell Swan MP

Shadow Minister for Finance
Lindsay James Tanner MP

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

Shadow Parliamentary Secretary for Foreign Affairs
Anthony Michael Byrne MP

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

Shadow Parliamentary Secretary for Environment and Heritage
Jennie George MP

Shadow Parliamentary Secretary for Treasury
Catherine Fiona King MP

Shadow Parliamentary Secretary for Education
Kirsten Fiona Livermore MP

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

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

Shadow Parliamentary Secretary for Industry and Innovation
Bernard Fernando Ripoll MP

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

Shadow Parliamentary Secretary to the Leader of the Opposition (Social and Community Affairs)
Senator Ursula Mary Stephens
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Thursday, 29 March 2007

The PRESIDENT (Senator the Hon. Paul Calvert) took the chair at 9.30 am and read prayers.

NOTICES

Presentation

Senator WATSON (Tasmania) (9.31 am)—Following the receipt of a satisfactory response, on behalf of the Standing Committee on Regulations and Ordinances, I give notice that on the next day of sitting I shall withdraw business of the Senate notice of motion No. 1 standing in my name for seven sitting days after today for the disallowance of the Veterans’ Entitlements (Special Disability Trust Beneficiary Requirements) Nomination of Agreement 2006 made under subsection 52ZZZWA(3) of the Veterans’ Entitlements Act 1986. I seek leave to incorporate in Hansard the committee’s correspondence concerning this instrument.

Leave granted.

The correspondence read as follows—

7 December 2006
ref: 217/2006
The Hon Bruce Billson MP
Minister for Veterans’ Affairs and
Minister Assisting the Minister for Defence
Suite M1 19
Parliament House
CANBERRA ACT 2600
Dear Minister
I refer to the Veterans’ Entitlements (Special Disability Trust Beneficiary Requirements) Nomination of Agreement 2006 made under subsection 52ZZZWA(3) of the Veterans’ Entitlements Act 1986.

The Committee notes that this instrument nominates, for the purposes of section 52ZZZWA(3) of the Veterans’ Entitlements Act 1986, each of the agreements entered into by the Commonwealth and a State or Territory, collectively known as the Commonwealth State/Territory Disability Agreement. The instrument does not indicate the date of this Agreement. Indeed, on the face of it, the instrument appears to apply to any agreement so described whenever it is made. This would raise the prospect of breaching subsection 14(2) of the Legislative Instruments Act 2003, by which a legislative instrument may not apply any matter contained in a non-legislative instrument as in force from time to time.

The Committee would therefore appreciate your advice on the following matters regarding this Agreement. First, does this Agreement have legislative character such that it would allow for its incorporation as amended from time-to-time or is it intended that the Commonwealth will nominate this Agreement each time it is amended? Secondly, if the Agreement is to be nominated as at a particular time, should the Nomination be amended to specify a date for the current Agreement?

The Committee would appreciate your advice on the above matters as soon as possible, but before 1 February 2007, to enable it to finalise its consideration of this instrument. Correspondence should be directed to the Chairman, Senate Standing Committee on Regulations and Ordinances, Room SG49, Parliament House, Canberra.

Yours sincerely
John Watson
Chairman

22 January 2007
Senator John Watson
Chairman
Senate Standing Committee on
Regulations and Ordinances
Room SG49
Parliament House
CANBERRA ACT 2600
Dear Senator Watson
This instrument nominates a number of agreements entered into by the Commonwealth with the States and Territories, which are collectively known as the Commonwealth/State/Territory Disability Agreement.

You have noted that the instrument does not refer to the date of the agreements and have suggested the instrument may contravene section 14 of the Legislative Instruments Act 2003 by incorporating a non-legislative document as in force from time to time. You have asked me a number of questions in this regard.

Firstly, whether the agreement has legislative character? No, it does not.

Secondly, if the agreement is not legislative, whether the Department of Veterans’ Affairs (DVA) intends to re-make the instrument if the agreement was amended, to ensure that s.14 was observed? In our opinion, based on advice from legislative counsel, s.14 is not relevant and this is canvassed in the following response.

Thirdly, if it is intended to confine the instrument to the agreement existing at the time the instrument commenced, whether the instrument should be amended to specify a date for the agreement? Our advice from legislative counsel of the Office of Legislative Drafting and Publishing (OLD & P) ie the body that drafted the instrument in question, is (and as slightly paraphrased by us) as follows:

“In our view, the Veterans’ Affairs (Special Disability Trust Beneficiary Requirements) Nomination of Agreement 2006 (instrument) does not incorporate the Commonwealth State/Territory Disability Agreement (CSTDA) by reference. Instead, the instrument nominates the CSTDA in accordance with the discretionary power to do so included in subsection 52ZZZWA(3) of the Veterans’ Entitlements Act 1986.

Accordingly, section 14 of the Legislative Instruments Act 2003 does not apply and there is no need to amend the instrument so that it refers to the CSTDA as existing as the commencement of the instrument. The CSTDA consists of a number of identical agreements signed on different dates by the States and Territories. In our view, the important thing is that the agreement being nominated was sufficiently described without reference to any date.”.

I accept the OLD & P advice and I trust this information satisfies your concerns.

Yours sincerely

Bruce Billson
Minister for Veterans’ Affairs

8 February 2007

ref: 21/2007

The Hon Bruce Billson MP

Minister for Veterans’ Affairs and

Minister Assisting the Minister for Defence

Suite M1 19

Parliament House

CANBERRA ACT 2600

Dear Minister

Thank you for your letter of 24 January 2007 responding to the Committee’s concerns with the Veterans’ Entitlements (Special Disability Trust Beneficiary Requirements) Nomination of Agreement 2006.

In your response you advise that the Commonwealth State/Territory Disability Agreement (CSTDA) – a collection of agreements entered into by the Commonwealth with the States and Territories – is not a legislative instrument for the purposes of the Legislative Instruments Act 2003 (LIA). You also advise that the CSTDA does not breach section 14 of the LIA because it has not been incorporated but rather nominated in accordance with subsection 52ZZZWA(3) of the Veterans’ Entitlements Act 1986 and therefore the instrument does not need to be amended to refer to the agreement as existing at the commencement of that instrument.

The Committee has considered your response but is of the view that it does not clarify what happens if the Commonwealth and the States conclude another CSTDA to replace that which is referred to in this instrument. Is it intended that this instrument would then be read as applying to that subsequent agreement, without the need for a new nomination under section 52ZZZZWB(3)?
The Committee is also not convinced by the argument that the act of ‘nominating’ an agreement can be distinguished from ‘applying, adopting or incorporating’ that agreement for the purposes of section 14(2) of the LIA, and would appreciate further advice on this matter. In particular, has the Department sought legal advice on the effect of this distinction?

The Committee would appreciate your advice on the above matters as soon as possible, but before 26 February 2007, to enable it to finalise its consideration of this instrument. Correspondence should be directed to the Chairman, Senate Standing Committee on Regulations and Ordinances, Room SG49, Parliament House, Canberra.

Yours sincerely
John Watson
Chairman

20 March 2007
Senator John Watson
Chairman
Senate Standing Committee on
Regulations and Ordinances
Room SG49
Parliament House
CANBERRA ACT 2600

Dear Senator Watson

Thank you for your letter of 8 February 2007 that raises two issues in relation to my letter of 24 January 2007 responding to the Committee’s concerns with the Veterans’ Entitlements (Special Disability Beneficiary Requirements) Nomination of Agreement 2006. I apologise for the delay in replying. However, it was considered appropriate to seek advice from the Australian Government Solicitor (AGS) in relation to the issues raised in your letter to ensure that these issues were considered by an independent legal adviser.

In relation to your question of whether it is intended that this instrument would be read as applying to a subsequent agreement, without the need for a new nomination under subsection 52ZZZWB(3), the answer is no. It is envisaged that this instrument would be read as applying to the nominated agreement as that agreement is amended (if that occurs). Senior General Counsel of the AGS has advised that the instrument would refer to the Commonwealth/State/Territory Disability Agreement (CSTDA) as it exists at any date.

In relation to your question of whether the act of ‘nominating’ an agreement can be distinguished from ‘applying, adopting or incorporating’ that agreement for the purposes of section 14(2) of the Legislative Instruments Act 2003 (LIA), Senior General Counsel of the AGS has advised that he agrees with the previous Office of Legislative Drafting and Printing (OLD&P) opinion that section 14 of the LIA does not apply and that there is no need to amend the instrument so that it refers to the CSTDA as existing at the commencement of the instrument.

The reasoning of the relevant part of the Senior General Counsel of the AGS opinion in reaching this conclusion is as follows:

“Section 14 is concerned with ‘enabling legislation’ that authorises or requires ‘provision’ to be made in relation to any ‘matter’ in a legislative instrument.

It appears to us that the relevant ‘enabling legislation’ in the present circumstances is section 52ZZZWA(3). It also appears to us that the relevant ‘matter’ is the nomination of an agreement of a type described in s 52ZZZWA(2)(b)(ii).

In circumstances where the ‘matter’ is the nomination of a relevant agreement there seems little scope for the legislative instrument to include ‘provisions’ that purport to deal with much more than the fact of the nomination. Because the VE Act relevantly contemplates a bare power of nominating a relevant agreement it does not in our view envisage that the instrument would include provisions that would purport to provide for ‘application, adoption or incorporation’ of such an agreement whether with, or without, modification. Such provisions would seem to us to deal with the very thing, the nomination regime, already dealt with under the relevant sections of the VE Act (s 52ZZZWA(2)(b)(ii) and (3)); they would either duplicate or supplement, depending on their content, that nomination regime. In our view, s14 does not authorise such duplication or supplementation. It follows also in our view that
4 SENATE Thursday, 29 March 2007

s.14 would not operate so as to enable those provisions to be made.”

I have accepted the advice of the AGS and hope that this additional advice addresses your concerns.

Yours sincerely

Bill Billson
Minister for Veterans’ Affairs

Senator Nettle to move on the next day of sitting:

That the Senate—

(a) notes the pledge by United States of America (US) Republican presidential candidate Senator John McCain that he will close Guantanamo Bay if he becomes President; and

(b) calls on the Government to make representations to the US Administration to shut down Guantanamo Bay.

Senator Siewert to move on the next day of sitting:

That the Senate:

(a) congratulates the Government on its leadership in achieving the outcomes of the United Nations General Assembly (UNGA) Resolution on sustainable fisheries in November 2006;

(b) calls on the Government to implement UNGA Resolution 61/105 on sustainable fisheries as soon as possible;

(c) urges the Government to actively assist other nations to implement the resolution in the timeframe set;

(d) calls on the Government to continue its leadership through the United Nations to ensure integrated global governance of high seas areas;

(e) recognises this opportunity to put in place best practice regional agreements that include a commitment to the conservation and the sustainable, equitable use of the marine environment through the implementation of the ecosystem approach based on the precautionary principle; and

(f) calls on the Government to take a leadership role in the negotiations on the development of the South Pacific Regional Fisheries Management Agreement.

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

That the Senate:

(a) notes:

(i) the recent report on student finances by the Australian Vice-Chancellor’s Committee (AVCC), Australian University Student Finances 2006, and

(ii) that the Government has yet to respond to the Employment, Workplace Relations and Education References Committee report, Student income support, tabled on 23 June 2005; and

(b) urges the Government to respond to both the committee report and the recommendations for alleviating student financial stress put forward by the AVCC on 15 March 2007.

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

That the Senate calls on the Government to halt the burning of old-growth forests and wildlife habitats in Australia.

COMMITTEES

Selection of Bills Committee

Report

Senator PARRY (Tasmania) (9.34 am)—

At the request of the Chair of the Selection of Bills Committee (Senator Ferris), I present the fifth report of 2007 of the committee.

Ordered that the report be adopted.

Senator PARRY—I seek leave to have the report incorporated in Hansard.

Leave granted.

The report read as follows—

SELECTION OF BILLS COMMITTEE

REPORT NO. 5 OF 2007

(1) The committee met in private session on Wednesday, 28 March 2007 at 4.16 pm.

CHAMBER
(2) The committee resolved to recommend—
That—
(a) the provisions of the Aged Care Amendment (Residential Care) Bill 2007 be referred immediately to the Community Affairs Committee for inquiry and report by 17 May 2007 (see appendices 1 and 2 for statements of reasons for referral);
(b) the Gene Technology Amendment Bill 2007 be referred immediately to the Community Affairs Committee for inquiry and report by 1 May 2007 (see appendix 3 for a statement of reasons for referral);
(c) the Food Standards Australia New Zealand Amendment Bill 2007 be referred immediately to the Community Affairs Committee for inquiry and report by 1 May 2007 (see appendices 4 to 6 for statements of reasons for referral);
(d) the provisions of the Liquid Fuel Emergency Amendment Bill 2007 be referred immediately to the Economics Committee for inquiry and report by 8 May 2007 (see appendix 7 for a statement of reasons for referral);
(e) the provisions of the Broadcasting Legislation Amendment (Digital Radio) Bill 2007 and the Radio Licence Fees Amendment Bill 2007 be referred immediately to the Environment, Communications, Information Technology and the Arts Committee for inquiry and report by 30 April 2007 (see appendix 8 for a statement of reasons for referral).

(3) The committee resolved to recommend—
That the following bills not be referred to committees:
- Classification (Publications, Films and Computer Games) Amendment (Advertising and Other Matters) Bill 2007
- Education Services for Overseas Students Legislation Amendment Bill 2007
- Food Safety (Trans Fats) Bill 2007
- Migration Legislation Amendment (Information and Other Measures) Bill 2007

The committee recommends accordingly.
(4) The committee deferred consideration of the following bills to its next meeting:
- Governance Review Implementation (Science Research Agencies) Bill 2007

Foreign Affairs, Defence and Trade Committee

Extension of Time

Senator PARRY (Tasmania) (9.34 am)—by leave—At the request of the Chair of the Foreign Affairs, Defence and Trade Committee (Senator Payne), I move:

That the time for the presentation of the report of the Foreign Affairs, Defence and Trade Committee on the Cluster Munitions (Prohibition) Bill 2006 be extended to 10 May 2007.

Question agreed to.

NOTICES

Postponement

The following items of business were postponed:
- Business of the Senate notice of motion no. 2 standing in the name of Senator Bartlett for today, proposing the reference of a matter to the Rural and Regional Affairs and Transport Committee, postponed till 8 May 2007.
- General business notice of motion no. 747 standing in the name of the Leader of the Australian Greens (Senator Bob Brown) for today, proposing the introduction of the Lobbying and Ministerial Accountability Bill 2007, postponed till 9 May 2007.
General business notice of motion no. 775 standing in the name of the Leader of the Australian Democrats (Senator Allison) for today, proposing the introduction of the Energy Savings (White Certificate Trading) and Productivity Bill 2007, postponed till 10 May 2007.

**HUMAN RIGHTS: UNITED STATES OF AMERICA**

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (9.35 am)—by leave—I move the motion as amended:

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.

Question put.

The Senate divided. [9.41 am]

(The President—Senator the Hon. Paul Calvert)

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**AYES**

Brown, B.J.  
Nettle, K.  

**NOES**

Abetz, E.  
Barnett, G.  
Bishop, T.M.  
Brown, C.L.  
Campbell, G.  
Colbeck, R.  
Evans, C.V.  
Fielding, S.  
Fifield, M.P.  
Humphries, G.  
Hutchins, S.P.  
Joyce, B.  
Ludwig, J.W.  
Macdonald, I.  
Mason, B.J.  

McGauran, J.J.J.  
Moore, C.  
O’Brien, K.W.K.  
Patterson, K.C.  
Polley, H.  
Ronaldson, M.  
Troeth, J.M.  
Vonstone, A.E.  
Webber, R.  

McLucas, J.E.  
Nash, F.  
Parry, S. *  
Payne, M.A.  
Ray, R.F.  
Sterle, G.  
Trood, R.B.  
Watson, J.O.W.  
Wortley, D.  

* denotes teller

Question negatived.

Senator STOTT DESPOJA (South Australia) (9.44 am)—I seek leave to make a very short statement on that vote on behalf of the Australian Democrats. I will be very brief, I promise the chamber.

Leave granted.

Senator STOTT DESPOJA—Mr President, the Australian Democrats have a long-standing opposition to torture. We have often called for the International Covenant on Civil and Political Rights to be incorporated in legislation, for example. Further, our serious concerns about some of the methods that the United States and its allies have used in the war on terror are well known. Our concerns about those techniques are well known. We have abstained and not supported the motion before us today because we consider that the quote by the former US Secretary of Defense Donald Rumsfeld is quite broad. What is likely is that Mr Rumsfeld’s intention was to justify techniques that we might consider torture in the interest of keeping the debate balanced. We cannot accept that the words as written are so extreme as to call them ‘tantamount to endorsing torture’ when other interrogation techniques that do not constitute torture could be included in them. I reiterate our shared opposition with Senator Brown and, I am sure, many others in this place on the issue of torture itself.

Senator LUDWIG (Queensland) (9.45 am)—I seek leave to make a short statement, Mr President.
Leave granted.

Senator LUDWIG—Similarly to the Australian Democrats, the Australian Labor Party continues to have a strong opposition to torture and the use of torture. There are a range of human rights and international conventions that oppose torture. In this instance, Senator Brown deferred his motion from yesterday. He then moved an amendment to it on the floor. It was not circulated on the floor; it was not provided to the opposition beforehand. I assume Senator Brown’s interest is in opposing torture more broadly, but in those instances where Senator Brown does not want to take the usual process of providing the opposition with those types of issues, I can assume that he does not want the support of the Labor Party on those matters.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (9.46 am) Mr President, I seek leave to make a statement following those statements.

Leave granted.

Senator BOB BROWN—The pertinent point here is that Donald Rumsfeld was the architect of the rules which permitted egregious torture in Guantanamo Bay and elsewhere under the rubric of statements such as that quoted in the motion. If we do not stand up to that sort of philosophy, if we do not make a stand against it, then we cross the line to breach international rules, international laws and domestic laws, and to torture itself.

MACQUARIE ISLAND

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (9.47 am) I move:

That the Senate—

(a) condemns the failure of Tasmania’s Minister for Tourism, Arts and the Environment, Ms Paula Wriedt, to respond reasonably and adequately to the environmental crisis caused by the explosion in the number of rats and rabbits on the World Heritage-listed Macquarie Island; and
(b) calls on the Tasmanian Government to accept its responsibilities for reversing the extraordinary damage to the island’s native plant life and threat to its wildlife by:
(i) immediately matching the Federal Government’s offer to pay half of the $24.6 million required for a rescue plan,
(ii) rejecting Ms Wriedt’s contention that World Heritage areas are ‘locked up’ and a ‘cost burden’, and
(iii) having the Tasmanian Premier, Mr Paul Lennon, intervene, if necessary, to ensure adequate action is taken before winter closes important options.

Question put.

The Senate divided. [9.51 am]

(The President—Senator the Hon. Paul Calvert)

Ayes………………... 37
Noes………………... 22
Majority………………... 15

AYES

CHAMBER

Second Reading

Senator ALLISON (Victoria—Leader of the Australian Democrats) (9.55 am)—I move:

That this bill be now read a second time.

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

Leave granted.

The speech read as follows—

Our Repatriation of Citizens Bill 2007 would establish an Act to require the Australian Government to promptly request the government of a country in which an Australian citizen is being held in detention in circumstances where there is a risk of infringement of that citizen’s human rights under international human rights treaties and conventions to which Australia is a party, to cause the swift release and surrender of that citizen and to provide for his or her repatriation to Australia.

The motivation for this bill is the failure of current laws to protect the human and legal rights of Australian citizen, Mr David Hicks, following his capture by the United States of America authorities in Afghanistan in 2003.

Mr Hicks’ situation demonstrates the absence of any obligation in Australian law for the Attorney General to act. On 6th March 2007 the Law Council of Australia advised that there was no prospect of Mr Hicks being brought promptly to trial in the United States before a regularly constituted court observing international fair trial standards and called for his immediate release from detention and repatriation.

The Attorney General has not acted despite evidence of undue delay in charges being laid, charges laid that were retrospective, charges made of war crimes for which there was no evidence and the prospect of an unfair trial by an ad hoc military commission established to try non-US citizens who would be accorded a lesser standard of justice than applies to US citizens.

On transfer from Afghanistan to Guantanamo Bay, Mr Hicks was declared by US authorities to be an ‘unlawful enemy combatant’ – a status that is unknown in the law of war. Whilst he was cap-
tured and detained in what was said to be an ongoing war on terror, Mr Hicks was denied the protections afforded prisoners of war under the Geneva Conventions.

In five years detention at Guantanamo Bay the legality of Mr Hicks detention has not been reviewed by a court or independent tribunal. Indeed the decision to detain Mr Hicks and others in a location beyond US sovereign territory indicates an intention to deny detainees access to such reviews.

For the first two years of his detention, Mr Hicks had no access to a lawyer. The military commission regime set up to try Mr Hicks made no provision to ensure independence, impartiality or competence and failed to safeguard even the most basic fair trial rights such as the defendant's right to be present to hear the evidence against him.

The US Congress enacted the Military Commissions Act (MCA) which specifically states that the speedy trial provisions of the Uniform Code of Military Justice do not apply. The MCA permits military commissions to admit evidence obtained by coercion, evidence of hearsay or even hearsay within hearsay, and evidence extracted from defendants themselves under involuntary interrogation.

The MCA allows for information to be withheld from a defendant about the sources, methods or activities by which the US authorities obtained evidence against him, rendering the defendant's right to challenge the reliability of that evidence potentially illusory and undermining a defendant's ability to resist the admission of evidence obtained by use of torture.

Unlike international criminal courts, the MCA provides that the evidence admitted against the defendant will not be evaluated by an international panel of independent, impartial and expert judges, but by ordinary US military officers appointed by the military commissions convening authority.

No independent investigation has been conducted into persistent and credible allegations of detainee abuse and mistreatment at Guantanamo Bay.

Mr Hicks has spent the last year in solitary confinement; 22 hours a day alone in a small concrete cell with 24 hour artificial light.

The Attorney General claimed that the Australian Government had no information to suggest that Mr Hicks had been subjected to abuse or mistreatment and that the US had provided assurances that Mr Hicks was treated in accordance with the standards required by the Geneva Convention. This is clearly not the case.

All previous charges against Mr Hicks—conspiracy to commit war crimes, attempted murder by an unprivileged belligerent and aiding the enemy - have now been dropped and he has finally been arraigned with the retrospective charge of providing material support for terrorism. On 27 March he pleaded guilty to that charge and awaits sentencing. US prosecutors indicate that it is possible that he will serve whatever sentence is brought down in Australia.

This bill provides a process whereby a citizen being held in detention outside Australia, their relative, a diplomat, a legal representative or a human rights organisation can apply to the Attorney General to request a foreign government to release and surrender an Australian citizen where there is a risk of infringement of that citizen's human rights under international human rights treaties and conventions to which Australia is a party.

The Attorney General must then request a report on the conditions of detention, request legal advice as to whether this demonstrates that risk and if the Attorney General refuses to take action, he or she must provide a statement of reasons and court action may be taken to require the repatriation request to be made.

The Democrats consider that all Australians are entitled to the protections afforded by international treaties such as the International Covenant on Civil and Political Rights, to which Australia is a signatory, no matter whether they are in Australia or overseas. This bill does not guarantee the upholding of human and legal rights but it does establish an obligation of government to request repatriation of Australian citizens held in detention where there is a risk that those rights are in jeopardy.

Senator ALLISON—I seek leave to continue my remarks later.

Leave granted; debate adjourned.
COMMITTEES
Environment, Communications, Information Technology and the Arts Committee
Extension of Time
Senator PARRY (Tasmania) (9.56 am)—
At the request of the Chair of The Environment, Communications, Information Technology and the Arts Committee (Senator Eggleston), I move:

That the time for the presentation of the report of the Environment, Communications, Information Technology and the Arts Committee on Australia’s national parks be extended to 12 April 2007.

Question agreed to.

50TH ANNIVERSARY OF THE TREATY OF ROME
Senator WATSON (Tasmania) (9.56 am)—I move:

That the Senate—
(a) notes that the week beginning 25 March 2007 marks 50 years of European integration with the 50th anniversary of the Treaty of Rome; and
(b) acknowledges that through European integration, the Treaty of Rome has led to peace, stability and prosperity within Europe and paved the way for the establishment of the European Union.

Question agreed to.

SLAVERY AND TRAFFICKING OF HUMANS
Senator JOYCE (Queensland) (9.57 am)—I move:

That the Senate—
(a) notes that 25 March 2007 was the 200th anniversary of the passing of William Wilberforce’s bill for the abolition of the trans-Atlantic slave trade;
(b) commends the Government for continuing its work to eradicate the modern day version of slavery, the trafficking of humans for the sex industry in Australia; 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.

Question agreed to.

WORKPLACE RELATIONS (RESTORING FAMILY WORK BALANCE) AMENDMENT BILL 2007
First Reading
Senator FIELDING (Victoria—Leader of the Family First Party) (9.57 am)—I move:

That the following bill be introduced: A Bill for an Act to give back Australian workers their public holidays, meal breaks, penalty rates and overtime and to protect their redundancy, and for related purposes.

Question agreed to.

Second Reading
Senator FIELDING (Victoria—Leader of the Family First Party) (9.58 am)—I move:

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

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

Leave granted.

The speech read as follows—

THE first media release Family First ever issued was about the Government’s Work Choices legislation.
That release, dated July 27, 2005, raised strong concerns about the Work Choices Bill and warned the changes would undermine family life by forc-
ing workers to fight for basic conditions that were previously guaranteed.

Family First voted against the legislation because it removed basic conditions such as overtime, penalty rates, meal breaks and extra pay for working on a public holiday.

What Family First warned about almost two years ago has come true. Consider just two cases:

Spotlight staff were offered new contracts which axed public holiday pay, meal breaks and overtime, in return for an extra 2 cents an hour; Cowra meatworkers were sacked and offered jobs on lower pay and conditions. And a government report cleared the abattoir of wrongdoing!

This week is the first anniversary of the Government’s Work Choices legislation so it is timely to review it.

Australian workers and their families are concerned about the changes, even though the Government insists there are no problems and claims the good economy as evidence of its success.

But what about when the economy turns, when interest rates start creeping up and workers are laid off?

Australian workers do not accept that working at 2am is the same as working at 2pm.

Australian families do not think it is fair for workers to do overtime without being paid extra.

They do not think it is right that people can work on a public holiday like Anzac Day without being compensated with a day off and more pay.

Nor do they think it is okay for people to be required to work long hours without a meal break.

While the Government is in denial, Labor plans to rip up the laws which is reckless and will cause huge disruption, particularly for small businesses.

Family First believes we need to strike the right balance—to find middle ground—between protecting workers and their families on the one hand and supporting business, particularly small business, on the other. Both groups deserve a fair go.

That is what Family First’s legislation does—our Workplace Relations (Restoring Family Work Balance) Amendment Bill 2007 is fair and reasonable legislation that recognises the needs of employers as well as employees.

The Prime Minister says workers want flexibility. What workers want is security; to feel secure in their jobs and to know they can bring home a decent wage and are not forced to bargain for basic wages and conditions.

The Government assumes there is a level playing field between employers and employees. But does anyone seriously believe that a checkout operator can sit down with the boss of Coles to negotiate their own salary package?

The Work Choices legislation puts many workers in a more vulnerable situation, and Family First is particularly concerned about those who are least able to negotiate for themselves, including young Australians, the low-skilled and migrant workers. Like other parents, I worry about my three children and what sort of workforce they are going into.

Removing basic conditions such as overtime and compensation for working on public holidays might suit the market but it certainly does not suit Australian workers and their families. These changes undermine family life and confirm Family First’s view that many so-called ‘family friendly’ policies aren’t really family friendly at all. Rather, they are market friendly.

Family First’s Bill improves this flawed legislation and makes life better, and fairer, for Australian families, by giving back to workers what the Howard Government took away: their public holidays, meal breaks, penalty rates and overtime.

Family First’s legislation will also guarantee redundancy entitlements so Australian workers get every cent they have earned.

Currently, there is nothing to stop employers requiring workers on agreements or contracts to work seven days a week with no overtime or meal breaks. There is nothing to stop an employer paying someone the same rate for working at 2am or 2pm. And there is nothing to stop employers from not compensating workers who work on public holidays like Anzac Day and Christmas Day.

Family First’s Bill gives back to Australian workers and their families what the Government has removed.

Under Family First’s Bill, workers who work on a public holiday will be guaranteed a minimum of a day off in lieu as well as time and a half. Existing
law says those who work on a public holiday do not need to be given a cent more.

Under Family First’s Bill, workers will be guaranteed an unpaid meal break of at least 30 minutes after five hours work. Existing law says workers are not guaranteed meal breaks.

Under Family First’s Bill, workers will be guaranteed overtime at a minimum rate of time and a half for working more than 38 hours a week. Penalty rates will apply for anti-family hours. Existing law says workers are not guaranteed overtime or penalty rates, so working at 2am is the same as working at 2pm. What a joke!

Finally, under Family First’s Bill, workers will be guaranteed every cent of their redundancy entitlements. This will ensure we don’t have a repeat of the ludicrous situation with Tristar workers being kept on by their employer, even though there is no work for them to do, until they can be sacked on lower entitlements when their agreement runs out.

Family First believes the Prime Minister has failed the ‘battlers’ who have put their faith in him.

We are introducing this Private Member’s Bill to protect those families, and we look forward to the support of both the Labor Party and the Government for our legislation.

Society has an obligation to ensure that all Australians earn a decent wage and have decent conditions, regardless of their bargaining position.

Conditions like overtime matter—they are really important. Many workers rely on overtime to make ends meet. Families rely on overtime to pay for the little luxuries, such as seeing a movie or going to the local Italian restaurant for dinner on a Sunday night.

Yes work is important, and so too is the economy. But we work to live. We do not live to work. Family First’s legislation ensures a fair go for Australian workers and their families by restoring conditions the Government took away.

Senator FIELDING—I seek leave to continue my remarks later.

Leave granted; debate adjourned.
Thursday, 29 March 2007

SENATE

13

Question put.
The Senate divided. [10.04 am]
(The President—Senator the Hon. Paul Calvert)

Ayes………..  8
Noes……….. 45
Majority…… 37

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

NOES
Abetz, E. Adams, J.
Barnett, G. Bernardi, C.
Bishop, T.M. Brown, C.L.
Calvert, P.H. Campbell, G.
Chapman, H.G.P. Colbeck, R.
Crossin, P.M. Eggleston, A.
Evans, C.V. Ferguson, A.B.
Fielding, S. Fierravanti-Wells, C.
Fifield, M.P. Forshaw, M.G.
Hogg, J.J. Humphries, G.
Hurley, A. Hutchins, S.P.
Johnston, D. Kemp, C.R.
Ludwig, J.W. Lundy, K.A.
Macdonald, I. Marshall, G.
McEwen, A. McGauran, J.J.J.
McLucas, J.E. Moore, C.
Nash, F. O’Brien, K.W.K.
Parry, S.* Payne, M.A.
Polley, H. Ray, R.F.
Sterle, G. Troeth, J.M.
Trood, R.B. Vanstone, A.E.
Watson, J.O.W. Webber, R.
Wortley, D.

* denotes teller

Question negatived.

COMMITTEES
Publications Committee
Report

Senator PARRY (Tasmania) (10.07 am)—At the request of the Chair of the Standing committee on Publications (Senator

Barnett), I present the 20th report of the committee.

Ordered that the report be adopted.

Corporations and Financial Services Committee
Report

Senator CHAPMAN (South Australia) (10.08 am)—I present the report of the Parliamentary Joint Committee on Corporations and Financial Services on the exposure draft of the Corporations Amendment (Insolvency) Bill 2007, together with the Hansard record of proceedings and documents presented to the committee.

Ordered that the report be printed.

Senator CHAPMAN—I move:

That the Senate take note of the report.

This report relates to the exposure draft of the Corporations Amendment (Insolvency) Bill 2007, which was released for public comment by the government in November last year. I am pleased to say that this report of the Parliamentary Joint Committee on Corporations and Financial Services on the exposure draft bill was unanimous. The committee welcomes the release of the bill, the first to address Australia’s insolvency laws in almost 11 years.

The committee is unanimous in supporting the major policy objectives of the bill, which include introducing greater flexibility into insolvency proceedings, removing unnecessary regulatory burdens and modernising legal frameworks to reflect market developments. In support of these objectives, the bill includes the most comprehensive package of insolvency law reforms since the Harmer review in 1988. The committee notes that the bill provides for a range of measures to strengthen creditor protections and improve the efficiency of the insolvency process.

CHAMBER
It is significant that, in developing this package, the government took into consideration a number of reviews and inquiries, including my committee’s comprehensive 2004 report on corporate insolvency laws. The committee notes in particular that a number of its recommendations were supported by the government and have been incorporated into this draft bill. In deciding to hold a short inquiry into the bill, we agreed that it would not cover the same broad ground covered in our 2004 inquiry. Instead we agreed to narrow the focus of our inquiry to the recommendations from our 2004 report which the government rejected, agreed with in principle or argued were matters falling under the jurisdiction of the Australian Securities and Investments Commission. In doing so, we sought the views of insolvency practitioners, regulators and industry stakeholders to see if there were any issues of continuing relevance.

The committee’s inquiry addressed issues under three broad categories. The first is the regulation of the insolvency process. We picked up on two issues dealt with at length in the 2004 report: uncommercial transactions and the procedure for creditors’ voluntary liquidation. We believe that the interests of creditors and shareholders must be balanced in any proposal to change the clawback provisions of the Corporations Act. We have recommended that the government reconsider its position on this issue so that a liquidator may challenge company transactions that have taken place within the one-year period preceding formal insolvency. While the committee acknowledges that the draft bill will improve the existing creditors’ voluntary liquidation process, it does not believe the government has done enough to further modify and simplify the process. We have recommended that the government revisit this issue to examine ways to enable a company to be placed into liquidation immediately to maximise recoveries for the benefit of creditors.

The second category of issues considered relates to the role of administrators and directors. Uppermost in the committee’s mind is ensuring that any potential or real conflicts of interest involving liquidators are avoided. We remain concerned that an administrator’s use of a casting vote in a resolution concerning his or her replacement may give rise to an apparent conflict of interest. We have recommended that the government consult with industry stakeholders to find an innovative solution which neither mandates a prohibition on the use of a casting vote nor mandates discretion in all circumstances. The committee also found support for its previous recommendation that so-called ‘ipso facto’ clauses be removed. We believe the government has not given sufficient weight to the safeguard built into the recommendations that we made—namely, that a court must be satisfied that a contracting party’s interests will be protected adequately. We urge the government to reconsider its position and pay particular attention to the operation of ipso facto clauses.

The committee examined two important issues relating to the role of directors: ensuring directors keep accurate and up-to-date financial records, and criteria which should apply before a person is disqualified from being a director. We heard evidence from stakeholders which provided strong support for our previous recommendations. To progress the issue of whether administrators should be permitted to recover from directors the cost of reconstructing company records, we have recommended that the government consider an alternative and arms-length administrative process which would place any decision to recover costs in the hands of an objective third party such as the Australian Securities and Investments Commission.
Evidence before the committee demonstrates that further change to the law is necessary to permit ASIC or a court to take swift and significant action in the event of corporate misconduct which may or may not relate to phoenix activity. We believe that the draft bill should be amended to reflect our previous recommendation 31 and that ASIC should benchmark the effectiveness of programs to combat phoenix companies. In the light of its concern about the lack of available data on the nature and extent of fraudulent phoenix activity, the committee believes a more concerted and cooperative policy effort is required to enable ASIC to provide liquidators with background information about company officers convicted of a serious criminal offence.

The third and final set of issues relate to the protection of employee entitlements. The committee believes strongly that the protection of employee entitlements is an important public policy issue. We remain concerned at the incidence of employees who are unable to receive entitlements under GEERS due to a lack of company records. The committee, therefore, has recommended that the government compile data on this issue and come up with practical measures to assist directors and company officers to maintain appropriate company records.

During this inquiry the committee was mindful of the multiple and even conflicting policies and objectives which need to be balanced in striving for an effective and efficient insolvency regime. This balancing act was foremost in our deliberations.

The committee notes the overwhelming support for the bill from the major insolvency and accounting bodies and believes there are no matters of such significance raised by the bill that would justify a delay to its introduction and passage through the parliament if possible before the end of this financial year. While the committee supports the bill, it found that the accounting bodies, the Insolvency Practitioners Association of Australia and the Law Council of Australia continue to support our previous recommendations which the government rejected. This is why this report strongly urges the government to reconsider its position with respect to a number of those recommendations and to consult with industry stakeholders on a range of issues.

In conclusion, I commend the report to the Senate. I thank our committee secretary, David Sullivan, and our committee staff for their effective contribution to our work on this issue. In particular, I want to refer to Stephen Palethorpe, who has been for some time a valued member of the staff of the Parliamentary Joint Committee on Corporations and Financial Services and a significant contributor to our work. I congratulate him on his promotion to become the secretary of the Senate Standing Committee on Finance and Public Administration. His leaving will be a loss to our committee, but I congratulate him on his promotion and wish him well.

Senator WONG (South Australia) (10.16 am)—I also rise to speak briefly to this report of the Joint Committee on Corporations and Financial Services, as I have had an interest both as a shadow minister and as a backbencher in the issue of insolvency. I start by echoing the chair’s thanks to the committee secretariat for their contribution in managing this inquiry and this report. My best wishes also go to Mr Palethorpe, and we look forward to welcoming him to the Standing Committee on Finance and Public Administration.

I indicate to the Senate that this committee undertook quite a lengthy inquiry which I was involved in, along with Senator Chapman and Senator Murray, in 2004 in relation to Australia’s insolvency laws. That was
quite a comprehensive inquiry and I think a very important and useful contribution to the discussion about the state of Australia’s insolvency laws. We in the Labor Party remain somewhat concerned that there are a number of aspects of the report of that inquiry which the government has as yet failed to act upon. Leaving aside the minority reports from the Australian Democrats and the ALP, there were quite a number of very sound recommendations which had bipartisan support but have not been acted upon.

I am only going to speak briefly in relation to three particular recommendations which I want to emphasise. The first is recommendation 1, which relates to the committee’s previous recommendation in the 2004 report to remove the prerequisite of insolvency for the purposes of the definition of uncommercial transaction. I place on the record our disappointment that the government has not sought to take that recommendation on. I suggest to the chamber that the evidence presented by Treasury on that issue overstated any concern about alteration of that provision. I commend to the government this bipartisan recommendation whereby the committee has suggested a shortening of the time frame—

Senator Murray—Cross-party.

Senator WONG—Senator Murray rightly corrects me and says ‘cross-party’. It is a cross-party recommendation whereby we say this to the government: you should remove the prerequisite of insolvency because, on the evidence that we were presented with both in the 2004 inquiry and, I would suggest, in this inquiry, it is unnecessarily restrictive. We have the view that this provision can impede the recovery of property for the company for the benefit of creditors, and we think it needs to be reconsidered by government. We are conscious of the issues Treasury raised, which is why the committee, again on a cross-party basis, has suggested a shortening of the time frame in which such clawback can occur, through an uncommercial transaction process, to 12 months. We encourage the government to consider that.

The second point I want to raise relates to recommendation 3, which is the right of an administrator to use a casting vote in relation to his or her removal. We have raised this previously. It seems extraordinary, in terms of general principles about the conflicts of interest and the desire that administrators not only act independently but be seen to be independent, that an administrator can exercise a casting vote in favour of or against their removal. We strongly encourage the government, consistent with the principles of independence, which the insolvency system to a large extent depends upon, to consider an alternative voting mechanism to deal with that issue. It seems to be a fairly patent conflict of interest that ought not to be permitted under the legislation and needs to be dealt with.

Finally, I want to deal with recommendations 5 and 6, which relate to the keeping of proper financial records. The evidence before this inquiry and, as I recall, also before the 2004 inquiry was that they are clearly a minority but there are some directors of insolvent companies who have not kept appropriate records. Not only does that make the administrator’s or liquidator’s job very hard, but it can potentially create a significant cost burden to the administration, to the detriment of creditors, which may include employees but also independent contractors and other persons or entities with whom the company contracts. In other words, the creditors get stung twice: first, the company goes into insolvency and they may not get the entirety or any of the moneys that they are owed; and, second, they then effectively have to wear the cost of the fact that the directors have not
complied with their obligations under the law.

There was some very compelling evidence at one point in the inquiry where I think one of the representatives of the insolvency bodies pointed out that the penalties under the act for the nonkeeping of these financial records were probably less than it might cost some directors to remedy any noncompliance. It is a practical absurdity to have a situation where it is potentially cheaper for people to not comply with the law than to comply with it. I urge the government to consider both recommendations 5 and 6. Recommendation 5 is a recommendation to significantly increase the penalties pursuant to section 286. In my view, this is absolutely required. I suggest to the chamber that most businesses do the right thing. We need a compliance mechanism to ensure that the directors who do not do something as simple as keeping proper financial records of the operations of a company are subjected to appropriate penalties as a deterrent to that sort of behaviour.

Senator MURRAY (Western Australia) (10.22 am)—Speaking to the same motion, I say at the outset that I fully support the remarks of both the Chair of the Joint Committee on Corporations and Financial Services, Senator Chapman, and of Senator Wong, the shadow minister, with respect to this report. I therefore do not intend to repeat the very strong statements made in the report itself and in their supporting remarks. I concur absolutely. What I do want to do is express my appreciation to the secretariat and also join in congratulating Stephen Palethorpe, who is a particularly able and very nice person, I might say. I wish him well in his new post. He comes to a committee on which I also sit, so I look forward to working with him further.

This is a particularly well-written report. It is tightly constructed, well argued and thoroughly referenced. It draws my attention again to an issue which concerns me—that is, by and large, the government have been active and productive and effective in advancing legislative change in the broad arena of Corporations Law and the laws which attach to it, but this insolvency law that we are discussing is not one of those areas to which the government have paid proper attention.

The chair correctly made the remark that the law has not been addressed for 11 years. The committee, and indeed I, felt strongly that law change was required. The community of interests concerned with insolvency law felt that law change was required. It has taken a long time for the government to get around to addressing this vital issue. The real advances made in insolvency administration and practice in recent years have been as a result, in my view, of committee pressure applied to the Australian Securities and Investments Commission, who have really lifted their game with respect to what they do under the existing law.

The point has been made too that what we are looking at here are unanimous recommendations from serious, engaged, long-term parliamentarians who have a portfolio and a personal interest in matters that affect corporations. Yet considered recommendations have not been responded to in time and many have been rejected or ignored. When you arrive at unanimous recommendations in this area, generally speaking it means that they are the result of a careful distillation of evidence and the agreement of the parties and the personalities concerned in the committee as to what the best outcome is. When you are dealing with characters with strong intellects and wills, as is the case with the members of this committee, you are not going to find weak, half-hearted outcomes which are the
result of a lowest common denominator compromise. Unanimous recommendations are only arrived at where the committee feels that they are so justified. So I say to the government that they need to focus more on what the committee is saying.

One of the reasons I wanted to address my remarks in this way is that my attention has been drawn this week to the Fincorp problem. I recall that in 2005 the committee produced a report with respect to property advice. The government to date has not got around to giving a response to that report. If there is anything which affects Australians’ wealth and Australians’ view of their financial security and their household balance sheets, it is the issue of property. If there is anything which affects the way in which their property interests are managed, it is the potential for schemers, promoters, con artists and so on to take advantage of Australians. I think the property advice report from the committee would have assisted in addressing some of the issues which surround matters such as Fincorp, because they would have tightened up on the kind of advice and the kind of recommendations that can be made by promoters and by people using financial prospectuses to gather investors into schemes such as these.

Without preconceiving the outcomes of what will occur with the Fincorp matter, I nevertheless say that one of the parties I will point the finger at is the government for not moving quickly enough when the committee unanimously—all parties—had said to them, ‘There is a problem with respect to property advice and property as real assets and you should attend to it.’

I use the opportunity of discussing this particular insolvency report to draw attention to a broader problem—that is, of the government in its formal sense and the bureaucracy not responding quickly enough and with sufficient respect for the process to considered, unanimous, detailed committee reports such as these, which are drawn together by serious people on serious issues and deserve a quicker response and more consideration than I feel they are getting at present.

Question agreed to.

**Community Affairs Committee**

**Additional Information**

**Senator HUMPHRIES** (Australian Capital Territory) (10.29 am)—I present follow-up information received by the Standing Committee on Community Affairs on an inquiry by the former references committee into petrol sniffing in Aboriginal communities, and move:

That the Senate take note of the document.

In speaking to that motion, I should record that the Senate community affairs committee has been very active in following developments that occur in areas that have been the subject of recent inquiries. Just yesterday, senators agreed to refer an ongoing matter relating to mental health to the committee. That is an indication of our desire to follow up on issues that were raised previously by a select committee. We also believe it is very important to maintain government and community focus on these issues.

The report to the committee from the Central Australian Youth Link-up Service, CAYLUS, that I have just tabled provides information on progress with petrol sniffing prevention initiatives in Central Australia that follow the committee’s inquiry into petrol sniffing. The committee’s report in June 2006 made a number of recommendations, including supporting an extended rollout of non-sniffable Opal fuel, developing longer term community based programs especially working with young people and widening the coverage of the eight-point plan.
The committee met with representatives of CAYLUS this week and is very pleased to report the tangible improvements that have occurred following completion of the committee’s inquiry. The report from CAYLUS stated:

There has been a huge reduction in petrol sniffing in remote communities in our region as a result of the Opal roll out. In most communities there is now a strong opposition to the return of inhalant abuse. This cessation of sniffing has already had positive effects on rates of STDs, school attendance, staff and community morale ... The challenge is now to provide young people with new options in their lives now that sniffing culture is broken.

In meeting this challenge, a regional youth program infrastructure is required. In particular, youth programs are required in the areas that have now been included within the extended eight-point plan and in communities east of the Stuart Highway. CAYLUS also commented:

Without the required funds, it is possible that the early success of Opal will be lost, as the window to address the underlying causes of inhalant and other substance abuse may close.

The committee strongly supports the initiatives proposed by CAYLUS in the tabled paper to ensure that the advances that have been made are not lost and that the initial gains made by the Opal strategy can be made sustainable in the long term.

Senator SIEWERT (Western Australia) (10.32 am)—I would also like to speak to the motion regarding the additional information received by the Senate Standing Committee on Community Affairs that has been tabled and to congratulate the communities that have had such a positive response to the roll-out of Opal.

For those of us who were lucky enough to go to the RemoteFest short film festival on Monday night and see some of the short films that had been made about the Opal rollout and how communities were dealing with petrol sniffing in remote communities, it was very exciting to see some of the successful programs, the creativity of the filmmakers and the joy of the young people who were featured in the films. It really was heart-warming to see these films and a change from some of the negative stories that we hear.

As the CAYLUS report that has been tabled today highlights, there have been some very positive outcomes to the rollout of Opal fuel, which, as Senator Humphries said just a moment ago, was one of the recommendations from the Senate report in attempting to renew hope in remote communities. Some of the other recommendations went to some of the other issues that need to be dealt with if we are going to successfully eradicate petrol sniffing permanently. They relate to diversionary programs, to youth support workers and to the need for infrastructure for those youth workers. The CAYLUS report stated:

It appears the capacity of the communities to deal with inhalant abuse has been greatly enhanced by the Opal supply reduction strategy. This has provided an environment in which communities and services can achieve improved health and social order outcomes. This requires a commitment of funds for infrastructure and youth programs in order to capitalise on this initial success.

This is what we really need to focus on now. For a start, while there has been positive success in a number of communities, there are still other communities that need the rollout of Opal and it is absolutely essential that infrastructure and ongoing youth programs and funding for those programs are provided. For example, accommodation for youth workers is urgently needed. Although some accommodation has been built, as I understand it, it is not being used as yet. These sorts of issues are absolutely vital.

CAYLUS also pointed out in their report and on Monday night that 23 young people
who had been through the Mount Theo pro-
gram have achieved employment in the 
community in Central Australia. So not only 
is this having successful health and social 
outcomes; youth who have been through a 
whole succession of programs are now find-
ing employment. The holistic approach that 
was pointed out in the Senate committee re-
port is absolutely critical.

CAYLUS also pointed out in their report 
that, through the eight-point plan, the rollout 
of Opal has been extended to other commu-
nities, which is dealing with the supply issue, 
but further resources are needed to deal with 
demand reduction programs. What the 
Greens are certainly asking government to 
urgently look at now is the provision of addi-
tional funds for infrastructure support for the 
youth diversionary programs so that this 
scurge can be permanently eradicated.

We are making a really good start, but it is 
too early for self-congratulation because we 
have been there before with avgas. We 
started to get some success with avgas but 
communities gradually fell back into sniff-
ing, which is why we need to learn from 
those mistakes of the past and really get be-
hind the call for additional resources and the 
upply of them so that this program truly is 
successful. As the committee pointed out 
when we tabled the report last year, we want 
this to be the last report on petrol sniffing. 
Progress is being made towards that and we 
truly hope that it is.

Senator MOORE (Queensland) (10.37 am)—Madam Acting Deputy President 
Crossin, I am sure that my comments will 
reflect many of your own ideas on this issue. 
I am sure that you would have liked to have 
been speaking at this stage. I also wish to 
add a couple of comments on this issue. I 
congratulate the chair of the committee, 
Senator Humphries, for bringing forward the 
supplementary comments on this process. As 
he said in his statement, the role of our 
committee does not end when we actually 
put forward a report. In the Senate Standing 
Committee on Community Affairs we have 
been privileged to have involvement with a 
range of very important social issues over the 
last couple of years since I have been here. 
Too often at the end of that process you table 
your report, there is a focus on the issue for a 
short time and then, to all intents and pur-
poses, that is the end of the process.

We do not accept that statement. In terms 
of the issues which our committee has been 
able to look at, we believe that there is a re-
ponsibility for the committee and, indeed, 
the parliament to continue involvement and 
to have a monitoring role to make sure that 
the recommendations and the real pain that 
has been brought forward in so many of our 
inquiries are continued to be felt by this 
body. Also, we should celebrate ongoing 
success. This is the real story out of the in-
formation we have before us on petrol sniff-
ing today.

In terms of the information that has come 
forward by reviews of what is happening in 
Central Australia, it has been an amazingly 
successful story. The rollout of Opal, which 
was a strong recommendation of our com-
munity affairs committee, has proceeded. As 
that has proceeded, the scourge of petrol 
sniffing has been reduced in those communi-
ties. Certainly, we encourage ongoing activ-
ity around the recommendations of the 
committee, which means that Opal must be 
available across all communities in our coun-
try that suffer from—and I keep saying 
this—the scourge of petrol sniffing.

No-one can remain immune to the pain of 
these issues when you have families, people 
who have survived this process and mothers 
come before us. For me—and I have said this 
before—one of the most impressive parts of 
our committee activity was having the moth-
ers of Central Australia come to us and talk about their pain for their children.

We have had some success with the roll-out of Opal, but that is not the end of the issue. That is indeed the import of the CAYLUS papers that have come before us today. We are talking about what happens next. The success is vulnerable. It needs to be strengthened by ensuring the community programs which are also recommended in the community affairs report and the eight-point plan. It is important that that support infrastructure is funded effectively over a sustained period and community strength is reinforced in these areas so that there will not be any rollback into the issues of petrol sniffing or the finding of other ways of escaping from what we saw as the hopelessness of the people in the communities. They sensed that their educational opportunities, employment opportunities and hope for the future were not there.

In fact, one of the more enjoyable parts of this work is when you can work together across all parties to learn and recommend changes that can be implemented positively. On behalf of all of us, we celebrate the success that has been achieved. Again, we congratulate the amazing work of CAYLUS. The workers of that organisation and their support in that area must be acknowledged. Their role must be effectively resourced by governments.

We must be able to move forward to ensure that the young people of our community do not feel the despair that forces them into taking any option to escape. Petrol sniffing is but one of the options people take up. We have been able to amend that activity through the implementation of Opal. We have much more work to do. We can work effectively across governments, across parties and with the community to ensure that this is a success. But we actually should take some time today to celebrate the hope that has been reinforced by people moving away from petrol sniffing and back into taking active roles in their communities. I seek leave to continue my remarks later.

Leave granted; debate adjourned.

BUDGET

Consideration by Estimates Committees

Additional Information

Senator NASH (New South Wales) (10.41 am)—On behalf of the chairs of the respective committees, I present additional information received by committees relating to estimates as follows:

Additional estimates 2005-06—Rural and Regional Affairs and Transport—Standing Committee—Additional information received between 19 May 2006 and 27 March 2007—Transport and Regional Services portfolio.

Budget estimates 2006-07 (Supplementary)—Environment, Communications, Information Technology and the Arts—Standing Committee—Additional information received between 8 February and 28 March 2007—Communications, Information Technology and the Arts portfolio.

Environment and Heritage portfolio.

Foreign Affairs, Defence and Trade—Standing Committee—Additional information received between 8 February and 21 March 2007—Foreign Affairs and Trade portfolio.

Rural and Regional Affairs and Transport—Standing Committee—Additional information received between 6 February and 27 February 2007—Transport and Regional Services portfolio.

Additional estimates 2006-07—Environment, Communications, Information Technology and the Arts—Standing Committee—Additional information received between 12 February and 28 March 2007—
Senator COONAN (New South Wales—Minister for Communications, Information Technology and the Arts) (10.42 am)—I indicate to the Senate that these bills are being introduced together. After debate on the motion for the second reading has been adjourned, I will be moving a motion to have the bills listed separately on the Notice Paper. I move:

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

Question agreed to.

Bills read a first time.

Second Reading

Senator COONAN (New South Wales—Deputy Leader of the Government in the Senate) (10.42 am)—I move:

That these bills be now read a second time.

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

Leave granted.

The speeches read as follows—
the rdcs are best placed to enhance the partnership between industry and government under the rdc model, the rdcs also determine investment strategies that best meet industry and government priorities and maintain key relationships with an extensive range of primary industry stakeholders and research providers.

However, the current administrative practice of appointing serving public servants as government directors on rdc boards was recognised as not consistent with a skills based approach and is to be discontinued. Instead, the skills set for board selection will be expanded to include expertise in public administration.

This decision will also remove the potential for conflict of interest for serving public servants between their responsibilities to the minister and to the board.

As part of the assessment process, consideration was given to the operational and reporting requirements under the act to achieve the appropriate balance between the minister’s role, effective communications and accountability and the role of the rdc boards.

The interactions of the act with the commonwealth authorities and companies act 1997 (cac act) in regard to accountability and management obligations of the RDCS were also considered.

These considerations gave rise to a number of other amendments to the act that respond to the Uhrig report’s recommendations to improve corporate governance and will improve board expertise, experience and management arrangements.

Two changes to the act in the areas of board selection committees and reporting on selection committee performance will improve governance through providing greater emphasis on the diversity of board membership.

They will also provide a practical response by the government to the recommendations by the recent report of the inquiry into women’s representation on regional and rural bodies of influence.

These amendments to the act will further strengthen the delivery arrangements for rural industries R&D. Together with the seven industry owned rural research and development companies, the eight statutory rdcs operated as a key partnership between the government and industry in delivering more than $541 million dollars in rural research, development and extension in 2005-06.

It is vital that the RDCS meet best practice in their operations. Through the Uhrig report assessment process, the government is helping to strengthen the efficiency and effectiveness with which the rdcs pursue the competitiveness, productivity and sustainability of Australia’s rural industries.

The amendments to the act are part of the broader range of responses to the Uhrig report that are being pursued by the government to improve the governance framework for a number of statutory agencies in the Agriculture, Fisheries and Forestry Portfolio.

These include the Australian pesticides and veterinary medicines authority and the Australian wine and brandy corporation. The legislative amendments to improve their governance framework and performance are due to be considered during the current parliamentary session.

I commend the bill.

GOVERNANCE REVIEW IMPLEMENTATION
(TREASURY PORTFOLIO AGENCIES) BILL 2007

Today I introduce a Bill which will improve the corporate governance of three statutory authorities in the Treasury portfolio – the Australian Securities and Investments Commission (ASIC), the Corporations and Markets Advisory Committee (CAMAC) and the Australian Prudential Regulation Authority (APRA).

The Bill is one part of a broader exercise within the Australian Government to improve transparency and consistency in relation to governance arrangements for statutory authorities and office holders.

In June 2003 the Government received the Review of the Corporate Governance of Statutory Authorities and Office Holders. This is now generally referred to as the Uhrig Review. The Uhrig Review identified a number of options for the Government to improve consistency and transparency in the relationship between Ministers and statutory authorities and office holders.
The Australian Government announced its response to the Uhrig Review in August 2004. As part of its response, the Australian Government agreed that the Financial Management and Accountability Act 1997 (generally known as the FMA Act), should apply to statutory authorities where it is appropriate they be legally and financially part of the Commonwealth and they do not need to own assets.

The Bill implements this decision in relation to ASIC, CAMAC and APRA.

Under the new framework, the three agencies will hold money and property on behalf of the Commonwealth, rather than in their own right. This reflects their status as agencies that are largely budget-funded, in contrast to agencies that raise funds for commercial activities.

The agencies will also have the power to enter into contracts on behalf of the Commonwealth. In addition, ASIC and APRA will retain the power to enter into contracts on their own behalf, however the intention is that this power will only be used for regulatory purposes (for example, regulatory agreements).

The Bill will also define the financial reporting requirements of ASIC, CAMAC and APRA under the FMA Act and the responsibilities of the Chief Executives of the agencies.

It is important to note that the above changes will not adversely affect the operational capabilities and independence of the statutory bodies. As noted in the Uhrig Review, it is the authority’s legislative framework (and not its financial framework), which establishes the level of operational independence required to exercise its statutory responsibilities effectively.

While these reforms may be considered to be minor in nature, I note they are an important part of a broader effort to improve governance across Commonwealth agencies. Improved consistency and transparency in governance will assist all agencies in delivering important services to the community.

In concluding, I note that I have, in accordance with the Corporations Agreement, consulted the Ministerial Council for Corporations (MINCO) prior to introducing this Bill. I have also obtained MINCO approval of the Bill. I therefore present the Explanatory Memorandum to the Bill and commend the Bill to the House.

Ordered that further consideration of the second reading of these bills be adjourned to the first day of the next period of sittings, in accordance with standing order 111.

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

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

**AUSCHECK BILL 2006**

**NATIVE TITLE AMENDMENT BILL 2006**

Returned from the House of Representatives

Messages received from the House of Representatives agreeing to the amendments made by the Senate to the bills.

**BANKRUPTCY LEGISLATION AMENDMENT (SUPERANNUATION CONTRIBUTIONS) BILL 2006 [2007]**

Returned from the House of Representatives

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

**COMMITTEES**

Australian Commission for Law Enforcement Integrity Committee

**Membership**

The ACTING DEPUTY PRESIDENT (Senator Crossin)—The President has received a letter from a party leader seeking a variation to the membership of a joint committee.

Senator COONAN (New South Wales—Minister for Communications, Information Technology and the Arts) (10.44 am)—by leave—I move:

That Senators Bishop and Crossin be appointed as members of the Parliamentary Joint
Committee on the Australian Commission for Law Enforcement Integrity.

Question agreed to.

**Environment, Communications, Information Technology and the Arts Committee Reference**

**Senator MILNE** (Tasmania) (10.44 am)—I move:

(1) That the Senate notes that:

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

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

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

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

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

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

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

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

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

(a) ecological, social and economic impacts;

(b) adaptation and mitigation strategies;

(c) knowledge gaps and research needs; and

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

Yesterday in Australia we heard from Sir Nicholas Stern, one of the world’s most eminent speakers on the economic impacts of climate change, pointing out that whatever it costs to take action now will be nothing compared with what it will cost if we do not take action. I am asking the Senate to agree to a motion to look at the assessment of the risks associated with sea level rise in Australia, including an appraisal of recent science relating to sea level rise projections, the ecological, social and economic impacts of the
full range of projections, adaptation and mitigation strategies, knowledge gaps and research needs, and options to communicate risks and vulnerabilities to the Australian community.

This is an urgent matter; it is an urgent matter because the science is telling us that we can expect not only the current amount of global warming that is locked in because of the levels of CO₂ concentrations in the atmosphere but that we will see accelerating global warming as the concentrations of CO₂ rise. We have to make deep cuts. But, regardless of the deep cuts that we make in the next 10 or 15 years, the sea level rise is going to continue. We have had the Intergovernmental Panel on Climate Change fourth assessment report published in February telling us that the sea level will rise by between 0.18 metres and 0.59 metres by the end of the century. More concerning than that is recent evidence from scientists such as Dr Barrie Pittock, formerly of CSIRO. He says that we have an increase in the outflow of the glaciers from Greenland and parts of Antarctica—increasing to such an extent that the latest papers are suggesting a rise by 2100 of between 50 centimetres and 1½ metres. That is the range that the latest science is demonstrating by 2100. If you take into account the rule of thumb that for every metre in sea level rise the coast will retreat and go inland by 100 metres—so for every metre you can expect that impact of 100 metres—and you consider how many people live in the coastal zone around Australia, we have to be concerned.

Only a couple of weeks ago in Cairns we had a meeting of the Planning Institute of Australia. They talked about the impacts of sea level rise, and we also had the insurance industry there. Both the Planning Institute of Australia and the Insurance Council of Australia are saying that we are reaching a situation where some people will no longer be able to get insurance because of where they are in relation to the coast. Furthermore, they are saying that, in the future, local government in particular will be sued because they have given planning approval for development in coastal zones where it was already known there would be sea level rise. So we have a situation where people are moving to the coast and local government is not taking adequate note of the likely impacts of sea level rise.

Looking at their website today, I was alarmed to see that the Greenhouse Office has not published anything since 2004 on updated impact assessment of sea level rise around Australia. No doubt I am going to hear from the government that they have a Greenhouse Office and that is the answer to climate change—that you set up the office. It is what the office actually does that is of concern to me.

At that recent Planning Institute conference in Queensland they said that in the Northern Territory nearly 900 coastal buildings, mainly in Darwin, are at risk. Along the Tasmanian coastline more than 17,000 addresses are considered vulnerable—as are more than 60,000 in South Australia, mostly around Adelaide, and over 80,000 along the Victorian coast, mainly around Melbourne. In Western Australia 94,000 buildings have been identified as vulnerable around Perth. But the biggest concern is along the eastern seaboard where more than 200,000 buildings are considered vulnerable on the New South Wales coast, including Sydney. Queensland faces the largest risk with almost 250,000 buildings under threat stretching from the Gold Coast to the Sunshine Coast. So this is not something 50 or 100 years hence—although, as I am saying, we are likely to see increasing rates of sea level rise; these are buildings that have been identified as vulnerable right now because of sea level rise. Add to that the issue of storm surge and you will
see that we are facing major disaster around Australia, and we need to spend money right now dealing with it.

In the UK the Thames Barrier in the mouth of the Thames River has been there for a long time to try and stop storm surge influencing the city of London to the extent that it did previously as a result of that coastal flooding and storm surge. At a recent meeting of the conference of the parties to the United Nations Framework Convention on Climate Change, there was a discussion about what we know as the Low Countries—and that includes, of course, the Netherlands—considering putting out a tender for a new coastline. It is a concept that is very difficult to even imagine in terms of the costs of actually considering that you might have to build a new coastline. Already in the Netherlands they are actively moving people from areas that are clearly going to be vulnerable to flooding. They face not only the risk of sea level rise but also, with heavier rainfall events, they are going to have flooding coming down the rivers—the two will meet and there will be massive flooding. Certainly Europe is focused on this because of the density of population in what we know as those Low Countries.

In Australia we also have issues with areas like Kakadu and our national parks, coastal wetlands, protected areas and so on. We are going to see sea level rise have a considerable impact as a result of saltwater incursion into our wetlands. I was appalled when I heard earlier this year the federal Minister for the Environment and Water Resources, the Hon. Malcolm Turnbull, saying:

There’s a lot of very exaggerated claims and you have to bear in mind that most of our coastal population lives on the east coast of Australia and because of the geology or the typography—I presume he meant topography—of the east coast, you know, much of that is adequately elevated to deal with a one-metre sea rise. That demonstrates the complete ignorance of the government about what a one-metre sea level rise would mean for coastal Australia. It would be absolutely devastating to infrastructure and to millions of people. But consider for a moment what it would mean for our Pacific neighbours. We already recognise that a large number of people will be dislocated and will have to move from the islands where they live. Not only will their lives and their culture be disrupted but they will need somewhere to go—and Australia, of course, is resisting even the definition of an ‘environmental refugee’ in the refugee convention, let alone agreeing to have future arrangements and treaties whereby Australia would take some of those people, even though Tuvalu and the New Zealand government have had an understanding that New Zealand will absorb a number of people from Tuvalu because of sea level rise and saltwater incursion into fresh water supplies.

Returning to Australia, a recent report by the Risk Frontiers Natural Hazards Research Centre at Macquarie University talked about the wider Sydney region, including the central and south coasts. It said that there are almost 13,000 dwellings below two metres above mean sea level and over 140,000 dwellings below six metres above mean sea level. It noted that, during spring tides, sea level is almost a metre above mean sea level in Sydney. Another study found that, for a given sea level rise of 20 centimetres by 2050, coastal erosion of up to 22 metres is projected for the Collaroy-Narrabeen beach, rising to 110 metres given a one-in-50-year storm surge, with associated economic losses of $230 million.

Also, an interesting rumour has been handed down from generation to generation of public servants in New South Wales that, as long ago as under the Wran government,
the planning department there did an assessment on sea level rise impacts on Sydney and coastal New South Wales. When those planning people delivered that to the Wran government, they were told to bury it—and it has been buried ever since—because of the devastating impact it would have had on coastal property prices at that particular time. No doubt that is why people do not want to have this kind of assessment into the future impacts of sea level rise and storms and storm surge on coastal Australia associated with global warming, because not only will it have a significant impact on future infrastructure planning—and it is absolutely appropriate that it should have—but also it will place a lot of councils and state governments in all sorts of quandaries about what they will do about protecting existing infrastructure.

Of course, that has to be done in conjunction with the insurance industry, which will be moving rapidly to take away people’s insurance cover. I am glad that the Insurance Council of Australia has come out with a plan that says we have to deal with this matter as soon as possible. In Tasmania, I pointed out that Lauderdale, which is not far from Hobart, is probably one of Tasmania’s most vulnerable communities to sea level rise. That was identified in a coastal vulnerability analysis done for the state government. The population of Lauderdale are already suffering a rise in the watertable as the sea level rises and they are vulnerable to overwash. However, the insurance institute representative in Tasmania said that it was not a problem as far as the insurance industry was concerned. I think that was a serious misleading of the local population about the likely impacts on people in that area being able to continue to maintain insurance cover.

However, all this goes to the point that, in Australia, we need a proper assessment, as has been done in the UK and in countries like the Netherlands. In the UK, they have gone along its southern coast and have identified communities that will be saved by infrastructure—new groynes, seawalls, new port facilities and so on. They have identified other coastal areas for what they call ‘managed retreat’. That has not even come onto the agenda in Australia. However, huge conflict is being caused on the southern coast of the UK, with the government there announcing that they will start identifying communities to be saved and others for managed retreat. Unfortunately, one of the main considerations for many of those communities is the extent to which they are well-known tourist locations. So a place like Lyme Regis, where The French Lieutenant’s Woman was filmed and which is a major tourist attraction, has been identified as a town that has to be saved, with millions of pounds being spent on groynes and seawalls. However, other communities nearby, which local people would say are more reflective of the culture of southern England and so on, have been identified for managed retreat.

That is how seriously the UK government is taking the figures on sea level rise. The Netherlands government is considering such measures and I have mentioned the Thames Barrier. It will require vast amounts of money in adapting to existing projections of sea level rise, not to mention that sea level rise will become unmanageable unless we act soon to mitigate further concentrations of CO₂ that will make the matter worse. So we have to adapt to what we know is coming and reduce greenhouse gases to make sure that the situation does not get worse.

That is why I am calling for the Senate to support an inquiry into this issue of sea level rise. It is not complicated. We know what the situation with global warming is. We know the projections for sea level rise. We need to look at Australia’s coastal vulnerability to sea level rise, because we need to consider
infrastructure into the future. I hope that the Senate will support this reference. I referred a matter last year to the rural and regional affairs committee relating to Australia’s future oil supplies and that was an extremely successful Senate inquiry. I take these Senate inquiries seriously. If this reference gets up, I will be at all the hearings and I will work hard in this context so that we get a collaborative approach and, hopefully, a majority report—because I think it makes an important contribution and raises awareness of the issues in local communities.

I urge the government, the opposition and the Democrats to support this reference. It has been circulated to members of the committee. As I said, it is not a complex idea that we would move to look at the science on sea level rise projections, the likely impacts for the full range of projections and scenarios, the adaptation of mitigation strategies, the knowledge gaps and the research that we need to undertake, and our options to communicate those risks and vulnerabilities to the Australian community.

I recommend this reference to the Senate. I will be interested to hear the response of my colleagues and hope that we can get this up and make a serious contribution to stopping what will be major disasters if we just pretend it is not going to happen.

Question negatived.

Employment and Workplace Relations Legislation Amendment (Welfare to Work and Vocational Rehabilitation Services) Bill 2006

Second Reading

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

That this bill be now read a second time.

(Quorum formed)
Under the amendments contained in the bill, the government has made changes to the delivery of vocational rehabilitation services by allowing for the staged introduction of partial competitive tendering by July this year by amending the Disability Services Act 1986. The amendments remove the current requirement for individual rehabilitation programs to be approved under the act and also broaden the delegation powers of the Secretary to the Department of Employment and Workplace Relations to allow for additional providers of vocational rehabilitation services. Basically, the government is opening up the provision of vocational rehabilitation services to the market. Labor does not, in principle, see a problem with the idea that rehabilitation services should compete in the market but it does have a problem with the way the government has gone about introducing these changes and the lack of safeguards in the changes to protect Australians who are at risk or in a vulnerable position.

Firstly, as stated previously, the government began the tendering process for vocational rehabilitation services before the bill was even introduced into parliament. The Minister for Workforce Participation released an industry alert for the tendering process back in June 2006, with applications closing on 8 November of the same year. Thus, the entire tendering process was completed by the awarding of the contracts a whole month before the bill was even introduced into parliament in December last year. This lack of respect for the political process reflects not only arrogance on the government’s part but also a lack of due consideration of the best interests of the Australian people.

The government appears to be hell-bent on railroading its legislative agenda through parliament, whatever the cost or consequence to the Australian people. This is not the only instance where the current government has begun the tender process before a bill has been passed by parliament. We saw it recently take the same approach to tenders under the proposed access card legislation. How can this promote transparency and good government? It cannot. The government has also failed to provide adequate safeguards to protect people who use vocational rehabilitation services. A number of submissions received during the inquiry highlighted a particular concern relating to the provisions which allow private sector providers to be granted contracts without possessing a certificate of compliance under the Disability Services Act.

The Mental Health Council of Australia, in its submission to the committee, noted that this will not in any way assist in ensuring an initial high standard of service, appropriate consideration for people with mental conditions and, most importantly, confidence in the assessment of the site for people with disabilities. Once again, the government is happy to sit back and leave Australians at the mercy of the market without making provisions for adequate safeguards in the legislation. This reflects its ignorance of the fact that there are many in our society who are unavoidably placed in vulnerable positions and whose rights are in need of government protection.

Another area of concern is the potential withdrawal of pension education supplement payments to certain candidates. Labor senators on the committee noted:

Over the next three years, through the government’s Welfare to Work changes, approximately 81,000 people with disabilities will be put onto lower payments, mainly Newstart Allowance. This is because the DSP is now only available to those who are unable to work at least 15 hours per week ...

This means that the pension education supplement is not available to people on Newstart. Under the previous Welfare to Work changes made by the government, people
who moved from DSP or parenting support payment to Newstart or Youth Allowance were supposed to retain their PES payment until they completed their current course of study. However, under the changes to PES payments contained in this bill, people who claimed DSP between 11 May 2005, when the changes were announced, and 30 June 2006, when they took effect, who qualified for the PES and who moved to an allowance will only continue to access PES payments if they no longer qualify for DSP as a result of their first review after July 2006. This will potentially result in a loss of up to $4,000 a year, going from the DSP payment to a lower payment, and the loss of the PES payment. This is an obvious backward step and is inconsistent with the government’s previous commitment to the transitional group of DSP recipients. Indeed, as the opposition senators noted in their alternative Senate report on the bill:

... no evidence could be provided to support the government’s policy of reducing income support payments in order to increase rates of participation in the workforce ...

That is because it simply does not work. Instead, the opposition has shown that countries that invest heavily in employment assistance have been the most successful in reducing unemployment and welfare dependency in the long term. It is as the shadow minister for workforce participation, Senator Wong, noted in her speech in the second reading debate:

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

Now I turn to the financial case management changes. The bill includes amendments that allow for financial case management debts to be recovered from social security payments. Labor fully supports giving Centrelink the appropriate powers to recover overpayments through financial case management. However, the current provisions are inadequate and in need of attention. Labor believes the amendments are ill conceived and one-sided, setting in stone the government’s right to recover financial case management overpayments, and that the provision of financial case management is itself completely discretionary. Thus the amendments in this legislation will ensure that the government’s right to recover overpayments is set out in legislation but that access to financial case management will not be; it will remain entirely based on discretionary decision making.

While Labor believe that it is reasonable to recover overpayments, we see no logical reason why the provision of financial case management should not also be covered by legislation and its entitlements and payments subject to review and appeal. We believe that this would ensure transparency and fairness to everyone concerned: recipients, taxpayers and administrators. However, the government’s amendments as they stand seem to be nothing more than one bandaid solution on top of another. Again, Labor senators on the committee noted that the discretionary provision of financial case management in the first place is nothing more than a very poor attempt by the government to lessen the impact of its harsh Welfare to Work compliance regime.

Labor supports real welfare reform that helps people to move from welfare to work. It is, after all, the party of work and the party of working people. Indeed, Labor is extremely committed to assisting people in whatever way necessary to help them make the transition from welfare to work, whether this means providing quality vocational re-
habilitation services or extra money to fund retraining.

The Howard government, on the other hand, just does not get it. It is too busy fulfilling its own ideological agenda to pay careful consideration to the needs of the Australian people and the workforce. How can a reduction in assistance result in more people taking up employment? Sure, it may force people to take up lower paid and unskilled positions, but how does it benefit the individual, their family or the community as a whole? Why not support people by giving them the training they require? Why not support them and encourage them to develop the knowledge and skills necessary to fill the growing number of unfilled skilled labour positions? Why? Because the Howard government is all about cost cutting and the dog-eat-dog mantra of the market. It is not for helping Australian people.

The Howard government’s lack of vision and liking for quick political fixes and cost cutting instead of carefully thought out policies to combat the skills crisis and to offer measures that enable a pathway to fulfilling, real jobs to Australians are evident through the original Welfare to Work legislation, its ill-conceived Australian technical colleges legislation and again in this bill. Labor would welcome a bill that delivers real welfare reform, but this bill is not it. This bill represents another failure by the Howard government, and, for the reasons outlined, Labor opposes this bill.

Labor supports a system that assists people to engage in the workforce where it is possible for them to do so. Labor does not support a system that discourages education, ignores skills advancement and fails to implement real policies to adequately train Australians. The Howard government have not explained how reducing access to education and training helps people get a job, and they will not, because this is about simple cost cutting and not about helping jobless Australians get real jobs. Labor takes a different approach. Labor believes that those who are jobless and lack skills should be encouraged to gain the skills they need to get a job. Labor believes that all Australians should get every possible support to reach their potential. By contrast, the Howard government have restricted access to services. It is with these concerns that Labor opposes this bill.

Senator JOHNSTON (Western Australia—Minister for Justice and Customs) (11.16 am)—I thank senators for their contributions in this debate on the Employment and Workplace Relations Legislation Amendment (Welfare to Work and Vocational Rehabilitation Services) Bill 2006. In summing up, I want to say that the bill contains a number of amendments to the Disability Services Act to support the staged introduction of contestability of vocational rehabilitation services. Currently the only organisation providing Australian government funded vocational rehabilitation services is CRS Australia. This bill, in supporting the opening-up of the vocational rehabilitation services market, ensures that people with injuries or disabilities will have better opportunities for assistance. The government’s proposed amendments to the Disability Services Act 1986 are about providing choice and diversity for people who require rehabilitation to assist them getting back into employment.

The services that different organisations will provide will help ensure that people will have the range of support they will need to help them re-enter the workforce. These changes will be implemented from 1 July 2007. Competition will mean that job seekers in most locations around Australia will be able to choose which provider best suits them, and star ratings will be developed to help job seekers identify which providers
offer the best services. Having more providers will also mean better coverage for many regions, rather than job seekers relying solely on the one provider. CRS Australia is currently the national provider monopoly, and a monopoly means the government runs the risk that if people are unhappy with services there will be no alternative.

Introducing new players into the market will lead to innovation. We will see this in virtually every industry. Where there is more than one player in the market, there will be additional incentives to improve performance. Maximising outcomes for a diverse job seeker population requires responsiveness, creativity and flexibility. Competition among multiple providers will drive this. This forms part of the government’s continued commitment to help job seekers build capacity and find and maintain work through employment and related services.

The government’s vision for supporting people with disabilities is to provide more opportunities for participation in the economic and social life of the community. The amendments in this bill uphold the integrity of the social security law and ensure that the right people are granted the right payments and allowances. It is about providing consistency with the administration of the social security system.

I would also like to address and clarify certain points in relation to financial case management and breaching. Members on the other side continue to peddle this claim that our system of accountability is harsh and onerous. Case management under Welfare to Work is providing additional safeguards to protect the most vulnerable in our society. Claims by the outspoken opposition spokesperson, Senator Wong, and many other senators that it is ‘one strike and you are out’ within the system are absolutely wrong and typical of Labor trying to mislead the public once again. The learned senator has not done her homework with respect to this proposal. The facts are clear. Under Welfare to Work, if an individual breaches their agreement to look for work or participate in mutual obligation three or more times without a reasonable
excuse in a 12-month period then they will receive an eight-week penalty. Only people who fail to accept a suitable job or leave a job for no reason may be automatically penalised. Claims that people will lose their houses or go hungry as a result of case management are absurd.

The system is not harsh; it is very fair and encourages the unemployed to make the most of the assistance provided to them and take up work opportunities. People in receipt of taxpayer funded income support usually want to work and actively look for a job. There are built-in safeguards to ensure job seekers only lose payment when they deliberately and knowingly choose not to look for work or accept a suitable job offer. The system is not about forcibly imposing penalties on individuals. The reformed case management program attempts to protect and assist an individual at every step—to continue to provide any ongoing assistance required to find a job. These measures will help to further provide assistance to vocationally rehabilitate or reskill these individuals to help them remain in or enter the workplace. 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 SIEWERT (Western Australia) (11.22 am)—The Greens oppose schedule 1 in the following terms:

(1) Schedule 1, item 4, page 3 (line 22) to page 4 (line 11), TO BE OPPOSED.

This amendment, and a series of other Greens amendments, relate to the rehabilitation arrangements, the secretary’s role in rehabilitation arrangements and the certification of private providers.

As I said in my speech on the second reading, the Greens do not oppose, per se, the provision of rehabilitation services by private providers. We are concerned about some of the provisions in this bill which, we believe, may leave the system open for providing inappropriate services, or for providing services that potentially do not meet the standards. This specific amendment opposes the secretary’s ability to enter into an arrangement with an uncertified private rehabilitation service, because we do not believe that the arrangements allowed for in the bill are satisfactory.

We are also looking at the fact that provisions of the bill currently provide private providers with a 12-month grace period in which to obtain certification. CRS is currently meeting standards which have long been regarded as important to the provision of quality services to people who are accessing assistance at a time when they are in significant personal and emotional need. The certification process is very important to clients and the community alike. It assures us that the agencies people are seeking assistance from meet certain professional standards. A full 12 months of practising without necessarily meeting these standards could, we believe, result in unnecessary risk to vulnerable people. Therefore, we are deeply concerned that people are going to be accessing services where providers do not necessarily meet certain standards and the standards that are required of CRS.

In my speech on the second reading, I went into some detail about our concerns around this. We are concerned that standards will not be met, meaning that people will not receive a standard of service that we as a community expect, and that it will unfairly disadvantage CRS, who are already meeting the standards. They will be competing with private operators and private providers who do not have to meet the standards and therefore may not have the same financial requirements on them for meeting the stan-
dards. They will in fact be getting a 12-month grace period in which they do not have to meet standards and will therefore have an unfair advantage when competing with CRS. The other concern is that clients will not be receiving the standard of care that the community, the clients themselves and their family members expect. I commend this amendment to the Senate.

Senator WONG (South Australia) (11.25 am)—Can I indicate Labor’s position in relation to this amendment and, in doing so, make a suggestion or a request to Senator Siewert about the order in which these amendments are moved. As I indicated in my speech on the second reading, Labor do not in principle support the contestability of vocational rehabilitation services. We believe there may well be some benefits to consumers from that. The issue is what will work, and we are very mindful of the position that has been put to us by a range of welfare and disability advocacy organisations. We are also mindful of the comments by Mr Mendoza, which I alluded to in the second reading debate, about the problems that the Mental Health Council of Australia sees are confronting people who suffer mental illness. They do not believe that they are adequately safeguarded against in this legislation.

I indicate to Senator Siewert that we have some difficulty in supporting this particular amendment, particularly because there are some measures in the subsection she seeks to remove which are in fact protective. For example, under item 4—the new subsection 19.2(a) and (b)—there are requirements around certificates of compliance for provision of rehabilitation programs. That is a useful and important thing to have in legislation. Labor are minded to support the contestability of vocational rehabilitation services. We believe there may well be some benefits to consumers from that. The issue is what will work, and we are very mindful of the position that has been put to us by a range of welfare and disability advocacy organisations. We are also mindful of the comments by Mr Mendoza, which I alluded to in the second reading debate, about the problems that the Mental Health Council of Australia sees are confronting people who suffer mental illness. They do not believe that they are adequately safeguarded against in this legislation.

Senator Abetz is going to indicate on behalf of the government that these amendments are supported—

Senator Abetz—You are reminded.

Senator WONG—I could be wrong on that, Senator Abetz. Labor’s position on the amendment that has been moved would depend on whether or not Greens amendment (2) is successful. My preference would be for Senator Siewert to move amendment (2) first and then we could move schedule 1, because our position depends on that.

Senator SIEWERT (Western Australia) (11.28 am)—I will postpone schedule 1 at this stage. I will move it later on, subsequent to amendments (2) and (3), which relate to the right of appeal on rehabilitation programs. I will move amendment (2), with the agreement of the Senate.

The TEMPORARY CHAIRMAN (Senator Crossin)—So you want to postpone considering schedule 1?

Senator SIEWERT—Yes, I want to postpone consideration of schedule 1 until we deal with amendments (2) and (3).

The TEMPORARY CHAIRMAN—Do you now want to move amendments (2) and (3) together or just amendment (2)?

Senator SIEWERT—I will just move amendment (2).

The TEMPORARY CHAIRMAN—So you are now moving amendment (2) on sheet 5193?

Senator SIEWERT—Yes, that is correct. I move Greens amendment (2) on sheet 5193:

(2) Schedule 1, item 4, page 4 (after line 11), after subsection 19(3), add:

(4) The arrangements provided for in subsections (2) and (3) cease to operate on 30 June 2008.

This is putting in a sunset clause so that provisions for the certification period are spe-
cifically just for a 12-month window. The intention is that, if the bill goes through and the act is amended, the department secretary can enter into arrangements with uncertified private rehabilitation services for a period of 12 months.

We believe this is a clear and unambiguous sunset provision that ensures the secretary can only enter into arrangements with private service providers during the first 12 months of the operation of the new provisions. While the government has said that the intention is that there be only a 12-month period during which new service providers can apply for certification of compliance, this is not how this section reads. The bill as it stands allows the secretary to enter into arrangements with an uncertified service provider at any time, provided the secretary is convinced that within 12 months of that time the provider might be able to achieve certification.

It is one thing to allow for a period of grace for rehabilitation services to obtain certification at the introduction of the bill; it is quite another, we believe, that this be an ongoing arrangement. We need to ensure that there are high standards among rehabilitation service providers, and we do not want to create a situation where this lack of certification is an ongoing issue. We believe this could be an incentive for providers that have cut-rate services to not achieve compliance. Having an ongoing provision such as this for 12-month certification does not encourage service providers who are genuinely interested in maintaining ongoing provision of services to maintain a long-term involvement in the market, as it were. We believe that it is more appropriate that, if the overall amendment gets up, all rehabilitation services be given 12 months in which to become compliant and that there then be a sunset clause.

We believe that 12 months is adequate warning to service providers that they will need to become compliant. The 12-month window provides an incentive to ensure that they undertake becoming compliant straightaway. They have 12 months in which to do that. We believe that is ample time to achieve that certification. After that time, if service providers want to become involved in providing rehabilitation services to people required to have rehabilitation services, they will have adequate time to decide if they want to become compliant and to do so. We believe this is an important amendment to ensure adequate standards are met in the provision of rehabilitation to clients.

Senator WONG (South Australia) (11.32 am)—I am not sure whether the minister wants to indicate the government’s position first, but I am happy to indicate the view of the opposition. Labor is supportive of a sunset provision in relation to those subsections in the legislation which enable a provider who is not holding a certificate of compliance to provide rehabilitation services to in fact provide them. I think Senator Siewert’s suggestion that a 12-month window is sufficient for private providers to ensure they become compliant in order to provide these government services is a sensible one. I look forward to hearing the government’s view on this.

I indicate one thing, and I apologise to Senator Siewert for this. It was only when looking more closely at this amendment that it occurred to me that it might be appropriate for you to consider the sunset provision as applying only to section 19(2)(b) rather than to the entirety of section 19(2) because subsection (2)(a) is in fact the general requirement that a certificate be held. I could be wrong—perhaps the advisers in the minister’s advisers box can confirm it—but it seems to me that if the amendment as drafted proceeds there will be a sunset provision
around the certificate of compliance issue. It might be useful if the minister could indicate the government’s position on this while Senator Siewert considers it.

Senator ABETZ (Tasmania—Minister for Fisheries, Forestry and Conservation) (11.34 am)—I indicate that the government does not support the amendment. The proposal by Senator Siewert, as I understand it, would have a 12-month sunset period after which no new provider could come into the scheme and be given the benefit of 12 months to become compliant. That would seriously disadvantage any new entrant into the area of this particular service provision. There are sufficient protections along the way, and if a new service provider comes along their services will be particularly monitored to ensure that they comply with the high standards that are expected. They will, one would hope, be counselled, assisted or whatever to be able to become certified after that 12-month period.

The reason we have this 12-month window of opportunity for certification is that we believe it is quite a substantial cost for any organisation to get that certification, and to require them to get that certification prior to them getting a contract could put a severe financial burden on them in circumstances where they will not get any return from any contract. Therefore, we believe that if an organisation is deemed sufficiently suitable to be a contract winner then within 12 months they can get the official certification that is required. There is that ongoing standard, but in the first 12 months there will be ongoing monitoring to ensure that the high standards that I would have thought everybody around this chamber would want from any service provider are provided to recipients. That is the government’s desire and intention. These are the reasons we oppose the Greens amendment.

Senator SIEWERT (Western Australia) (11.37 am)—The Australian Greens disagree. What this bill provides is an open-ended process for service providers to be able to seek certification. We believe this is too important an issue for the open-ended seeking of certification to be allowed. We believe that, if service providers are serious about entering into providing rehabilitation services, they will start the process of seeking compliance, and that 12 months is a reasonable time for them to achieve compliance. We believe it is about upholding the standards that Senator Abetz was alluding to, and of course I agree with him on that. I think everybody in the chamber expects service providers who are serious about providing some of these services to in fact engage in seeking to comply with the standards required. I am still double-checking as to whether I want to amend the amendment in line with Senator Wong’s suggestions.

Senator ABETZ (Tasmania—Minister for Fisheries, Forestry and Conservation) (11.38 am)—Without seeking to prolong the debate on this at all, I note the senator’s suggestion that the certification of service providers should not be open-ended. I absolutely assure the senator in committee that this legislation would not provide any open-ended period for certification. Any new operator or service provider seeking to provide a service who is then successful as to a contractual arrangement with the government would have an absolute maximum of 12 months in which to gain certification. If they did not get certification within that 12-month period it would be over and out. Under the terms of the contract, they would be out and therefore the suggestion that somehow this is open-ended is rejected by the government.

Question negatived.

Senator ABETZ (Tasmania—Minister for Fisheries, Forestry and Conservation) (11.38 am)—Without seeking to prolong the debate on this at all, I note the senator’s suggestion that the certification of service providers should not be open-ended. I absolutely assure the senator in committee that this legislation would not provide any open-ended period for certification. Any new operator or service provider seeking to provide a service who is then successful as to a contractual arrangement with the government would have an absolute maximum of 12 months in which to gain certification. If they did not get certification within that 12-month period it would be over and out. Under the terms of the contract, they would be out and therefore the suggestion that somehow this is open-ended is rejected by the government.

Question negatived.
Senator SIEWERT (Western Australia) (11.39 am)—I move Australian Greens amendment (3) on sheet 5193:

(3) Schedule 1, item 5, page 5 (after line 11), after section 20, insert:

20A Application to Administrative Appeals Tribunal

An application may be made by a person to the Administrative Appeals Tribunal for a review of a decision relating to his or her rehabilitation program where that program was provided by a non-CRS officer.

This amendment relates to AAT review of rehabilitation programs. I alluded to this issue in my second reading contribution, being the ability of clients to appeal against rehabilitation plans. The clients of private service providers will not have access to the same appeals mechanism as clients of the CRS, which has in place a system which clearly outlines what client rights of appeal are. No clear appeals process is outlined in the legislation for the clients of private service providers, unlike the situation for clients of the CRS. All that DEWR officers were able to offer by way of explanation, when this issue was put to them by the committee, was that if a client were not satisfied with the result of an internal appeal to the organisation that is the subject of the complaint they could attempt to pursue the matter through the Complaints Resolution and Referral Service, although it is unclear what powers, if any, this body would have to intervene and direct or compel a private provider.

While the vast majority of service providers delivering government funded services to other parts of the social services sector are doing so in a responsible and ethical manner, for those areas there is a degree of accountability and oversight not contained in this bill. We believe it is important that all clients should have access to an appeals mechanism. Those going through the CRS do. We are seeking to provide an appeal mechanism for the clients of private providers as they are in circumstances where they are being required to undertake rehabilitation services. If they go to a private provider, the private provider will develop their rehabilitation plans. The clients may not agree with those rehabilitation plans. As I have said, I am sure that in the vast majority of cases everything will be straightforward, satisfactory and above board. But there is the potential for clients not to agree with the plans and for the private provider not to be okay, and there may be a time when clients do want to appeal. Under the CRS there is a provision, complicated though it may be, but for the clients of private service providers that is not so, so we are seeking to put in place a provision whereby those using private services have the right of appeal. This is what this amendment seeks to do.

Senator ABETZ (Tasmania—Minister for Fisheries, Forestry and Conservation) (11.42 am)—I am happy to put the government’s position now, and it is not to support the amendment. VRS participants who are social security recipients will have access to exactly the same review mechanisms as those available to other job seekers in other employment assistance programs, moving them into the general social security framework. These include Centrelink review, the Social Security Appeals Tribunal and the Administrative Appeals Tribunal. I am advised that there have been only three Administrative Appeals Tribunal appeals under part III of the Disability Services Act 1986 in the last three years and that these have all been related to the closure of the participants’ VRS program. Voluntary participants can choose not to participate in VRS. Voluntary participants can end their participation at any time. There is also an independent complaints mechanism in place available to participants dissatisfied with the services provided. That
is the Complaints Resolution and Referral Service.

I would agree with Senator Siewert that it is important that people be able to appeal and have decisions reviewed. All I think we are really talking about here is the mechanism by which they are able to do that. We say that the threefold review mechanisms of Centrelink, the Social Security Appeals Tribunal and the Administrative Appeals Tribunal provide appropriate vehicles for the vast majority of beneficiaries and that putting these recipients under the same framework does not prejudice them.

Senator WONG (South Australia) (11.44 am)—The Labor Party is inclined to support the Greens amendments in the interests of ensuring that persons who are subject to a rehabilitation program do have an appropriate appeal mechanism. I note the minister’s contribution in relation to this amendment, and there are a number of questions I would like to ask him. He describes three appeal processes: Centrelink, SSAT and AAT. I would like to ask him, very specifically: do those appeal mechanisms enable a review of a decision in relation to the design or conduct of a rehabilitation program? If so, where is that spelt out? In particular, will those appeal processes enable a review of a decision relating to a rehabilitation program provided by a non-CRS officer after the passage of this bill?

Senator ABETZ (Tasmania—Minister for Fisheries, Forestry and Conservation) (11.45 am)—The advice I have received is that, if that which is appealed about is within the activity program, those matters can be appealed to the Social Security Appeals Tribunal, which can refer it back to Centrelink, which would then be going back to the service provider. That is the chain. Matters in relation to the design of the rehab program, if it is part of the activity requirements, can be appealed.

Senator WONG (South Australia) (11.46 am)—So only those aspects of a program that are actually part of someone’s activity requirements under relevant social security legislation are appealable or reviewable. That is one qualification. The second question was regarding non-CRS providers after the passage of this legislation.

Senator ABETZ (Tasmania—Minister for Fisheries, Forestry and Conservation) (11.47 am)—I am advised that this applies to any provider, both CRS and the private companies.

Senator WONG (South Australia) (11.48 am)—Minister, there was a further question. Did you get back to us about whether it applies to non-CRS provision as well?

Senator ABETZ (Tasmania—Minister for Fisheries, Forestry and Conservation) (11.48 am)—I read that out, I thought. That applies to—and I have a written note in front of me—any provider, both CRS and the private companies.

Senator WONG (South Australia) (11.48 am)—I wonder if the minister can clarify precisely where those appeal processes are identified. While he is getting that advice: the answer appeared to be in relation to activity requirements, so to what extent does that extend to, for example, the design or the implementation of the program? If the activity requirement is something as general as ‘you shall participate in a rehabilitation program provided by X provider’, does that then enable the participant to seek a review of issues around the design of the program or its implementation?

Senator ABETZ (Tasmania—Minister for Fisheries, Forestry and Conservation) (11.50 am)—First of all, I indicate—and I am not sure whether this is going to be satisfactory to Senator Wong, but I will try—the appeals
mechanisms are those in the Social Security (Administration) Act, but I thought you might know that. Were you inquiring as to where reference is made in this particular legislation?

**Senator Wong**—Yes.

**Senator ABETZ**—I thought that was the case. There is no specific reference in this legislation because these people are income support recipients—I think that is the correct term—and therefore they fall under the Social Security Act and therefore they fall within the sweep of the Social Security Appeals Tribunal.

**Senator WONG** (South Australia) (11.51 am)—While the minister is getting advice, I also asked for clarification of the extent to which the right to review activity requirements extends. Does that enable a participant to review the design and implementation of a rehabilitation program provided pursuant to an activity agreement?

**Senator ABETZ** (Tasmania—Minister for Fisheries, Forestry and Conservation) (11.51 am)—I am advised that the Social Security Appeals Tribunal can review the terms of the activity requirements.

**Senator SIEWERT** (Western Australia) (11.51 am)—Sorry, I am still not clear. My understanding of the process as it is now is that rehabilitation programs are actually signed off by the secretary for CRS, and that is no longer going to apply for private providers. We are not talking about the activity statement; we are talking about the rehabilitation program. Will people accessing private service providers be able to specifically appeal the provisions of their plan? That is the actual nub of the question.

**Senator ABETZ** (Tasmania—Minister for Fisheries, Forestry and Conservation) (11.52 am)—The short answer is yes.

**Senator SIEWERT** (Western Australia) (11.52 am)—And that is under the provisions that you have already articulated—Centrelink, the social security process?

**Senator ABETZ** (Tasmania—Minister for Fisheries, Forestry and Conservation) (11.52 am)—Yes.

Question negatived.

**Senator SIEWERT** (Western Australia) (11.53 am)—by leave—I move Greens amendments (4) and (5) on sheet 5193 together:

(4) Schedule 1, page 7 (after line 19), before item 18, insert:

17A **Subsection 5(18) (and the heading)**

Repeal the heading and the subsection, substitute:

Principal carer – a child may have more than one principal carer

(18) Where:

(a) a court orders that more than one parent has a significant proportion of responsibility for the care of a child; and

(b) the difference in percentage of responsibility for the care of a child between the two parents is 12% or less;

both parents must be treated for all purposes of this Act as a principal carer for the child.

(5) Schedule 1, page 7 (after line 19), before item 18, insert:

17B **After subsection 5(19)**

Insert:

19A Notwithstanding subsection (19), where a court orders that more than one parent has a significant proportion of responsibility for the care of a child and the difference in percentage of responsibility for the care of a child between the two parents is 12% or less, the Secretary must make a determination that each parent the subject of the
court order is the principal carer of the child.

These amendments relate to a separate issue from that which we are talking about, but I am taking the opportunity to try to make some amendments to the act to address the significant problems that many people in the community are facing at the moment related to shared parenting, where the court orders that parents have shared equal parenting. Last year the government brought forward legislative changes to family law which were a source of major community concern and the subject of much debate in this place.

The bill required that the court, when considering issues around parenting, take as a starting point the concept of equal shared parenting. These changes are now law and people are anticipating that the outcome of the implementation of the legislation will be greater shared equal parenting, which means that separating couples will have fifty-fifty care, or close to it, of their children. However, under the Social Security Act the appointment of the principal carer is not consistent with this concept. Under the act only one parent is deemed to be the principal carer and therefore that person has fewer participation requirements and has access to things like medical benefits and other benefits that are available only to the principal carer. This is manifestly unfair to the parent who is not nominated as the principal carer.

We have children that are living with one parent for 50 per cent of the time and another parent for 50 per cent of the time. If both parents are income support recipients, only one gets the benefit of the principal carer provisions of the act. When the other parent has residency and care of the child, they do not have access to those provisions. They therefore have greater participation requirements under Welfare to Work. They do not have access to pharmaceutical benefits, healthcare cards and other things that are available to the principal carer. This seems to us to be unfair. When living with the parent who is not the principal carer, the child is in fact the one that suffers.

This amendment seeks to enable both parents to be nominated as the principal carer of the child so that the child has the same support and advantage when they are in either parent’s house instead of the situation that exists at the moment, where in one household the child gets the support provided by the principal carer provisions and in the other household they do not. It seems to the Greens that it is entirely inequitable and unjust that this situation has been allowed to develop. We support the concept of shared equal parenting. We were very concerned, as we articulated at the time, about some of the amendments that were made to the Family Law Act, but the fact is that those are now law. The Social Security Act should reflect the principles now held in family law—that is, shared equal parenting. Surely that means shared access to the principal carer provisions of the Social Security Act.

**Senator Wong** (South Australia) (11.58 am)—Labor will be supporting these amendments. I want to briefly make a contribution on this issue, which Labor followed up in Senate estimates in November last year. This is one of those situations where it appears one arm of government is not clear about the impact of its policy changes or legislative changes on another arm, with potentially poor impacts on children.

Family law changes went through this parliament in 2005 or 2006. My recollection is that Labor supported those. Amongst other things, those changes encouraged couples to enter into more shared care arrangements. Yet under the Welfare to Work changes we have a situation where it appears that potentially one parent in a shared care or fifty-fifty care arrangement will be significantly disad-
vantaged because the government is insisting that only one parent can be identified as a principal carer. It seems rather bizarre that, on the one hand, the government will be arguing that parents need to spend more time with their children and share more responsibility and yet, on the other hand, they will be putting in place restrictions and requirements under their social security legislation which make it more difficult for parents to do that. Of course, the group that will be most disadvantaged by this are the children, who, in such a scenario, will be in situations where one of their parents will have activity requirements and may also, as Senator Siewert pointed out, be financially disadvantaged as a result.

I actually raised this issue in estimates in November 2006. I asked the department about this issue. I asked how, under the family law changes, if there was a fifty-fifty care and custody arrangement, the principal carer would be determined under the government’s policy. Essentially, the department answered in this way: it is the first person who identifies as the principal carer. I asked, ‘What do you mean by the first?’ The department answered, ‘The first person who puts in the claim for payment.’ I made the point in the estimates hearing that it appears that the government’s policy decision around this comes down to a race as to who first puts in their claim for income support and that, if there is a disagreement about that, the delegate from Centrelink will make a decision. Unless the minister is going to indicate that the policy position of the government has changed since November, it did not appear from the answers at estimates that there were in fact any policy parameters around that.

It is important when we are dealing with policy change that we do look at how various aspects of policy overlap and also at their cumulative impact. Certainly, when it comes to children, one would hope we could get away from a silo mentality within government and actually look at how the totality of legislative and policy reform affects children. It appears the government has failed to do that. It is something that needs to be addressed in the interests of both the children and the parents concerned. We are supportive of the amendments moved by Senator Siewert.

Senator ABETZ (Tasmania—Minister for Fisheries, Forestry and Conservation) (12.01 pm)—The government does not support the amendments moved by the Greens on this occasion. For income support purposes, the government will continue to recognise only one parent as the principal carer of a child at any point in time. There are in fact two reasons for that and they depend on how you look at it. This is to help ensure that there are not two part-time earners or households caring for a child, as this would lead to reduced financial circumstances for the child if they were both deemed to be the part-time earners or households caring for the child. The other approach is to consider them both as principal carers, and of course that would provide an advantage to separating couples that would not necessarily be available to other parents who have not separated.

I am also advised that, of all the single recipients of the parenting payment, only 1.5 per cent share care of their children where the gap in the level of care between the two parents is between 45 and 55 per cent. So we are talking about a relatively small cohort of the population. Having said that—and I hasten to add this—just because they are a small cohort of the population does not mean that they should be dismissed or that their concerns should not be taken into account. The concerns of this small cohort of 1.5 per cent are in fact taken into account.

I am advised that the guide to social security law dictates that, in circumstances where
parents have between 46 and 54 per cent of the care of a child, Centrelink determines which parent should get principal carer status. I am not fully cognisant of the discussion that Senator Wong had at Senate estimates about what might be called ‘the race to riches’ or ‘first in, best dressed’ in relation to the principal carer status, but I am advised that the factors that are taken into account in those circumstances are factors such as income from other sources and future employment prospects or assets. These are used by Centrelink to determine which parent is deemed to be the principal carer parent of a child. As I understand the situation, other factors are in fact taken into account other than the person who first presents themselves to the counter.

Senator SIEWERT (Western Australia) (12.04 pm)—There are a number of issues there. Firstly, at the moment there may be 1.5 per cent; the fact is that the law comes into effect this year. The law now requires that the starting point when determining shared care arrangements is fifty-fifty shared equal parenting. If that is now the basis for negotiation that the court is required to do, one would expect to see a significant increase—if the law is being effective—in the number of parents who are sharing care. That is the first point. So one law was changed last year but the other laws are not being updated to take account of the law about shared equal parenting of children, despite the fact that 1.5 per cent still means that a lot of children are affected by these unfair provisions.

The sorts of provisions we are talking about are the continuation of pharmaceutical benefits, concession cards, telephone allowance, education entry payments, limited activity tests, less earnings per week, less access to suitable child care and not being subject to the provisions about travelling to work for more than 60 minutes. All these issues are very important when you are looking after children. The reality of this is that one week a child will be living with the parent who has principal carer status and will therefore get the benefit of that parent not being subject to the more intense participation requirements in looking for work; the next week the child will go to the parent who does not have that support—who is on the provisions of Newstart, for example, and has more intense work requirements, may not have the capacity to be able to access the provisions around suitable child care, may be forced to travel further for work requirements, may not have access to pharmaceutical benefits and may not have the same access to concession cards.

The children are being substantially disadvantaged in those situations. For the life of me, I cannot understand why the government does not understand this. Children are being disadvantaged by this provision. On the one hand, the bottom line is now shared equal parenting, but, on the other, that does not come down to how the government provides income support for the parents of these children. I cannot understand why such a simple fact cannot be understood by the government. Children are being materially and emotionally disadvantaged by this provision. It is fairly simple.

Senator WONG (South Australia) (12.08 pm)—I am wondering if the minister is going to see fit to respond to any of the issues that were just put onto the Hansard record.

Senator PATTERSON (Victoria) (12.08 pm)—I will intervene here to give the minister some time. I feel that the intonation in Senator Wong’s voice suggested that she was saying, ‘Will he deign to respond,’ basically, to put words into her mouth. These are quite complex issues. This is not the minister’s portfolio area. He is, I believe, answering questions as they come up with advice from the departmental officers. I think it is reason-
able to expect that he get that advice from the departmental officers given that he is not the minister actually responsible. From my experience I think that the minister is giving very clear answers.

My answer to the question that Senator Siewert has asked is that from all of the work that Professor Parkinson did on the Parkinson report, we can see that, when you are at the point of shared care of 35 per cent or over, the relationship that has broken down is usually still at a stage where people can actually cooperate. All of the evidence showed that those people actually take into account the children and the issues facing the children. So it is not as big an issue as when there is a total breakdown. Also, our family relationship centres have been designed to try to assist families to discuss these sorts of issues that face children in families. So I think the claim that we are not taking account of children is not valid. I do think that, when you have a fifty-fifty shared arrangement, you would find greater cooperation than you might otherwise expect.

Senator WONG (South Australia) (12.09 pm)—I look forward to the minister’s response. We would have been happy, as we have been, Senator Patterson, to wait for the minister to get advice. But, at the time, the question was being put and the minister had his back to the chamber. I appreciate that he has to get advice. But the point is that we on this side of the chamber do have a view that this is an important issue for the children concerned. The issues that were placed onto the Hansard by Senator Siewert do deserve a response.

Senator ABETZ (Tasmania—Minister for Fisheries, Forestry and Conservation) (12.10 pm)—On the face of it, what Senator Siewert has been raising I think is a relevant and serious issue. The difficulty, as I pointed out before, is that the only way to look at this is either that both parents are part time or they are both principal carers. If they are both part time, there is clearly a financial disadvantage to the now separated unit, if I can call it that, of the two parents and the child. If you were to deem them both principal carers, there would be a financial benefit to the unit and a disadvantage to the taxpayer.

This is something that we as a government, in fairness, I think, need to consider further. What I would say to Senator Siewert and to the committee is that I think that is a real issue for us to give further consideration to. But at this stage of the proceedings I am unable to take the matter any further.

It is the consequence of potential double payment by making both parents the principal carers that would be potentially a growing burden on the taxpayer. I am not the portfolio minister, but what Senator Siewert said—that this 1.5 per cent cohort is likely to grow because of the changes to the Family Law Act—on the face of it makes sense. This might be a naive hope—having practised in the area of family law in the dark, distant past, the idea of separating couples cooperating is sometimes something which one would hope for but which does not actually occur—but, if the court presumes and the parents are happy to have a fifty-fifty shared parenting arrangement, one would hope that there was a fair degree of cooperation between the separating couple. One would also hope that our family relationship centres, for example, might be able to provide some counselling and assistance to them in sharing the financial income and burdens in relation to that.

On the face of it, I think the senator has raised a public policy issue which I cannot answer on behalf of the government at the moment, but I do undertake to give the portfolio minister the benefit of Senator Siewert’s contribution. There may well be
some cut-through answers in relation to the matters that she has raised that have not raised themselves in my mind at the moment. I do not want to raise any false expectations in any way, shape or form, but what I do say is that, on the face of it, to me, at this stage there does seem to be some cogency in what the senator says. I am happy to take that back to the portfolio minister and see what might develop from there.

Senator SIEWERT (Western Australia) (12.13 pm)—I thank the minister for his answer. I take on board the fact that he has not made any promises but I do appreciate that he is taking the issue back to the portfolio minister. These are very sensitive issues. I appreciate the comments about cooperation; however, I am aware, both from my own life experience and from the experiences of a number of my constituents who have approached me, that the reality is that there are a number of parents who find it impossible to cooperate. In a perfect world, of course, we all would seek that. In a perfect world we would not be in a situation where parents are at loggerheads, but the fact is that in the real world that happens. In many cases they do not cooperate. In fact, the relationship can break down further when they are trying to sort out these issues.

Senator Abetz was talking about them still being a unit even if they are separated—that the separated parents plus the child are still a unit. The fact is that the separated parents do not see it that way. The separated parents see it as each parent now being a unit in themselves. So it is unrealistic, I think, to make the presumption therefore that they are like an expanded unit and that resources can be shared between the parents. The fact is that in many cases that cannot happen. We are talking here about parents who are on income support. They have very limited resources and access to resources. In those circumstances the taking away of a small amount of money can have significant consequences for that parent and the child or children involved.

I do appreciate the fact that you are now taking the issue back. I have also been raising these issues in Senate estimates. In fact we have had toing and froing on this on a number of occasions. I am glad now that the government will at least give it further consideration.

Question negatived.

Senator SIEWERT (Western Australia) (12.16 pm)—The Greens oppose item 4 in schedule 1 in the following terms:

(1) Schedule 1, item 4, page 3 (line 22) to page 4 (line 11), TO BE OPPOSED.

I will not rehash the argument again. We went through that slightly earlier. I will just reiterate that, despite some of the answers that we were given, the Greens still have strong concerns about this provision.

Senator ABETZ (Tasmania—Minister for Fisheries, Forestry and Conservation) (12.16 pm)—Similar to Senator Siewert, I would refer those following this debate to—chances are—about two pages back in Hansard.

The TEMPORARY CHAIRMAN (Senator Chapman)—The question is that item 4 in schedule 1 stand as printed.

Question agreed to.

Senator WONG (South Australia) (12.17 pm)—The opposition opposes items 19 to 32 in schedule 1 in the following terms:

(1) Schedule 1, items 19 to 32, page 7 (line 22) to page 9 (line 3), TO BE OPPOSED.

Senator WONG—That is fine. I will speak very briefly on this—given that it is the last day of sitting. I do not intend to hold up these proceedings too much. We have
articulated, both in the other place and in this chamber during the second reading debate, our views in relation to the pensioner education supplement. I want to emphasise that this is a broken commitment by the government. The government indicated when it introduced its Welfare to Work changes that persons who were put onto the lower payment as a result of these changes who were receiving the pensioner education supplement for the purposes of completing a course would continue to be able to receive it. The government now seeks to put another provision through which will effectively limit their capacity to continue to receive the pensioner education supplement. So this is another broken commitment from the Howard government.

Apart from that, there is the broader policy issue which really demonstrates the different approaches to welfare reform: that taken by the government and that argued for by the opposition. We are of the view that mutual obligation must be matched by opportunity. We are of the view that people do not get a job unless they have the skills that an employer needs. We believe that the government should encourage, help and support those people who want to move from welfare to work to get the skills they need to get a job. We think that is in the national interest. It is also in the interests of those people on income support.

We agree—I think all parties in the chamber agree; certainly the opposition and the government are of the view, and I assume the minor parties—that moving people who are able to work from welfare to work is absolutely in the national interest and in the interests of the individuals concerned. But we think it is important that the government actually also puts its shoulder to the wheel. Obligation must be matched with opportunity. We fail to understand why it is that the government wants to cut access to this entitlement. It is not a princely sum. My recollection is that for full-time students it is approximately $60 a fortnight and around half that for part-time students. But for people on these levels of income this provides very important support for the cost of education—for books and associated costs—for them to get the skills they need to get a job. That is what we are talking about: we are talking about people on income support who are trying to get the skills they need to move from welfare to work. That is something that should be supported by governments. That should be something governments assist with. Instead what we see is the Howard government putting roadblocks in the way of people seeking to gain the skills they need to get work.

Senator SIEWERT (Western Australia) (12.21 pm)—The Greens also have an amendment on the pensioner education supplement. I articulated in my speech in the second reading debate our deep concern about this and the impact it will have on people on the disability support pension. We are not talking about a large amount of money; but, as Senator Wong said, it is a large amount of money if you do not have much money in the first place. We cannot see why the government is actually proceeding with this amendment. It seems to us to be something that will impact quite unfairly on a relatively small group of people—but a group for whom this amount of money is very important.

On our reading of it, a provision in the bill means that basically, as soon as a person has had their second review, they automatically lose their entitlement to PES. This supplement is a very important top-up to people who are trying their best to improve their skills through education, and here we go with another whammy on those who are already some of the most disadvantaged in our community. We have an amendment to op-
pose this provision in the bill. Obviously, we support all the opposition amendments but specifically the amendment that deals with items 21 and 28, because it is identical to the Greens amendment.

Senator BARTLETT (Queensland) (12.23 pm)—I also indicate the Democrats’ support for this amendment and, while I am on my feet, the previous amendments. I covered this issue in my second reading contribution, so I will not repeat all those comments now. My understanding is that the measure in the legislation regarding the pensioner education supplement will impact on only a very small number of people, but for that small number of people it will be detrimental and will be income that they could certainly find valuable.

It is worth noting the comment in the committee report made by government senators that the amendments are:

…the latest measures to improve workforce participation and improve employment rates.

If the minister can come up with a rationale as to how this particular measure that this amendment addresses increases workforce participation and improves employment rates, I would be interested to hear it. But removing somebody’s entitlement to the pensioner education supplement, which I think is about $31.20 a week, does not seem to me to be particularly beneficial in that respect: it does not seem to be beneficial in any respect at all, frankly.

Senator ABETZ (Tasmania—Minister for Fisheries, Forestry and Conservation) (12.24 pm)—The government does not find itself able to support the amendments that are being proposed. They would allow people in the disability support pension transition group to retain their transition group status indefinitely. That is contrary to the government’s intention that people would no longer be in the transition group once they had had their first review after 1 July 2006 and is against the new rules. Accepting the Labor-Greens amendments would discriminate against other DSP recipients—that is, DSP recipients who are not in the transition group who also receive the pensioner education supplement. Other DSP recipients do not have the benefit of retaining their entitlement to the pensioner education supplement if they lose their entitlement to DSP.

The government remains committed to assisting people in the DSP transition group who lose entitlement to DSP when assessed against the new rules and move to Newstart or the youth allowance. The government introduced the special provision to retain the pensioner education supplement for this group to ensure that DSP transition group recipients who have been undertaking a course of study in preparation for work are not disadvantaged because of their transition group status.

However, DSP transition group recipients should also not be advantaged indefinitely over all other DSP recipients, which is what these amendments seek to do. The government believes that there are many benefits of working, such as increased income, access to on-the-job training, improved self-esteem and greater confidence. People on Newstart and the youth allowance are assisted to look for work that matches their capacity and they have access to appropriate vocational training through Job Network and the other providers of Australian government employment services. This gives people who have substantial work capacity the opportunity to reduce their reliance on welfare payments. Alternatively, people who wish to study can apply for Austudy or the youth allowance.

Senator Wong referred to the different philosophical approaches of the government and opposition. I would say that I think we are in heated agreement in relation to that—
we, in fact, do have different philosophical approaches—and we make no apology for our proposals to get people off welfare and into work. However, those debates have been previously had and, as Senator Wong showed great self-restraint in developing that any further, I will reciprocate by also showing restraint in not rehashing the arguments.

However, one issue that I do need to engage in is the suggestion that we somehow broken a promise in relation to the pensioner education supplement. I simply repeat: there has been no change to the government’s commitment that people in the DSP transition group can continue receiving the pensioner education supplement for the duration of their course, if they are receiving that supplement when they are reviewed against the new rules.

Senator WONG (South Australia) (12.28 pm)—It is the last day of session and we have a few things to do, so I will not have another one of my long arguments with Senator Abetz. I make just two points. One is that we believe there is a very strong case for work-focused education and training that, in fact, gives people the chance to get the skills they need to get a job. We have a skills shortage in this country. If you look at any economic analysis of the profile of people who are not in the workforce, clearly their skills acquisition or attainment is the most significant factor for most groups.

I just indicate, in the interests of expediting this bill being dealt with in the relevant time frame, that I am not going to call a division in relation to this aspect of our amendments. We will be calling a division in relation to one of the three and I suggest probably it is most appropriate for the set moved by both the Australian Labor Party and the Greens. I do not want anyone to believe that there are any reasons other than technical ones for not calling a division in respect of the other two. I want to re-emphasise very strongly that Labor believe the approach being put forward by the government is short-sighted. We see no policy justification for it. We want to emphasise also that this is inconsistent with the announcements that were made in the Welfare to Work budget.

Senator ABETZ (Tasmania—Minister for Fisheries, Forestry and Conservation) (12.30 pm)—Can I invite Senator Wong and the committee to defer the amendment the opposition are thinking of calling a division on until the very end of the committee stage, rather than calling senators in for two separate divisions?

The TEMPORARY CHAIRMAN (Senator Chapman)—Minister, I suggest that, subject to the Democrat amendment, we could deal with schedule 1, items 19 to 32, in one block, providing it meets Senator Siewert’s requirements. Senator Siewert, you are involved in 21 and 28. Is that acceptable?

Senator Siewert—Yes.

Senator Wong—To clarify: you are now suggesting that the three separate sets of amendments from the opposition and the Australian Greens amendment can be moved together and voted on together.

The TEMPORARY CHAIRMAN—Yes.

Senator Wong—That would seem to be appropriate.

Senator ABETZ—I invite the committee to move to the other amendments and then return to the vote.

Senator SIEWERT (Western Australia) (12.31 pm)—I move Greens amendment (8) on sheet 5193:

(8) Schedule 1, item 50, page 11 (after line 27), after subsection 1228(3), add:

(4) Subsection (3) only applies in cases where:
(a) the primary income support payment is restored part way through the 8 week penalty period; or
(b) the person had undeclared income at least at the level of their normal income support entitlement.

This amendment relates to the restrictions on deductions of overpayments of benefits. This is specifically about the recovery of overpayments from what is a discretionary scheme which does not have a statutory basis, which we believe provides a number of problems. When the payment is discretionary and the parameters surrounding it are not explicit, it becomes very difficult to determine what is an overpayment. To address this problem, I am proposing an amendment to allow only for an overpayment to be collected in the following circumstances—that is, where the primary income support payment is restored part way through the eight-week non-payment period and where the client has undeclared income, at least at the level of their normal income support entitlement.

Under those circumstances, which are consistent with what was recommended by ACOSS in the Senate inquiry process into this bill, as I articulated in my speech in the second reading debate, the Greens have concerns that, while the other mechanisms of income support payment are obviously covered in the statutes, this one is not. It is a discretionary payment, and now we are putting in the legislation provision for overpayments of that discretionary payment to be collected. We are moving an amendment to clarify and to put parameters around the manner in which and the circumstances in which an overpayment of financial case management payments can be collected.

Senator ABETZ (Tasmania—Minister for Fisheries, Forestry and Conservation) (12.34 pm)—The government is unable to support this amendment. I note, if I am correct, that this amendment would in fact conflict with a Democrat amendment and I am wondering whether it may be possible to consider those two amendments together for the sake of time management. While the Democrats and the Greens are thinking about that, I indicate the government’s opposition to both the Greens and Democrat proposals. The proposed amended provision excludes some—I think the Democrats would exclude all of them whereas the Greens amendment excludes some—financial case management debt that should clearly be the subject of recovery action. For example, under the amended provision, withholdings would not be available in all cases where a person committed a fraud. The government, and I would have thought Australian taxpayers, simply could not support that outcome. The government believes that the provisions in the original bill are clear in their intent and will allow financial case management debt to be recovered from social security payments in all cases where this is appropriate.

The TEMPORARY CHAIRMAN (Senator Crossin)—Minister, if I am correct, you have spoken to the Greens and to the Democrat amendment on the last sheet. Is that correct?

Senator ABETZ (Tasmania—Minister for Fisheries, Forestry and Conservation) (12.35 pm)—Technically only to the Greens amendment but the same arguments would apply to the Democrat amendment.

Senator BARTLETT (Queensland) (12.36 pm)—As I understand the Greens amendment, it relates to the same principle but has a narrow scope with regard to the so-called overpayments that it addresses. Perhaps in the broader spirit of time management and the moderated tone with which we have managed to conduct the debate, I signal that the issues are the same and the concerns of the Democrats are the same. If the Greens
amendment is not successful—if the outside chance happens—then I will not proceed with the Democrat amendment. The issues that the Democrats have with this measure being in the legislation are simply, firstly, the principle of what is being done here and, secondly, how widely you try to restrict what is being done—from my point of view, the key aspect is that it is being done at all.

The Democrat amendment is based on the suggestion contained in the submission from the Welfare Rights Network to the Senate committee inquiry. It really goes to the point that was made in the opposition senators’ minority report from the Senate committee that examined this legislation, which was that the aspect that is contained in the bill will create an inconsistency in the legislation whereby the right to recover overpayments is outlined in the law but the making of payments themselves under financial case management is not. My view is that, until you get that consistency correct, an imbalance is being put in place. It means, in effect, that there is a legislative regime covering the government’s ability to recover payments but there is no legislative detail set out about entitlements to financial case management payments. There is no appeal mechanism for people who feel they should be entitled to such a payment and do not get it, the amount of it or how it is applied.

It is very much an administrative bandaid measure and in my view it is a very flawed measure. A bandaid is better than nothing when you are in serious trouble, so I am not suggesting that we would be better off without financial case management. But I think the system is so lacking in transparency and consistency that it does present significant problems. Even if they are not massive problems as yet, I think the longer it is in place, the more potential there will be for problems to occur. It is quite problematic to be putting in place legislative criteria for recovering what are deemed to be overpayments under that mechanism.

Those are the reasons behind the scope of the Democrat amendment. I understand the argument for having a narrower scope to it, as has been put forward by the Greens amendment that is before the chamber at the moment. I did go into this issue in some detail in my second reading contribution, so I will not repeat the points at length. But it is worth making the point that people who receive financial case management, unless there is deliberate fraud or misrepresentation happening, on the whole are people who are in quite significant financial difficulties, which are of course exacerbated by the fact that they are having their general payments withdrawn. If, down the track, the withdrawal of those payments is reversed, it is unnecessarily stringent for people in that circumstance, frankly, to have those sorts of payments clawed back. They could be rent payments, electricity payments or food voucher type payments.

As I said in my second reading contribution, St Vincent de Paul do not go running after people to grab food voucher money back from them. Once people get on their feet or get their payments restored, people may choose to donate back to St Vinnies or others, but it is not standard practice to say, ‘You’ve got some extra money now, so give it back.’ If we were a nation that was in significant fiscal difficulty and stringency was being applied left, right and centre, it might be more justifiable, but frankly, given the difficult circumstances these people are in, the fact is that even when payments get restored they are still living below the poverty line in terms of their day-to-day income. I think it is unnecessarily harsh to be putting in place a system to recover that money—unless perhaps it is fraudulently obtained—given the current lack of regulated consis-
tency in the financial case management system.

Senator WONG (South Australia) (12.41 pm)—As I outlined in my second reading contribution, notwithstanding our concerns about aspects of the system, Labor do support this aspect of the bill; therefore we are not able to support the Greens or Democrat amendments. That is on the basis that we do agree that the principle that overpayment should be recovered is a sensible one. We have made some suggestions to the government about improvements in the transparency of this regime and the review mechanisms associated with it. We would take a different approach in government to how these matters were dealt with in terms of transparency, but there is a general principle here that overpayments ought to be recovered.

In relation to the Greens amendment, I understand they have picked up some suggestions from ACOSS. I make the point that the ACOSS submission in relation to this bill did not indicate that the circumstances outlined in the Greens amendment were exhaustive; rather, it stated that circumstances suited to the recovery of overpayments included those specified. We believe there are a range of circumstances which might warrant recovery of overpayments in addition to those outlined in the Greens amendment—for example, if the amount should not have been paid, the person did not fit any eligibility criteria for either financial case management or the original income support payment, or if the amount paid through FCM was greater than their entitlements.

Labor believe there needs to be a compliance system with appropriate penalties that encourage people to meet their obligations. However, as I have said previously in this place and publicly, we consider the eight-week non-payment penalty to be simply too harsh. One important factor is that it does not encourage people to make amends. Even if they are meeting their obligations after being breached, they are still unable to get their income support, which seems to fly in the face of the notion that penalties should try and encourage appropriate behaviour. So in those circumstances we are not in a position to support either the Greens or the Democrat amendment, given the principle that overpayments, we believe, ought to be recovered. However, I make it very clear that we do think there is a very strong case for much better transparency in this system and a much better system of review.

Question negatived.

The TEMPORARY CHAIRMAN (Senator Crossin)—The question is that schedule 1, item 50, stand as printed.

Question agreed to.

The TEMPORARY CHAIRMAN—We will now deal with postponed items 19 to 32.

The question is that schedule 1, items 19 to 32, stand as printed.

Question put.

The committee divided. [12.49 pm]

(The Chairman—Senator JJ Hogg)

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AYES

Abetz, E.
Barnett, G.
Brandis, G.H.
Chapman, H.G.P.
Coonan, H.L.
Ellison, C.M.
Fielding, S.
Fifield, M.P.
Humphries, G.
Kemp, C.R.
Macdonald, J.A.L.
McGauran, J.J.J.
Nash, F. *

Adams, J.
Bernardi, C.
Calvert, P.H.
Colbeck, R.
Eggleston, A.
Ferguson, A.B.
Ferravanti-Wells, C.
Heffernan, W.
Johnston, D.
Macdonald, I.
Mason, B.J.
Minchin, N.H.
Parry, S.
Abetz, E. 
Barnett, G. 
Brandis, G.H. 
Chapman, H.G.P. 
Coonan, H.L. 
Ellison, C.M. 
Fielding, S. 
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Humphries, G. 
Kemp, C.R. 
Macdonald, I.A.L. 
McGauran, J.J.J. 
Nash, F. * 
Patterson, K.C. 
Ronaldson, M. 
Troeth, J.M. 
Vanstone, A.E. 
Wong, P. 

AYES

Adams, J. 
Bernardi, C. 
Calvert, P.H. 
Colbeck, R. 
Eggleston, A. 
Ferguson, A.B. 
Heffernan, W. 
Johnston, D. 
Macdonald, I. 
Mason, B.J. 
Minchin, N.H. 
Parry, S. 
Payne, M.A. 
Scullion, N.G. 
Troid, R.B. 
Watson, J.O.W. 

Bill read a third time.
CORPORATIONS AMENDMENT (TAKEOVERS) BILL 2007

Second Reading

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

That this bill be now read a second time.

Senator WONG (South Australia) (12.56 pm)—On behalf of the Labor Party, I rise to speak on the Corporations Amendment (Takeovers) Bill 2007. The Takeovers Panel was established in 1999 as a replacement for the Corporations and Securities Panel as part of the Corporations Law Economic Reform Program, known as CLERP 9. Labor welcomed the introduction of the Takeovers Panel and its role as the main forum for resolving disputes in a takeover bid period when this occurred in March 2000. The panel has largely been an effective forum for resolving takeover disputes by reducing litigation in the bid period, which, if not otherwise reduced, would have the effect of increasing the cost and time involved in corporate takeovers. However, the role of the panel should not restrict companies that are involved in takeover disputes from the right to a judicial review of its decisions.

The amendments in this bill, which are to the Corporations Act 2001, primarily arise out of two Federal Court decisions: Glencore International v Takeovers Panel (2005) and (2006), which are known as Glencore cases. These matters construed the jurisdiction of the Takeovers Panel more narrowly than had previously been anticipated, and, as we understand it, the bill seeks to amend the Corporations Act to ensure that the panel will continue its role in resolving disputes during a takeover bid period.

The panel has the power to make declarations in circumstances relating to a takeover or to the control of an Australian company it finds to be unacceptable in a bid period. In determining whether activities by companies involved in takeover bids are unacceptable, the panel has relied on the definition of ‘substantial interest’. In the Glencore cases, the panel decided that equity swap arrangements to indirectly purchase shares through two investment banks were a ‘substantial interest’, which gave it jurisdiction over the bid. However, in the Glencore cases, the Federal Court found that the equity swap did not increase Glencore’s substantial interest and therefore precluded the panel from making any declarations with regard to the bid.

The disclosure of equity derivatives, although an issue arising in the Glencore cases, is not dealt with by this bill and Labor supports the view of the Parliamentary Joint Committee on Corporations and Financial Services that there should be consultation with stakeholders in relation to possible amendments to chapter 6C of the Corporations Act on the issue of disclosure of equity derivatives.

The bill before the chamber seeks to do the following things. First, it seeks to clarify the definition of ‘substantial interest’ in section 602 by introducing a new section 602A, which gives a so-called indirect definition so that the panel’s role should not be limited only to the issues described in the section. Second, it amends section 657A so that the panel’s jurisdiction, when making a declaration of unacceptable circumstances, is not restricted to looking only at current circumstances but may also consider past, present and future effects of circumstances on the control of the company. This amendment effectively expands the jurisdiction of the panel by allowing it to consider future effects of the circumstances in relation to its review function. Third, the bill seeks to repeal the requirement to give each person to whom the panel’s order relates an opportunity to make a submission on the matters in section 657D(1)(a) and substitute a new section which contains a requirement to receive
submissions only from persons to whom the proposed order is directed. Finally, it seeks to create a time limit for concluding reviews of panel decisions.

Currently there is no clear definition of ‘substantial interest’ in the act and Labor support the introduction of the section 602A definition of ‘substantial interest’. However, we do note that there have been a number of concerns raised with the approach taken in this bill to defining this term. This ostensibly indirect definition of ‘substantial interest’ has been said to have the potential to be misinterpreted, to increase uncertainty and to raise the possibility of the panel essentially determining its own jurisdiction. This was the view put by the Australian Institute of Company Directors. The explanatory memorandum to the bill states that there are limits to the definition of ‘substantial interest’ and that the amendment is not intended to include, for example, employees, suppliers and customers who are involved with a company.

As I indicated, the bill also seeks to expand the jurisdiction of the panel so that it can consider future likely effects of current circumstances. There were concerns raised that the amendment to the relevant sections would allow the panel to consider effects of the circumstances in the past, present and future. There were concerns raised that this would expand the jurisdiction of the panel in a way that might be unforeseen. Paragraph 657A(2)(b) qualifies the jurisdiction of the panel by using the words ‘having regard to the purposes of this chapter set out in section 602’. Submissions to the parliamentary joint committee have suggested that this provision may not adequately address the concerns regarding the panel’s jurisdiction, which arguably is included in the bill.

During the inquiry undertaken into this bill the Law Council proposed that the words ‘having regard to’ in paragraph 657A(2)(b) be replaced with ‘because they are inconsistent with or contrary to’ the purposes as set out in section 602. This is essentially a circumscribing provision which enables the limits and the parameters of the panel’s jurisdiction to be identified with greater certainty. In Labor’s view such an approach would soon create more certainty about the scope of the panel’s jurisdiction.

We support the Law Council’s amendment to paragraph 657A(2)(b). We accept the Law Council’s submission that this is likely to give more clarity to the jurisdiction of the panel, and we note that this is, I believe, a cross-party, but certainly a bipartisan, recommendation of the parliamentary joint committee.

Senator Murray—Cross-party.

Senator WONG—Cross-party. I did indicate that at the outset, Senator Murray. Labor also supports the repeal of paragraph 657D(2)(a) and the replacement of words consistent with the amended section 657A to make orders to protect the rights and interests of persons affected in the past, present and future. The Law Council’s amendment that is circulating the chamber on sheet 5233 is an amendment in my name which seeks to give effect to this.

Concerns were also raised through the inquiry process with the new proposed paragraph 657D(1)(a) which allows the panel to receive submissions only from parties that will be directly affected by the proposed order. Labor are cognisant of the concerns raised but nevertheless we are intent on supporting these amendments to the relevant section on the basis that they will increase the efficiency of panel proceedings.

Labor acknowledge that there may be a range of ways which enable shareholders to increase their interest in target companies that may not trigger a review by the panel. We are of the view that there should be a
review of chapter 6C of the Corporations Act 2001 to consider specifically the issue of disclosure of equity to derivatives. As I outlined earlier, this was a cross-party recommendation from the parliamentary joint committee. The opposition consider that the Takeovers Panel has an important role to ensure that the control of voting shares takes place in an efficient, competitive and informed market, as is set out in section 602 of the Corporations Act. Accordingly, we support this bill as part of a corporate regime which is intended to increase the efficiency of the takeover process without restricting the necessary rights of parties to access courts to review the panel’s decisions in accordance with the principles of administrative law.

Senator MURRAY (Western Australia) (1.05 pm)—I commence my contribution by reminding the chamber that I was an enthusiastic party to the original legislative team that inquired into the concept and backed the introduction of the Takeovers Panel to Australia. We wanted its processes to be informed, expert, principled, practical, quick, low cost and flexible, and to contribute materially to a dynamic acquisitions and mergers market. By and large we succeeded and I remain a strong supporter of this institution.

The Corporations Amendment (Takeovers) Bill 2007 amends the sections of the Corporations Act 2001 which relate to the Takeovers Panel. The amendments are designed to allow the panel to continue to act in an effective, efficient and expeditious manner as the primary forum for resolving disputes during takeover bids and to continue to rely on the specialist expertise of the panel members so that the outcome of any takeover bid can be resolved by the target shareholders on the basis of its commercial merits. It is well recognised in legal and commercial circles that the objective underlying the takeovers law is to ensure that the purposes set out in section 602 of the Corporations Act are achieved and in particular that the acquisition of control over the voting shares or voting interest in companies takes place in an efficient, competitive and informed market. To achieve this, the panel requires broad and flexible powers, one of the most important of which is being the main forum for resolving disputes about a takeover bid until the bid period has ended.

In the last couple of years two Federal Court decisions relating to the panel, commonly referred to as the Glencore cases, have given a limited interpretation to the jurisdiction of the panel. As a result of those cases, concerns were raised—by the panel itself, the regulators, Treasury and others—that it might be open to read the panel’s powers and jurisdiction as now being too narrowly formulated so that the panel was not able to effectively perform its role. The general consensus was that the interpretation put on the role of the panel by the court did not reflect the policy behind the legislation and therefore legislative change was needed to ensure that the role that the parliament envisaged for the panel was maintained. I think that is accurate. There were particular concerns raised regarding the Glencore decisions, and these are outlined in the explanatory memorandum as being:

- the interpretation of the term ‘substantial interest’ in the decisions, based on existing defined provisions, may prevent the Panel from being able to deal with new and developing interests and tactics in relation to takeovers;
- the Panel may not be able to act to prevent the effects of unacceptable circumstances (even if clearly apprehended), but rather, may need to wait until those effects, and the consequent harm, have actually occurred;
- the Panel may not be able to address all the circumstances which impair or affect the efficient, competitive and informed market for
control of voting securities in companies; and

- under the interpretation set out in the Glen-core cases, the Panel’s power to make orders to protect the rights or interests of persons affected by unacceptable circumstances may be too confined, with the result that the Panel may not be able to properly address the effects that the circumstances have on the interests of those persons.

This bill responds to those concerns and addresses the limits of the orders that the panel can make and the time limit for concluding a review of a panel decision. The Democrats welcome this bill because it does try to ensure that the effective and efficient role of the Takeovers Panel be resumed.

The Parliamentary Joint Committee on Corporations and Financial Services, working as effectively as it always does, reviewed this legislation and, after due consideration, made two recommendations. I sit on that committee, and this contribution from me benefits from the insights. Before I deal with those recommendations, I would like to briefly touch on a couple of issues which the committee addressed. There were concerns raised in submissions to the committee about the proposed definition of ‘substantial interest’. In fact, the definition as proposed by the bill, as pointed out by a number of submitters, is more of a nondefinition. There are no limits set on the definition for the reason that, as many who gave evidence to the committee stated, as soon as limits are proposed then a clever lawyer will try to find a way around them. The way it is currently expressed also allows the Takeovers Panel a degree of flexibility in interpretation. More importantly, and in light of the wide variety of financial instruments available, it enables the panel to move with the times and to keep a weather eye on changing trends. As Treasury points out, the drafters have opted for a principles based approach which has an in-built flexibility. I agree with that approach.

I note also the inclusion of the possibility of regulations which could list, if found necessary, those types of interest which are included or excluded for the purposes of the definition. As stated in the committee report: The committee will maintain a close interest in developments in this area.

It will be more than happy to revisit the matter should it be necessary. Another matter which the committee investigated was the effects test. The bill is broadening the effects test in paragraph 657A(2)(a) to take into account past, present and future effects so that the panel can make a declaration or order where it is satisfied that circumstances ‘had, have, will have or are likely to have an effect’. The committee agreed that this amendment was necessary so that, rather than waiting until something that the panel could clearly see would happen happened, this amendment would enable it to take those matters into account in its decision making.

It should be remembered that the panel decisions will still be able to be reviewed by a court, which is an effective check on behaviour that may overstep its jurisdiction. Under the current legislation, the panel is required to give each person to whom one of its orders relates—paragraph 657D(1)(a)—the opportunity to make a submission. This has been narrowed so that it is only those to whom an order ‘would be directed’—new paragraph 657D(1)(a)—who are able to make submissions. The practical implications of retaining the word ‘relates’ are obvious, and the committee, while being aware of the examples provided by some submitters, accepted that that narrowing was necessary. As the committee pointed out, if someone to whom an order relates wishes to make a submission the panel could in fact receive such a submission but there is no longer a
legal obligation that the panel should contact what could be thousands of people.

I would now like to discuss briefly the recommendations of the committee. I note that recommendation 1 is contained in the proposed amendment by the opposition. In passing, I note that this amendment was proposed and defeated in the House of Representatives. One of the concerns raised several times by the Takeovers Panel members, in evidence to the committee, was the possibility of litigation arising from or surrounding their deliberations. Although the members were happy that the courts were able to review their decisions, the threat of litigation about the panel’s jurisdiction was not something they envisaged prior to the Glencore cases. It was now something of a Damocles sword over the panel’s decision making. It was also brandished by solicitors, aware that the Glencore decisions could be used to slow down the takeover process. Here is what Mr McKeon, the President of the Takeovers Panel, had to say to the committee:

The two Justice Emmett decisions in the Glencore litigation some time ago provided a surprising outcome to many. The outcome interpreted the way in which we go about the business of resolving takeover disputes in an unusually narrow way. I would like to make that point, because this morning we are here to encourage the parliament not to make any radical changes to the dispute resolution that was adopted six or seven years ago but simply to restore it to the regime the market understood was the parliament’s original intention.

I quote that because I agree with him. Later on Mr McKeon made the point:

What we are saying very firmly this morning is that the amending legislation, which we hope will be passed in some form through parliament, makes it very clear that parliament is sending a strong message to the takeover industry that its original intent for this informal commercially based expeditious process is precisely what it continues to want. ... Currently, we are taking longer to make decisions.

Mr Morris, a director of the Takeovers Panel, also advised the committee:

In a good number of the more contentious matters since Glencore and now, the various solicitors acting for parties have run Glencore type arguments at us and have, in essence, threatened litigation. We think that the uncertainty that the Glencore cases have created both for us and the market is real. It does not help our ability to give quick and commercial decisions to have that sort of uncertainty.

Currently, someone is taking one of the panel’s decisions to litigation, and the precise issues about likely effect that we talk about in the legislation are being argued. While we do not think that we have had a crash with Glencore decisions so far, there are very definite sounds and signs that people are looking to use them. Tactical delay and tactical litigation is, for many people, what takeover defences and takeover strategies are all about. Unfortunately, we feel there is an increased risk of tactical litigation because of the Glencore decisions, and these amendments are intended to say that tactical litigation is not appropriate.

Again, I quote that because I agree with him.

The committee took note of these concerns and those of other submissions, and I am satisfied that this amendment bill is necessary to ensure the ongoing effectiveness of the Takeovers Panel. The Democrats therefore support the bill, but we had hoped that the recommendations of the committee would be included as amendments to the bill. I think the amendment to be moved by the opposition, which is based on the committee’s recommendation, is the right way to go and I will be supporting it.

The Democrats recognise that the committee does not make recommendations lightly or without giving due consideration to a number of factors. The committee recommendations were unanimous. Recommendation 1 from the committee reflects wording proposed in a submission from the Law
Council of Australia. The Law Council suggested this as a minor but meaningful amendment to section 657A(2)(b) and said that it was needed to ‘ensure that the new power is firmly grounded in explicit policy considerations’. The council’s proposal was to replace the phrase ‘having regard to’ with ‘because they are inconsistent with or contrary to’ the purposes set out in section 602 of the Corporations Act.

As far as the committee was concerned, this proposal appeared to be consistent with the commentary in the explanatory memorandum. However, this amendment was not passed in the other place. The explanation given by Parliamentary Secretary Chris Pearce was:

The question was raised by the committee of whether alternative wording should be used in paragraph 657A(2)(b). This option has been rejected.

He meant, of course, by the government. He continued:

The alternative wording suggested would be unduly narrow and difficult to apply, in the view of the government. The wording creates uncertainty, which could lead to increased jurisdictional arguments and increased litigation.

That is not a sufficient or satisfactory answer for me. Those matters were considered by the lawyers who work in this area every day, including the authors of the Law Council submission, who drafted the recommended wording. I would like to invite the government, in its summing-up of the second reading debate, to again explain why the wording accepted unanimously by the committee—in other words, by the government members of the committee, by the opposition members of the committee and by the Democrats—has been rejected. As the committee did not have the benefit of seeing the advice from Treasury, it would be helpful for that advice to be tabled here.

The committee made a further recommendation:

... that once the bill is passed by the Parliament the Government commence a consultation process with a view to amending Chapter 6C of the Corporations Act 2001 to establish a robust framework for the disclosure of equity derivatives relating to corporate takeovers.

That is an important issue. Treasury most of all would be aware of the strength of the equity derivatives market and how important it is to ensure proper disclosure. Once again I quote from Mr McKeon of the Takeovers Panel—please forgive me if I mispronounce his name:

In relation to the proposal by one or two that the parliament take the opportunity to introduce further measures to make it plain that equity derivatives should also be the subject of a very discrete disclosure regime, we would say that is not necessary at this point—and, in any event, we would have expected that to entail its own process, which might take quite some time. The reality from our perspective is that the decision made by the three panels in the Glencore case requiring disclosure of these equity derivatives, which was ultimately overturned by the Federal Court, was nevertheless a sound decision. It was a decision widely embraced by the market and a decision that was adopted by others in large high-profile takeovers, such as the bid by BHP Billiton for WMC. It is a relatively uncontroversial position that the panel took.

It was heartening to hear from Ms Kljakovic—again, forgive me if I mispronounce her name—from the Market Integrity Unit at the Treasury that they too are keeping an eye on equity derivatives and other inventive financial instruments. It was apparent from the evidence to the committee that Treasury is in the early stages of some policy consideration of these matters. Therefore, I am hopeful that recommendation 2 of the committee’s report will be given due consideration and that the consultation process regarding equity derivatives and their place in...
chapter 6C of the act and the framework un-
der which they operate will be in the area of
policy development in the not-too-distant
future.

This bill reflects the parliament working at
its most efficient. It began as a draft expo-
sure bill, seeking submissions from all af-
ected parties, and finished with a concise
and precise report from the Joint Committee
on Corporations and Financial Services. The
committee found common ground and made
only two, well-considered recommendations.
Those recommendations deserve to be sup-
ported.

Senator COLBECK (Tasmania—
Parliamentary Secretary to the Minister for
Finance and Administration) (1.20 pm)—
Firstly, I would like to thank honourable
senators who have taken part in the debate
on the Corporations Amendment (Takeovers)
Bill 2007. The bill is an important initiative
because it will restore to the Takeovers Panel
the clear, flexible and adequate powers that
the parliament had originally envisaged for
it. In this way, the Takeovers Panel will con-
tinue to be able to hear takeover disputes in
an efficient and effective manner and serve
as the primary forum for resolving takeover
disputes. The government believes that the
role of the Takeovers Panel is critical to the
wellbeing of Australian financial markets
and that it should not be subject to a constant
threat of legal challenge. Since the panel was
reconstituted in March 2000, it has per-
formed its functions well and should con-
tinue to do so. The current bill will ensure
that the Takeovers Panel will continue to
contribute to the current healthy operation of
the takeovers market in Australia.

In preparing this bill, the government has
seen that the consensus view is clearly that
the role of the Takeovers Panel is critical and
that the panel is well respected. Recent court
cases have thrown some doubt on the extent
of the panel’s powers, however. This bill is
designed to remove those doubts, clarify the
law and enable the panel to get on with its
work, which is highly valued by market par-
ticipants. Indeed, this was recognised by the
Parliamentary Joint Committee on Corpora-
tions and Financial Services, which exam-
ined the earlier draft bill and whose feedback
has been reflected in certain parts of the bill
now before us.

Senator Murray, I reconfirm the comments
that you quoted from Parliamentary Secre-
tary Pearce’s response to the amendment that
will be moved by the opposition, and I am
more than happy to expand on that once we
got to the amendment in the committee stage.
But I will reconfirm that the alternative
wording that was put forward by the commit-
tee was considered by the government as part
of its consideration when drafting the bill
and was rejected at that stage.

Ensuring the integrity of the Australian
marketplace and the financial markets which
comprise it is a goal that this government
continues to strive for. In this bill the gov-
ernment is delivering on its commitment to
the open and efficient operation of our take-
overs market by restoring the position of the
Takeovers Panel to that which was originally
intended by the parliament. 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 WONG (South Australia) (1.23
pm)—I move opposition amendment (1) on
sheet 5233:

(1) Schedule 1, item 4, page 4 (line 9), omit
“having regard to”, substitute “because they
are inconsistent with or contrary to”.

This is an amendment which deals with the
issue I raised in my speech during the second
reading stage. We seek to pick up the proposal of the Law Council which is intended to more clearly circumscribe the jurisdiction of the panel. I understand that Senator Murray, in his second reading contribution, sought that the government table its advice about the appropriateness or otherwise of this amendment. I ask if the parliamentary secretary is intending to do so.

Senator COLBECK (Tasmania—Parliamentary Secretary to the Minister for Finance and Administration) (1.23 pm)—No, that is not the government’s intention.

Senator WONG (South Australia) (1.24 pm)—Perhaps the government could clarify what its concerns are in relation to the amendment.

Senator COLBECK (Tasmania—Parliamentary Secretary to the Minister for Finance and Administration) (1.24 pm)—The government’s perspective in relation to this is that the Takeovers Panel was established to take takeover cases away from the courts. Indeed, there need to be broad powers for experts to decide commercial issues based on broad principles and on what they consider unacceptable. In fact the PJC agreed that the panel should have broad based powers to act without constant concerns about jurisdictional challenges, and I note that Senator Murray commented on that in his contribution. The very aim of the legislation that we have before us is to give the panel a wide power to act so that it can make commercial decisions which give effect to the spirit and the purposes of the act.

The formulation in the bill that the panel can do certain things, having regard to the purpose of the takeovers law, gives a broad jurisdiction to the panel. The proposed opposition amendment narrows that formulation, because the circumstances would need to be inconsistent with or contrary to the takeovers law. This is a narrow jurisdiction. It would lead to, in the government’s view, constant uncertainty, as it invites parties to argue that the panel has not demonstrated something as definitively contrary to or inconsistent with the purposes of the law. For example, you could say circumstances were contrary to only one of the four purposes set down in the takeovers law and therefore not contrary to the purposes overall. Persons might therefore see it as worth their while to challenge whether the panel has satisfied the negative test in order to slow down a bid for months until the court gives its decision.

A plethora of tactical litigation is exactly what was happening before the panel was constituted in 2000 and is what the government is seeking to guard against as part of this legislation. In light of the constant threat of challenge to the panel’s powers that would exist under the opposition’s proposed amendment, the panel would become very reluctant in the government’s view to intervene in all but the clearest cases, leaving the market with no option but to go to court on any takeovers matter.

Question negatived.

Senator MURRAY (Western Australia) (1.27 pm)—I move Democrat amendment (1) on sheet 5234:

(1) Page 3 (after line 8), after item 1, insert:

1A After Division 8 of Part 2M.3

Insert:

Division 8A—Disclosure by companies of political donations

323DB Object of Division

The object of this Division is to authorise gifts and other political donations as defined in the Commonwealth Electoral Act 1918 and in this Division, made by companies to political organisations.

323DC Prohibition of gifts and political donations by companies
(1) It is unlawful for a gift or other politi-
cal donation as defined in this section
to be made by a company to a political
organisation or a candidate except as
authorised by this Division.

(2) In this Division:

candidate means a candidate for elec-
tion to the Commonwealth Parliament,
a State Parliament or for a position in a
registered organisation as defined in
the Workplace Relations Act 1996.

political donation means:

(a) a gift as defined by the Common-
wealth Electoral Act 1918; or
(b) a disposition of property as defined
by the Commonwealth Electoral Act
1918.

political organisation means a regis-
tered political party or an associated
entity as defined by the Commonwealth
Electoral Act 1918.

relevant time, in relation to any politi-
cal donation made by a company,
means:

(a) the time when the donation is made;
or
(b) the time, if earlier, when any con-
tact or undertaking is entered into
by a company in pursuance of which
the political donation is made.

323DD Approval of gifts and political do-
nations by companies

(1) It is unlawful for a company or an offi-
cer of a company to make any political
donation to a political organisation or
candidate unless:

(a) the political donation is authorised
by a resolution passed at a general
meeting by a majority of sharehold-
ers of the company before the rele-
vant time; or
(b) the political donation is made on the
authority of the company, board or
management body in accordance
with a donation policy which has
been approved by a general meeting

of the company before the relevant
time.

Penalty:

(a) in the case of an individual—by a
fine not exceeding 2000 penalty
units; or
(b) in the case of a body corporate—
by a fine not exceeding 10,000
penalty units.

(2) For the purposes of this section, an
approval resolution is a qualifying
resolution which specifically authorises
the company to make donations to
nominated political organisations not
exceeding in total a sum specified in
the resolution, during the requisite pe-
riod beginning with the date of the
resolution and concluding at the expira-
tion of 3 years after the date of the
resolution, after which a further resolu-
tion is required in accordance with
paragraph (1)(a).

(3) In this section:

qualifying resolution means an ordi-
nary resolution or, if the directors so
determine or the articles so require:

(a) a special resolution; or
(b) a resolution passed by any per-
centage of the members greater
than that required for an ordinary
resolution.

requisite period means three years or
such shorter period as the directors may
determine or the articles may require.

(4) The directors may make a determina-
tion in relation to a qualifying resolu-
tion or the requisite period unless any
 provision of the articles of the company
operates to prevent them from doing
so.

(5) An approval resolution must be ex-
pressed in specific terms which con-
form with subsection (2).

(6) If a company or an officer of a com-
pany makes any donation in contraven-
tion of subsection (1), no ratification or
other approval made or given by the company or its members after the relevant time is capable of operating to nullify that contravention.

(7) For the purposes of this section, company includes a subsidiary of a company.

I seek leave to table the accompanying supplementary explanatory memorandum.

Leave granted.

Senator MURRAY—The amendment I have moved is opportunistic. On Friday, 23 March 2007—a week ago—the Minister for Employment and Workplace Relations was reported as telling journalists outside the Australian Mines and Metals Association conference in my home town of Perth:

[Unions] of course don’t have the same accountability [as corporates] - they don’t disclose how much union executives are being paid, they don’t go to members and ask them whether they can contribute millions of dollars to the Labor Party.

They don’t have the same disclosure arrangements as corporate Australia. They don’t have the same fiduciary obligations to act in the best interests of the company - or the union movement - as corporate Australia, and that’s something that I think needs to be addressed.

This statement leads me to conclude that there is now acceptance in the government of reform in this governance area. The Corporations Amendment (Takeovers) Bill 2007 is the earliest legislative corporate law vehicle available to effect such reform. And of course it is opportunistic, because with the election due any time from 4 August I need to address these issues as soon as I can.

The minister seems unaware that corporates do not have to gain shareholder approval for political donations and that most do not. I have raised this issue several times since 1996. I drew attention to this matter in my minority report to the Joint Standing Committee on Corporations and Financial Services May 2004 report into CLERP 9. I subsequently unsuccessfully moved an amendment reflecting my recommendation to the Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Bill 2003. I have again drawn attention to the need for disclosure by companies making political donations without shareholder approval and unions making political donations without member approval and suggested the remedies for this. Note my supplementary remarks to the September 2005 report of the inquiry by the Joint Standing Committee on Electoral Matters into the conduct of the 2004 federal election and matters relating thereto.

The amendment, which is a fairly lengthy one, provides for the prohibition of gifts and political donations by companies unless the political donation is authorised by a resolution passed at a general meeting by a majority of shareholders of the company or unless the political donation is made in accordance with a shareholder-approved donation policy. It does not seek to prohibit donations; it seeks to require that the shareholders approve the policy under which donations are made.

I referred earlier to my supplementary remarks to the September 2005 report of the inquiry by the Joint Standing Committee on Electoral Matters into the conduct of the 2004 federal election. I said the following, which is the Democrats’ approach to these matters:

The practice of companies making political donations without shareholder approval and without disclosing donations in annual reports must end.

So must the practice of unions making political donations without member approval. It is neither democratic nor is it ethical. Shareholders of companies and members of registered organisations (or any other organisational body such as mutuals) should be given the right either to approve a political donations policy, to be carried out by the board or management body, or the right to approve political donations proposals at the annual
general meeting. This will require amendments to the relevant acts ...

I think this position is clearly understood. If I were to take parliamentarians and ask them to put on their personal moral and ethical hats, I have no doubt they would support my remarks. But when you come across parliamentarians in their guise as representing political parties, of course it is not in their self-interest to support them, so I am anticipating the rejection of this amendment.

In closing on my motivation for the amendment, I do want to remind the committee that in the report of the Joint Standing Committee on Corporations and Financial Services, which assessed that original CLERP 9 legislation, recommendation 26 said the following:

The Committee recommends that provisions be inserted in the Corporations Act that would require the annual report of listed companies to include a discussion of the board’s policy on making political donations.

To this date, of course, the government has not taken up that committee recommendation. That is not unusual: the government does not take up lots of recommendations of that particular committee. In my opinion it should take up more. I do not think there is much more to say from my point of view.

Senator COLBECK (Tasmania—Parliamentary Secretary to the Minister for Finance and Administration) (1.32 pm)—I congratulate Senator Murray on his foresight. We will not be supporting his amendment. The government does not support intervening in the operations of individual companies in the way proposed by Senator Murray. The government notes that Australia’s Corporations Law is principles based and allows a broad discretion to act in the best interests of the company and its shareholders. In making these sorts of decisions, companies must take due care and diligence and all reasonable factors into account, and it is not for the government to dictate to companies how they do that. The government does not support the amendment proposed by the Democrats.

Question negatived.

Bill agreed to.

Bill reported without amendment; report adopted.

Senator COLBECK (Tasmania—Parliamentary Secretary to the Minister for Finance and Administration) (1.34 pm)—That this bill be now read a third time.

Question agreed to.

Bill read a third time.

MIGRATION AMENDMENT (REVIEW PROVISIONS) BILL 2006 [2007]

MIGRATION AMENDMENT (BORDER INTEGRITY) BILL 2007

Second Reading

Debate resumed from 7 December 2006, on motion by Senator Ellison, and from 28 March, on motion by Senator Scullion:

That these bills be now read a second time.

(Quorum formed)

Senator LUDWIG (Queensland) (1.37 pm)—I rise to speak on the Migration Amendment (Border Integrity) Bill 2007. At the end, I will seek leave to have my speech on the Migration Amendment (Review Provisions) Bill 2006 [2007] incorporated in Hansard. I foreshadow that at this point. The reason for that, of course, is that these bills are cognate. I was intending to speak to both of them but I did not want to then be constrained to 10 minutes apiece given that I only have 20 minutes for my speech. I would rather spend a bit more time on the border integrity bill first.
The purpose of the amendments in the Migration Amendment (Border Integrity) Bill 2007 to the Migration Act 1958 is to enable certain persons with an eligible passport to choose either an automated system of clearance or a clearance officer in immigration clearance and to define who may use an automated system. In addition, the bill seeks to amend the Migration Act so that a special purpose visa may cease at a time specified by the minister. Currently the visa would cease at midnight on the day of the ministerial declaration. The bill remedies the current situation where a declaration is made by the minister that a noncitizen should not remain in Australia but action to detain that person for removal cannot occur until midnight on the day on which the declaration is made. Clearly, that is a problem that needs a remedy. Labor will be supporting the bill and those matters that are contained within it that go to the various schedules.

I turn to identity verification for passports or what is probably now well known as SmartGate. The bill allows for the expansion of the government’s voluntary SmartGate system to all Australian citizens and selected noncitizens provided they hold an eligible e-passport. While Labor will be supporting the bill, as I have said, we are not convinced that the SmartGate system as proposed will adequately deliver on those aims.

The use of SmartGate is dependent on having an eligible passport—in other words, an e-passport. The e-passport was launched on 25 October 2005. The biometrically enabled e-passport, as some would know, has a microchip embedded in the centre page which contains the digitised facial image and personal details of the passport holder. The microchip can be read electronically by facial recognition technology. The introduction of e-passports internationally will continue to assist, clearly, in streamlining international travel.

I would say at the outset that there is much support for the concept. The automated system will temporarily store the data which is electronically read from the embedded information stored on the microchip in the e-passport. That is the broad process which will be utilised. That is only while it is used to process the relevant passenger. The information is destroyed shortly afterwards. The automated system will not collect—that is, permanently store—the relevant personal identifiers from these passports.

The government moved amendments to the bill in the other place to avoid an unintended consequence under the original draft that would have prevented the collection of passenger cards from citizens and noncitizens arriving in and departing from Australia because they contain signatures. A signature is defined to be a personal identifier for the purposes of the Migration Act. It does seem that a little more attention to detail is needed here. I think I was speaking about that yesterday as well.

The amendments also provided clarification so that clearance would not be restricted to wholly one or the other—that is, the automated system or the migration clearance officer. This ensures that a passenger can hand their passenger card to an officer and still be cleared through the automated system. You would obviously need to avoid the situation where you then get stuck at that point if you have chosen one and not the other. Labor supports these amendments. They are sensible amendments. They in fact go to clarifying, clearing up and correcting some omissions.

Let us have a bit of a talk about SmartGate. Labor does support the move towards the use of biometric technology for the purpose of identification. However, Labor does note that there have been some teething problems with SmartGate itself. The reliabil-
ity of the technology such as that used in the SmartGate system has not been without some criticism. In fact, I think it is now called ‘SmartGate No. 1’. I do recall a range of iterations of that prior to this current SmartGate model. In fact, completely different stands were used in the past. My recollection is that this is about the third iteration of SmartGate that has been trialled and is now being rolled out.

On 5 September 2006 the *Australian Financial Review* noted that industry insiders had identified gaps in biometrics such as excessive error rates, a poor ability to find database matches and high sensitivity to varying conditions. The article referred to a senior policy analyst at the White House Office of Science and Technology who had estimated that the accuracy rate for facial scanning is about 90 per cent. For fingerprints it is 99 per cent and for iris scanning it is about 97 per cent.

The reliability and effectiveness of the SmartGate system was directly questioned by Dr Roger Clarke, a visiting fellow in the Faculty of Engineering and Information Technology at the Australian National University. He made these remarks on ABC Radio’s *PM* program on 5 May 2006. Dr Clarke stated then that SmartGate would face difficulties because:

... it’s built on the assumption that a person’s face will always appear the same, when in reality that’s rarely the case.

He stated that this was particularly challenging when you are trying to do this in volume, with large numbers of people passing through the process.

In their 2005-06 annual report Australian Customs maintained that, although there were problems initially, ‘by the time SmartGate comes into full operation next year all the creases will have been ironed out’. That beats the term, ‘It’s a work in progress’, which the then minister used. Customs might recall. To that extent, the Howard government is asking us to take on faith a Customs assurance of a successful IT contract management. Forgive me if I smile at that; perhaps it is a wry smile. The problem is that we have just seen the release of an audit report into the last IT project at Customs—if there has not been one that has failed since—which was the Customs cargo management system. Customs might recollect only too well—in fact I suspect they are still working through some of the matters—that that also is ‘a work in progress’, but I am happy to be corrected if it is no longer in that category. That project was approved without a financial management plan; it was costed on the basis of a stab in the dark, was delivered years late and was approximately—wait for it!—$200 million over budget.

Labor has strong reasons to question the government’s ability to manage the implementation of systems technology in this area. Risk profiling of people who come to our country is critical for national security. We need to know who is coming into our country so that we can do background checks before they arrive. The same is true for sea and air cargo. Customs analyse sea and air cargo in Australia by computer; they look at the cargo reports and check them against risk profiles. At Senate estimates hearings this year we heard that for 12 days the Howard government switched off up to 3,200 separate risk profiles when the Customs computer crashed as a result of the minister ordering that a half-ready and inadequately-tested IT system be switched on. When Customs went back and risk profiled the sea and air cargo reports after that incident, they found that an indeterminate number of air cargo reports and import declarations appeared not to have been checked. You then have to look at what the audit report said,
because it really does not leave you in any doubt. It states:
The deactivation of—
over 4,000—
risk profiles—
over several days—
presented a considerable risk to Australia’s border security and Customs’ revenue collection responsibilities. These profiles covered areas such as counter terrorism, illicit drugs, revenue, prohibited items and compliance.
The rush to introduce technology to streamline processes such as in this instance is surely a warning for the government, particularly in relation to uncertain technology in other areas. With this government’s track record, it is very difficult for Labor to accept its assurances that the same will not happen in this case. We must, though, ensure that the identity verification systems are accurate, feasible and robust. We have no argument about that. The problem will be in the delivery, and I do not want to hear again from the government that it will be ‘a work in progress’, when it starts to have teething problems. They should ensure that the system works accurately from day one.

The National Director of Border Intelligence for the Australian Customs Service commented in May 2006 that the biometric technology is ‘urgently needed to deal with the increasing numbers of people arriving at Australian airports’. The director stated that facial recognition technology has ‘a high accuracy level’. In answer to a question from me during estimates hearings, when I raised concerns that SmartGate might actually run the risk of causing undue delays to processing rather than alleviating congestion, the director unfortunately would not reveal what the level was during the SmartGate trial. If this expensive technology is so sensitive and prone to confusion, and therefore more likely to direct people to manual processing rather than to automated processing, it does not actually appear to be a ‘smart gate’ at all. In short, if the system does not do what it is supposed to do with a high degree of accuracy you will simply have to have a manual system as a backup to ensure that those who do not get through the first gate have to go through to the second gate—in other words, it would be back to manual processing.

On 31 October 2006, in answer to a question at Senate estimates hearings on the implementation of SmartGate following its trial, an Australian Customs Service officer stated:
The idea is, at this stage, that the first implementation will be at the end of February next year in Brisbane. As I said, it is a development implementation to develop the model fully. Then we intend to move to Sydney and Melbourne after that. But that will be a few months off. It will probably be in the latter part of the next calendar year.

So, following the trial, the implementation of the system is:
... a development implementation to develop the model fully.
The question is: why has the government chosen to proceed with legislation without first having a fully developed model? Hopefully, some light might be shed on that point during the committee stage of this bill. Despite concerns with the technology more generally, governments in countries such as Britain, the United States, Germany, Israel, Brazil and Singapore are rolling out their own biometric authentication systems in customer-facing departments such as customs, social security and health. It does appear that we are simply reinventing the wheel. The government also should be able to explain whether these models have been tested by Customs for effectiveness and efficiency. If there are other models and standards out there, why would we not be doing this in accordance with those standards? And if they
do not exist and we are developing our own model, are we doing it in isolation from models that are being developed? Or has Customs looked at models which might be implemented but which are currently on the shelf? Ultimately, what we want is a system that integrates all the other systems so that we do not have a hotch-potch border control system.

The other main purpose of the bill is to enable the minister to specify a time when a special purpose visa will cease to be in effect. As I have said, Labor supports this amendment. The ability to cancel a special purpose visa immediately, however, is unfortunately overdue. At present maritime crew are granted a special purpose visa on arrival in Australia following checks against the Department of Immigration and Citizenship movement alert lists. This process does not permit security checks to be conducted before the crews of these ships are allowed to enter Australia—an issue Labor has been saying for a long time needs to be addressed. While the government recently introduced a checked visa for maritime crew in the Migration Amendment (Maritime Crew) Bill 2007, Labor questioned why it had taken some 6½ years, since September 11 2001, for the government to introduce it. The government has only just adopted what has been a longstanding Labor Party policy to vet foreign maritime workers. The measures in the maritime crew bill were another example of the government adopting a longstanding Labor policy in order to address a security related issue.

In conclusion, the government continually neglects to monitor and regulate the necessary micronational security issues. It does so in two ways. It either neglects them or it shoots back with the retort, ‘It’s a work in progress.’ On that model you will never finish it and you will never get it right. In fact, you will never strive to get it right. That is the point of it all. If there are holes and they are identified, you should be able to remedy them. If there are deficiencies, you should be able to fix them. But when you continue to ignore and neglect micronational security issues then we will have this piecemeal, late, ad hoc legislation dribbling out of the government. It is not good enough.

The government is spending considerable money on Immigration and Customs related IT systems. However, based on the IT system contract management we have seen to date, it is simply not up to scratch. Simply spending money does not address a problem or issue. It must be targeted, it must be robust and it must be effective. That is the outcome that Labor would expect.

While Labor supports the move to biometric authentication systems, we do have concerns that the government’s approach to go it alone internationally and to iron out identified problems with the SmartGate system during its introduction is not good enough. While Labor supports this bill, it remains wary of the system the government has chosen and its ability to administer it. Perhaps I can restate the latter in a stronger way. The government has not demonstrated clear IT management credentials in the Australian Customs Service. Labor will be monitoring closely the performance, cost and international compatibility of the SmartGate system.

I turn to the Migration Amendment (Review Provisions) Bill 2006 [2007], which is being debated cognizably with the Migration Amendment (Border Integrity) Bill. The bill attempts to fix two unintended anomalies in the Migration Act that had been exposed by High Court and Federal Court decisions over the past two years. The courts have interpreted the Migration Act in a way that imposes rigid due process requirements on the Migration Review Tribunal and the Refugee
Review Tribunal regarding the communication of information that would be adverse to the applicant’s case. Given my time is about to expire, I seek leave to incorporate in Hansard the remainder of my second reading contribution on the Migration Amendment (Review Provisions) Bill.

Leave granted.

The speech read as follows—
So the bill attempts to rectify the bill in two main ways:

It confers on the tribunals a discretion to the effect that they can choose whether to communicate orally or in writing the particulars of any information that would be the reason, or part of the reason, for affirming the decision under review and invite the applicant to comment on the information; and

It introduces an exception to the requirement to communicate adverse information to the applicant—and that is that the tribunal need not communicate the information that the applicant originally provided to the Department of Immigration for the purpose of their visa application, with the exception of information provided to the Department orally by the applicant.

Labor’s position

Labor supports this bill for several reasons. First, it is clear that the rigidity of the requirement currently imposed on the tribunals is an unintended consequence. For example, the Act stipulates that the tribunal need not communicate adverse information that was provided to the tribunal by the applicant in their ‘application’. The courts have interpreted this in a very narrow way to mean the applicant’s ‘application’ to the tribunal to have their original application reviewed as part of the merits review process.

As a result of this, the Tribunal has been required to put to the applicant in writing within statutory time-frames factual information that the applicant themselves had already provided in writing with their original applications to the Department – e.g. passport information and statutory declarations.

This bill clarifies that the tribunal need not put to the applicant in writing information that the applicant originally provided to the Department of Immigration in their visa application.

- It is desirable that the Tribunal put to the applicant in writing evidence and factual information that would be a reason to affirm the original negative decision of the Department. This is an important component of the fair hearing rule that requires that applicants understand the evidence against their case and be given an opportunity to respond to the evidence.

However, the courts’ interpretation of the Act has stretched what should be a very reasonable requirement into an often unnecessarily burdensome process.

Secondly, while there are certainly benefits of having any adverse information that the tribunal would rely upon to affirm the Department’s original negative decision communicated to the applicant in writing, it is often the case that this requirement to communicate in writing delays the processing of the case, even in a situation where the applicant was happy to deal with the matter orally during the course of the hearing.

The administrative burden certainly has impeded the tribunals’ ability to process the applications in a timely manner. This has been particularly problematic for the RRT, which must comply with the statutory time limit of 90 days for the processing of the applications.

Aside from the enormous administrative burden these rigid requirements have placed on the tribunals, applicants themselves can also be frustrated and can come out with no extra benefit in terms of a fair hearing.

Flexibility for flexibility’s sake is not the point of this bill; it’s flexibility that will in appropriate circumstances assist the applicant as well as the tribunal.

Thirdly, while the bill provides the necessarily flexibility needed, at the same time it includes additional safeguards to protect the interests of the applicant. For example, where the tribunal chooses to communicate the adverse information to the applicant orally during the hearing, the bill requires:
That the Tribunal member must ensure, as far as is reasonably practicable, that the applicant understands the relevance of the adverse information to the review;

That the Tribunal must inform the applicant of their right to request an adjournment in order to allow the applicant to prepare their response, and must grant the adjournment if reasonably requested;

The new provisions inserted in sections 357A and 422B specifically state that the Tribunal must act in a way that is fair and just. The Tribunal’s decision as to what will be appropriate in particular circumstances will be subject to this provision.

Hence, the Tribunal is not being given an unfettered unreviewable discretion to provide material orally rather than in writing. The bill enables a continuation of the current judicial oversight of procedural fairness.

Labor’s concerns

Labor is however concerned about the prospect of increased litigation resulting from this bill.

I quote from the Committee report:

‘It is almost certain that the provisions will invite litigation challenging whether the Tribunals:

considered that the applicant understood the information;

reasonably formed the view that the applicant did not require more time to respond to the information; and

met the overarching requirement to apply the provisions in a fair and just manner.’

Labor will be monitoring the outcome of the bill to ensure that excessive litigation does not result. However, Labor’s amendment goes some way to reducing this likelihood.

Committee recommendations

In the Senate Legal and Constitutional Affairs Committee report, several concerns were raised about the bill, which led the Committee to recommend that the discretion to communicate adverse information orally should only be enlivened if the applicant consents. If the applicant does not consent, then the tribunal’s obligations would default back to the requirement to communicate in writing.

Labor is introducing an amendment here in the Senate to give effect to the Committee’s recommendation (number 1) that the applicant can elect for the tribunal to communicate the information orally.

The government has already indicated that it would not be backing the Committee’s recommendation.

However Labor believes that the amendment should be supported because it is likely to assist in ensuring the applicant understands the process and it would assist the applicant in trusting the tribunal’s decision.

Conclusion

This Bill addresses an unsatisfactory situation that Migration Review Tribunal and the Refugee Review Tribunal have found themselves in as a result of recent High Court and Federal Court decisions as to how the tribunals need to carry out their reviews.

The existing provisions have become unnecessarily burdensome without necessarily providing any added assistance to the applicants or providing any additional procedural fairness.

Labor will be supporting the bill because it is an attempt by the Government to remove some unnecessarily cumbersome administrative processes from the merits review process. We believe the bill could have been improved by our amendment but nevertheless the bill achieves outcomes that are beneficial for all parties involved.

Senator BARTLETT (Queensland) (1.57 pm)—It is 2½ minutes before question time and, in the interests of efficiency, I will collapse my second reading comments on the two migration bills into that 150-second window. The Democrats support the Migration Amendment (Border Integrity) Bill 2007. We share the concerns that Senator Ludwig has outlined at length, but I will not repeat them. The Migration Amendment (Review Provisions) Bill 2006 [2007] was examined by the Senate Standing Committee on Legal and Constitutional Affairs. I refer the Senate and anyone interested to the additional comments I made in regard to that
committee’s review of the legislation. There have been a lot of amendments over the years supposedly dealing with procedural fairness and the like. Most of them seem to me to be more on the side of putting efficiency ahead of fairness. I understand the rationale behind the amendments that are put forward here that were argued by the tribunals before the Senate committee but I also took on board the evidence provided by those people who practise and represent people in this area on a regular basis. They identified some concerns about the potential consequences of these changes and I share those concerns.

I do think that providing an extra discretion for the tribunal to not provide reasoning or not provide information to the applicant in writing, but to only have to provide that information orally, is less than desirable. It is potentially problematic. Whilst it might mean some more paperwork for the tribunal, it is one of those cases where it is better to be safe than sorry. The Democrats are not convinced of the need to make those amendments. The amendments that have been circulated by Senator Ludwig in regard to this legislation seem to me, on the surface, reasonable. So I would foreshadow that the Democrats would give support to those amendments when we reach the Senate committee stage of the debate. However, we are still not convinced that the legislation as a whole is necessary, or that the core provisions in it are necessary. Frankly, I think it is time we had a comprehensive overview and review of the entire Migration Act rather than these continual nips and tucks all the way along that just seem to add to the number of court cases being made.

Debate interrupted.

QUESTIONS WITHOUT NOTICE
Climate Change

Senator CHRI S EVANS (2.00 pm)—My question is directed to Senator Minchin in his capacity representing the Prime Minister. Can the minister confirm that some of Australia’s largest coal producers, like BHP Billiton and Rio Tinto, have expressed support for an Australian carbon trading scheme? Is the minister aware that Rio Tinto submitted to the task group on emissions trading: ‘The view that nothing should be done until every nation is ready to take action is unrealistic’? Haven’t Australia’s coal-producing companies acknowledged that failing to address climate change will hurt the economy, their industry and their employees? Minister, isn’t our clever politician Prime Minister Howard just desperately employing yet another scare campaign, this time on coal jobs? Don’t Australian coal communities deserve leadership rather than the Prime Minister playing politics with their futures?

Senator MINCHIN—It seems extraordinarily like groundhog day. I cannot tell the difference between the question Senator Evans just asked today and the one he asked me yesterday, which was similarly about business submissions to the government’s task force inquiry into the question of an emissions trading scheme for Australia. The government has indeed set up this inquiry to examine what form an emissions trading scheme might take in relation to Australia and how that might relate to other trading schemes being proposed around the world.

As I said yesterday and I will say again, we are delighted that major corporations and businesses around Australia are putting forward their ideas on how an emissions trading scheme might look and whether that is an appropriate proposal for Australia. Indeed, the Prime Minister today indicated that one of the key issues we do have to address as a
nation is the extent, if any, to which a price on carbon is going to be necessary to ensure we moderate greenhouse gas emissions.

But the Labor Party cannot, by this sort of questioning, escape from the fact that the policies they propose, and most particularly the proposal to have a 60 per cent cut in emissions by 2050, would be devastating for Australia’s coal industry. They do have Mr Garrett running around saying that the coal industry should be stopped in its tracks. They cannot escape the opprobrium of that particular comment by their environment spokesman. He is on record as saying that, and the Labor Party are on record as advocating a proposal involving a 60 per cent cut in emissions by 2050.

The widely respected and independent agency ABARE has modelled that particular proposal and found that, at the least, such a proposal would mean that the wholesale price of electricity would double—a 100 per cent increase in the price of electricity. Petrol prices, about which the Labor Party often complains, would go up by 50 per cent. We have the respected economist Dr Peter Brain saying that, with these sorts of cuts, the impact would be most heavily upon the poor in our community. So the Labor Party can run around joining in apocalyptic hysteria, saying we have to make all these cuts. It is easy to go around in opposition and proclaim these sorts of targets—60 per cent cuts in emissions—without facing up to the reality of what those things would mean.

We are approaching this problem of greenhouse gas emissions and their contribution to climate change in a very practical, serious way and an experienced way. We are dealing with issues in a cost-effective manner to see what is appropriate for the Australian economy to do. As Senator Abetz said yesterday, we set up the Australian Greenhouse Office nearly 10 years ago. We spent $2 billion over the last 10 years on programs to stimulate renewables technologies to ensure that Australia does make a contribution to greenhouse gas abatement. We are approaching this issue with the seriousness which it deserves. That is why we have gone and taken the political risk of putting nuclear power on the table, because if you are serious about this issue you cannot rule out the possibility of nuclear power playing a role in Australia’s energy mix. But what do these people do? Run around creating hysteria, but then the only solution for baseload power that is zero emissions they just rule out. So they are not to be believed on this issue.

Senator CHRIS EVANS—Mr President, I ask a supplementary question. Senator Minchin refers to creating hysteria. That is exactly what the Prime Minister sought to do yesterday by saying any attack on climate change is a threat to our economy. Aren’t business and others in the community leading the debate, trying to drag the government along behind them, in recognising that it is bad for our economy if we fail to tackle climate change? Why won’t the government show some leadership, catch up with business in the community and seriously tackle these issues rather than trying to spread fear? Isn’t it a fact that unless we take steps to tackle climate change we will suffer economically in the long run?

Senator MINCHIN—The Australian people should be scared about the alternative policies put forward by the Labor Party. As Terry McCrann said today:

Kevin Rudd has recommitted a Rudd Labor government to damaging the economy in the short term and destroying it in the longer term. That would be the consequence of the Labor Party’s policies to cut emissions in this country by 60 per cent over the next 40 years. It would be devastating to the economy. Terry
McCran is dead right; they would be a threat to every Australian.

Forest Management

Senator TROOD (2.05 pm)—My question is to the Minister for Fisheries, Forestry and Conservation, Senator Abetz. Will the minister outline to the Senate how the Howard government is leading the world in acting to reduce deforestation and in doing so helping to reduce carbon dioxide levels in the atmosphere? Is the minister aware of any alternative policies?

Senator ABETZ—Senator Trood is right: Australia is a world leader in forest conservation and forest management, with almost 22 million hectares of forest reserved in this country. Whilst those on the other side seek to whip up hysteria about climate change and propose ridiculous, job-destroying responses, we on this side are getting on with the job of providing real, practical, balanced solutions which do not destroy jobs.

In fact, in Australia we have some 7.9 hectares of forest per head of population. Australia is second only to Canada in that regard—not that you would believe that if you listened to the absent Senator Bob Brown. In fact, together with our working and plantation forests, Australia’s massive and growing forest estate sequesters over 43 million net tonnes of carbon dioxide per annum. Not many countries boast such an impressive record in forest management. Not many countries are like us and plant at least twice as many trees as we harvest.

In South-East Asia and the South Pacific, we know that vast amounts of forests are being illegally logged and deforested. Last year I released the draft illegal logging policy, which is designed to address this issue and focuses on how we can encourage a shift in our South-East Asian neighbours to not permanently cut down their forests. Today I am pleased to advise the Senate that the Prime Minister announced that we will contribute $200 million to assist our neighbours in this process—a real, practical solution to reduce deforestation in South-East Asia; a solution which aims to reduce world CO₂ emissions by a massive 20 per cent without costing a single Australian job. It is the experienced Howard government that takes the real, practical, balanced, sensible measures to address climate change, while those on the other side continue with their insane job-destroying policies.

For example, the Labor Party’s proposal to reduce only Australia’s carbon dioxide emissions by 60 per cent by 2050 would cost literally thousands of Australian jobs, while not making one iota of difference to the world’s temperature.

As for the Greens, Senator Brown continues with his never-ending crusade to close down the Australian forestry sector and to throw 83,000 people out of work—all based on the false premise that forestry in Australia is somehow contributing to climate change. In fact, forestry is the only sector of our economy which is carbon positive. If Senator Brown’s proposal to close down the forest industry were enacted, there would actually be more carbon dioxide in the atmosphere than there is now. That is the sort of nonsense the Australian people are being subjected to by the Australian Greens and the Australian Labor Party—job-destroying, illogical policies which will make no difference to climate change and will, in the case of Senator Brown’s proposal, actually make it worse.

The Howard government is working to offer a 20 per cent reduction in world CO₂ levels without the cost of one single Australian job. Labor and the Greens want to halve only Australia’s emissions, at the cost of thousands of Australian jobs. The choice for the
working men and women of Australia could not be clearer. *(Time expired)*

**Climate Change**

**Senator WEBBER** *(2.10 pm)*—My question is to Senator Minchin, the Minister representing the Prime Minister. I refer to the minister’s statement in the Senate yesterday:

Yes, we adopted a Kyoto target of 108 per cent which we are going to achieve.

Given that the government’s December 2006 *Tracking to the Kyoto target* report indicates Australia will miss its Kyoto target, on what basis did the minister make his statement? Doesn’t the Howard government’s failure to sign the Kyoto protocol and its failure to meet Australia’s target show that the Howard government is not capable of meeting the climate change challenge? Isn’t that why after 11 long years of the Howard government we are still waiting for action on climate change? Minister, isn’t the government still dominated by climate change sceptics, who are not capable of providing the solution Australia needs?

**Senator MINCHIN**—I am very happy to restate the government’s proud record in relation to responding seriously and sensibly, and against the background of our long experience in government, on this international issue of climate change. We do take the issue seriously, but we made a very sensible and wise decision not to ratify the Kyoto protocol, and it is well known why we did that: the world’s major emitters are not part of that protocol. The Labor Party seem to forget that Australia is responsible for some 1½ per cent of the world’s greenhouse gas emissions. The world’s major emitters—the United States, China, India and Brazil, which account for, I think, some 60 per cent of the world’s emissions—are not part of that protocol. All that ratifying that protocol would do would guarantee the export of jobs from this country. You would guarantee that energy-intensive industries, which all of us have worked so hard to bring to this country to employ Australians and to create wealth for Australians, would simply migrate to those countries not part of the protocol and not bound by any of its restrictions—to countries where there are much worse environmental practices than in this country, resulting in probably greater emissions than if those industries operated in this country. There would be no net benefit to the environment whatsoever and probably a net deficit to the environment internationally, and at the cost of jobs and wealth in this country.

What we did, however, was agree to adopt the target set for Australia and restrict our emissions to 108 per cent at the start date. I am advised we are on target to meet that objective because of the substantial range of measures that we have adopted. It was the Australian coalition government that introduced the mandatory renewable energy target. For example, we were the ones who introduced the solar panel rebate, about which now the Labor Party have said: ‘Yes, we like that too. We’ll have some of that.’ They are proposing to keep our solar power rebate policy, which of course this government will also continue. As I said, we have committed some $2 billion to support emissions-reducing technologies. We are supporting the world’s biggest solar power plant—the solar tower in Victoria. We are conducting research into clean coal, which the Labor Party now support. As I said before, we have the task force on emissions trading. We are taking a whole range of steps to ensure that Australia does play its appropriate and responsible part in the way the globe is tackling climate change. But we will not do anything which will unduly threaten the jobs of Australians and we will not do anything to threaten the foundations of the Australian economy.
Senator WEBBER—I ask a supplementary question, Mr President. Minister, hasn’t Australia’s international reputation been tarnished by the Howard government’s failure to ratify the Kyoto protocol? How on earth can the Australian people expect the Howard government to address the challenges of climate change when so many members of it deny it is actually a problem? Isn’t it time that Australia got a government that can address the problems of today and tomorrow, not one that is stuck in the past?

Senator MINCHIN—Fortunately, Australia does have a government which is tackling the problems of today and tomorrow. What we fortunately do not have in government is an opposition which wants to take us back to the future with the most backward-looking industrial relations proposals anyone ever invented. What is Mr Rudd’s big idea? To go back to the 1960s approach to industrial relations, to go back to the 1980s approach to providing broadband for this country and to rehash WA Inc. and the Victorian Economic Development Corporation. We know about the party that is back to the future, and that is the Australian Labor Party.

Goods and Services Tax

Senator SANDY MACDONALD (2.15 pm)—My question is to the Minister for Finance and Administration, Senator Minchin, and it goes to the core of our economic well-being and an effective and fair tax system. Minister, will you inform the Senate of the benefits to Australia’s state and territory governments from the GST? Are you aware of any proposals to increase the rate of the GST in order to provide additional revenue to those governments? Will you inform the Senate what circumstances would be required in order for the GST to be increased?

Senator MINCHIN—I thank Senator Sandy Macdonald for a very timely question. As I was saying, the Labor Party opposes just about every economic reform in this country. There was a time when the Labor Party was against the GST, but of course now, by contrast, the Labor Party has become the GST’s greatest advocate. Indeed, state Labor premiers love it and cannot get enough of it. Why wouldn’t they support the GST, when every state and territory, including Senator Sandy Macdonald’s state of New South Wales, is now reaping far more revenue from the GST than they did from the state taxes that it replaced? This year the states and territories will be a massive $2 billion better off as a result of having the GST.

Today we see that Labor’s love affair with the GST has gone to a new level. It has been reported that the premiers want the GST to be increased so that they can pocket more of the revenue. Today’s Australian reliably reports that the Labor premiers have commissioned a report which argues for a higher rate of GST. That report will be presented to the Labor premiers—just as they sought it—today. Of course, the Labor Party has already embraced that report. Victorian Premier, Steve Bracks, says it debunks the claim that the states are awash with cash. So Premier Bracks is endorsing the report’s central claim that the states need more GST revenue to run their state operations.

The additional revenue now flowing to the states means that they can in fact afford to cut more state taxes, just as was agreed in the original GST agreement, but of course the reality is that the states do love the GST and its ongoing revenue flows. Unfortunately, because the states have shown absolutely no fiscal discipline, they have spent money faster than they have been receiving it from GST income, and that is why every mainland state and territory, other than WA, is now running cash and fiscal deficits in this financial year. While we at a federal level are running a surplus of $11.8 billion this year, the
states are on track to run a combined cash deficit of $3 billion and a fiscal deficit of $5 billion. If you include state owned businesses, the states collectively are going to run a $14 billion cash deficit in 2006-07. So, despite the GST and strong economic growth, the states have completely lost control of their budgets.

Senator Sandy Macdonald asked me how the GST might be increased. It is a matter of law that any change to the GST rate requires the unanimous agreement of all states and territories and the federal government—in other words, you have to have like-minded governments in all states and territories and in Canberra. Guess what: that is exactly what you would have if Labor wins the next federal election. We have already seen that Mr Rudd has proven himself a soft touch for the premiers. Mr Rudd is a soft touch for the premiers. He has made expensive new promises in a whole range of areas of state responsibility. He goes around the country promising to bail out all his spendthrift state Labor mates. We have state Labor governments claiming they are running out of money and seeking an increase in the GST, and we have the possibility of wall-to-wall Labor governments. That is definitely a recipe for the greatest threat the Australian people face: a significant increase in the rate of the GST. We know from the Labor Party’s raid on the Future Fund and the sale of Telstra shares that they will throw any of their long-held policies out the door whenever they need the cash. After all, they once opposed the GST and now they literally cannot get enough of it.

**Climate Change**

**Senator STERLE** (2.20 pm)—My question is to Senator Abetz, representing the Minister for the Environment and Water Resources. Is the minister aware that, under the EU arrangements, the United Kingdom agreed to cut its greenhouse gas emissions by 12½ per cent from the level in 1990 and is projected to achieve an 18 per cent cut? Is the minister also aware that Germany has targeted a 21 per cent cut in greenhouse gas emissions from the level in 1990 and is projected to achieve a 19 per cent cut? How is it that these two countries can make such massive, absolute cuts to their emissions by 2010 while Australia struggles to reach its target of 108 per cent? Why is it that by 2010 these two countries will have made significant cuts to their greenhouse emissions while the Howard government has spent the last 10 years denying the threat of climate change and the need to take real measures to cut our emissions?

**Senator ABETZ**—In relation to the honourable senator’s question, what we have is a desperate attempt by the Australian Labor Party to deal themselves into this debate. As I was able to inform the Senate yesterday, the issue of greenhouse gas emissions was something that we took on board immediately we came into government with our then environment minister making a statement in 1996—the very first year we came into government. Within a year or two of that, we established the Australian Greenhouse Office to deal with exactly these issues.

It is informative that the honourable senator selectively quotes the odd country or so in Europe. But it is interesting that the country of Germany, for example, relies on nuclear energy. That is an interesting consideration. Also, in relation to Australia, we should keep in mind that a lot of the fossil fuel that is expended in Australia is expended because we are one of the breadbaskets of the world. And I pay tribute to the agricultural and primary sectors for the way they have been dealing with the issue of trying to decrease greenhouse gas emissions. But make no mistake: those countries that are forced to buy foodstuffs from us may well be confronted...
with higher costs and that, of course, would not be of benefit to those countries that rely on our agricultural produce and those people who rely on it.

The release of the UK’s draft climate change bill proposes to make legally binding the target of at least a 60 per cent reduction in carbon dioxide emissions from 1990 levels by 2050. But the bill is undergoing a consultation phase and no final decisions on the elements of the draft legislation have yet been made. So let us just put all this in perspective. This is what the Labor Party continually does: it seeks to assert something as fact, whereas in reality the UK have put forward a proposal—a draft bill—and are determining whether or not they should go down that path.

What better proposal could there be than that announced by the Prime Minister yesterday? He showed world leadership in announcing the $200 million fund to deal with the issue of deforestation. You see, that is what you get when you have an experienced Prime Minister, an experienced government, saying, ‘Let’s forget all the hype, let’s look at practical, workable solutions that are sensible and will not cost one single Australian job but could reduce the carbon dioxide emissions of the world by 20 per cent.’

Australia has a vision for the world, to help the world meet the targets that are required. The Labor Party thinks that if they can somehow reduce Australian emissions by one-half and cost thousands of Australians their jobs they will have done something useful. It is a lot better for the environment to adopt the Howard proposal to assist South-East Asian countries not to deforest. I would be very interested to hear whether—

 Senator ABETZ—There are a lot of claims floating around at the moment. Mr Garrett makes claims in relation to this about rising sea levels, yet I happened to note that he has bought a house very close to the beach at Maroubra. I also happened to note the extreme examples given by Senator Bob Brown, of 17 metres, six metres, five metres—depending on the day—and, guess what? I heard he was moving his office the other day from the ninth floor! I thought it would be the 10th, 11th or 12th floor, but do you know where he has moved his office to? To the ground and first floors of—guess where? Not the top of Mount Wellington, but the Murray Street Pier on Hobart’s waterfront. If Senator Brown believed his predictions, he would not be setting up his office on the Murray Street Pier.

 Illicit Drugs

Senator PATTERSON—My question is to the Minister for Justice and Customs, Senator Johnston. Will the minister provide details of what the government is doing to combat the devastating effects of illicit drugs within the community? And how is the government going about detecting the importation of drugs into Australia?

Senator JOHNSTON—I thank Senator Patterson for her outstanding contribution in this place over many years and particularly for her longstanding interest in the area of combating the deleterious effects of illegal drugs in our community. I can tell all sena-
tors that the government will do everything, and is very committed to doing so, to win the battles in the war against drugs in our community.

 Opposition senators interjecting—

 The PRESIDENT—Order! Senators on my left!

 Senator JOHNSTON—I am pleased to say that yesterday officers of the Joint Asian Crime Group took part in a successful operation which culminated in the seizure of 141 kilograms of cocaine, with an estimated street value of approximately $68 million. This is the fifth largest cocaine seizure in Australia, which will put a significant dent in the trafficking of illicit drugs into Australia. This successful operation testifies to the technology, the dedication and the teamwork of all members of the Joint Asian Crime Group.

 Opposition senators interjecting—

 Senator Patterson—Mr President, I raise a point of order. I do not know if those opposite do not care about this issue, but I am interested in the answer and I cannot hear it. I ask the Labor Party to keep quiet while I hear the answer to what is a very important issue for Australia.

 Opposition senators interjecting—

 The PRESIDENT—When senators on my left come to order, we will continue with question time.

 Senator JOHNSTON—The drugs were seized from two crates as part of an airfreight shipment from Hong Kong. The crates were labelled as a water system, and arrived in Sydney on 15 March. Further examination by the diligent and vigilant members of the Australian Customs Service revealed a white powder concealed in the subframe of one of the systems, and initial testing identified that powder as cocaine. The Joint Asian Crime Group subsequently substituted the drugs with an inert substance and, on 26 March, observed it being delivered to a business premise in Marrickville in New South Wales. Late yesterday afternoon, a man accessed the consignment and was duly arrested.

 The joint Asian crime group utilised the extensive and effective international network of the Australian Federal Police as part of the investigation to identify—

 Senator Hurley interjecting—

 Senator Faulkner interjecting—

 The PRESIDENT—Order! Senator Hurley and Senator Faulkner, if you want to have a conversation, go outside. We are trying to hear the answer to this question.

 Senator JOHNSTON—To repeat: the joint Asian crime group utilised the Australian Federal Police’s extensive and effective international network as part of the investigation to identify the man allegedly involved. By using the combined expertise of the various agencies that are members of the Joint Asian Crime Group, we have been able to disrupt the importation of a very significant amount of cocaine, the fifth-largest ever, into Australia. This successful operation demonstrates clearly the strength of inter-agency cooperation both internationally and between federal and state agencies. I can report to the Senate that, since our first day in office, the government have taken a very strong and tough stance on drugs. I make no apology for that. The government will continue to maintain our strong stance in the fight against this insidious scourge in our community.

 More recently, in October 2006, Australian Federal Police forensic and intelligence officers provided assistance to the Royal Malaysian Police to dismantle a clandestine and illicit drug laboratory producing drugs destined for Australia. In November 2005, the Australian Federal Police provided assistance to the Indonesian National Police,
which resulted in the discovery and seizure of one of the world’s largest clandestine laboratories. On 4 December 2006, a passenger on a flight from Bangkok was apprehended with 696 grams of heroin. On 15 November 2006, a passenger on a flight from Thailand was apprehended with approximately two kilograms of heroin concealed in luggage. The fight goes on. We are winning the fight and we will continue the fight.

Workplace Relations

Senator FIELDING (2.32 pm)—My question is to the Minister representing the Minister for Employment and Workplace Relations, Senator Abetz. Why is it that, under Work Choices, more than eight million Australian workers are not guaranteed another day off or a cent extra for working on public holidays such as Anzac Day when their agreements and contracts expire?

Senator ABETZ—I have been aware of Senator Fielding’s longstanding interest in issues relating to Work Choices. Indeed, he has circulated to the media his second reading speech on a particular bill that he has introduced on a similar topic. Senator Fielding is on record as saying, ‘What workers want is security.’ He is dead right. Today, 263,700 more Australians have a job. That is what I call security. Senator Fielding said that workers want to feel secure in their jobs. Guess what? Of the 263,700 more jobs, 87 per cent are full time. That is what I call security. This at the same time as the Leader of the Opposition saying, ‘We wouldn’t really mind the casualisation of the labour force.’ We said that we wanted full-time jobs, and that is what we have delivered.

What else has Senator Fielding said? He said, ‘They want to know they can bring home a decent wage.’ They are. Wages are 19.8 per cent higher in real terms since the Howard government came into being and 1.5 per cent higher in real terms since the introduction of Work Choices. I have also noted a comment by Senator Fielding that Australian workers do not accept that working at 2 am is the same as working at 2 pm. I have had experience of doing both as a taxidriver and I fully agree with him. But I can tell the honourable senator that being unemployed at 2 am is just the same as being unemployed at 2 pm, because unemployment stays with you 24 hours a day and puts you and your family under severe financial pressure. Financial pressure is the one social tendency above all others that is indicated in family break-ups. When we have been able to reduce the unemployment rate right down to 4.6 per cent, a generational low, I think the people of Australia will make the judgement that we have delivered social justice in providing more jobs, more full-time jobs, at a higher rate and higher wages, all of which benefit not only the men and women of Australia but also their families. That is why the men and women and families of Australia know that the Howard government is delivering for them, albeit sometimes as a result of taking tough decisions which have met opposition all the way along the track. At the end of the day, the statistics speak for themselves. The workers of Australia are now able to enter flexible negotiations with their employers to determine rates of pay for particular hours and what days they may or may not have off. That is the real guarantee of job security for the future of our fellow Australians.

Senator FIELDING—Mr President, I ask a supplementary question, although I am not so sure I want to since the minister never answered the last question. Why is it that, under Work Choices, more than eight million Australian workers are not guaranteed one cent extra for working anti-family hours, such that working at 2 am is treated the same as working at 2 pm, when their agreements and contracts expire?
Senator ABETZ—Can I inform the senator that there is a big difference in not getting an answer to a question and not liking the answer that you are given because it does not suit your political purposes. In relation to the working hours that Australians have to work, I have in fact been provided with some very interesting information, and that is that average working hours are now lower under Work Choices. Between April 2006 and February 2007 full-time weekly hours worked averaged 39.8 hours per week compared with 40.3 hours per week over the same period a year earlier. Do you know what that means and why that is? Because under Work Choices employers feel comfortable in employing more people. As a result, they do not have to rely on their workers working longer hours. As a result, we are sharing the wealth around. More people are in jobs and those that have jobs do not have to work as long. (Time expired)

Media Ownership

Senator EGGLESTON (2.38 pm)—My question is to the Minister for Communications, Information Technology and the Arts, Senator Coonan. Will the minister update the Senate on the government’s reform to media laws? Is the minister aware of any alternative policies?

Senator COONAN—I thank Senator Eggleston for the question and for his very longstanding interest in the reform of Australia’s antiquated media laws. This week the regulator, the Australian Communications and Media Authority, has released the register of controlled media groups and the local presence licence condition. Both of these are key components of the government’s media reform package, which will protect diversity and localism while taking the media regulatory framework into the 21st century and beyond.

The register allows ACMA, as the primary regulator, to ensure that there will be an adequate number of independent voices in each licence area. I take this opportunity to remind my Senate colleagues that under the legislation there must be at least five voices in metropolitan areas and at least four voices in regional areas. The four-five voices test is based on voices that are additional to ABC services, which number four to five separate services, such as Local Radio, News Radio, Radio National et cetera, in each licence area—and I wish the ABC a happy 75th birthday. SBS services are of course added to this—not forgetting pay TV, satellite and the internet available in a given market. In addition, the government has imposed a two-out-of-three rule, which means that no more than two of the three regulated platforms—that is, commercial radio, commercial television and associated newspapers—can be controlled by the same person or organisation in one licence area.

The local presence condition gazetted yesterday will ensure that regional radio stations will continue to have a presence in their local communities, irrespective of any change in ownership. The condition provides that licensees of regional commercial radio stations who experience a change in ownership or become part of a cross-media group will be required to demonstrate to ACMA that staffing levels are being maintained, as well as the existing studios and other production facilities. The regulator, ACMA, has a range of enforcement powers at its disposal to deal with any breaches of this licence condition. The government’s media laws, when proclaimed, will create a framework that will deliver greater consumer choice as well as a competitive industry in the digital media age.

I am asked if there are any alternative policies. Indeed, the Labor Party would keep this sector shackled to a regulatory framework of the last century, preventing vital in-
vestment and diversification of the market. The Labor Party, of course, fought the government every step of the way—as they have with every other major reform of the economy—in relation to reform of the media sector. And today we learn that, if Senator Conroy is let loose, they are going to introduce a fourth commercial television network, regardless of the impact it would have on the viability of existing networks to deliver what consumers like and expect. They would politicise media takeovers by introducing a subjective test. While, the government is moving forward to implement our reform of Labor’s outdated media laws, the Labor Party is struggling to come to grips with the realities of the new digital world. Their last foray into media, under Paul Keating’s jurisdiction, stunted the sector for 20 years. This government will not back away from the tough decisions that will allow our media industry to operate in the 21st century.

DISTINGUISHED VISITORS

The PRESIDENT—Order! I draw the attention of honourable senators to the presence in the public gallery of former distinguished senator for New South Wales, John Tierney.

Honourable senators—Hear, hear!

QUESTIONS WITHOUT NOTICE

Workplace Relations

Senator WORTLEY (2.42 pm)—My question is to Senator Abetz, the Minister representing the Minister for Employment and Workplace Relations. Can the minister confirm that, in addition to the government’s $55 million advertising blitz to promote Work Choices, market research was commissioned to test the public’s attitude to these laws? Can the minister confirm that at least $1.8 million was paid to Colmar Brunton, a research company, to undertake tracking surveys of the views of over 11,000 Australians? Hasn’t the government refused an FOI request for the survey results, stating that the surveys could not be released until they were seen by the Ministerial Committee on Government Communications? Doesn’t this contradict evidence given by DEWR in Senate estimates in November 2005 that the results had already been sent to the ministerial committee? Minister, aren’t you hiding these embarrassing results because they confirm the massive opposition of the Australian public to your unfair laws?

Senator ABETZ—One survey that I am aware of indicates there are 263,700 Australians that do know that Work Choices is working for their benefit and for their families. The Work Choices communication and education campaign is a work in progress. The campaign, including associated tracking research, is continuing and will run through until at least late 2007. It is general policy adopted by all governments of all persuasions, state and federal, that while a communication campaign is still active no campaign material, including strategy documents and research findings, are released publicly. As I understand it, that is the basis of the department’s decision to defer release of tracking research reports under the Freedom of Information Act until after an evaluation of the Work Choices communication and education campaign is finalised and considered by the government’s Ministerial Committee on Government Communications. This is expected to occur in late 2007.

The tracking research reports will be released once the campaign concludes. Freedom of information applications dealt with by the department are a matter for the department. It is therefore not appropriate that I comment in any detail about the matter. However, I do note that the freedom of information applicant in this matter, Mr Davis, chose not to exercise his right to appeal to the Administrative Appeals Tribunal the department’s decision to defer release of the
tracking research reports—and undoubtedly the reason he did not appeal was that he fully understands the reason why and he had no ground to appeal, which of course should be taken on board by the honourable senator.

Senator Lundy—It’s just arrogant!

The President—Order! Senator Lundy!

Senator ABETZ—Can I say once again to the people of Australia: we did not undertake Work Choices because it was popular. We did not undertake tax reform because it was popular. We did not balance the budget because it was popular. Indeed, Senator Lundy and her crew tried to knock down the front doors of Parliament House, if I recall, with the trade union officials at the time. We do not go to the Australian people saying: ‘Look at our policies. Look how popular we are trying to make ourselves.’ What we say to the Australian people is: ‘You can trust us to make the tough decisions for the benefit and the future of this country.’ That is why we undertake the sorts of campaigns and the sorts of policies for tax reform and welfare to work reform—and I note, by the way, the Labor Party are now trying to say that they really do support welfare to work, but when you look at the detail they do not.

The simple fact is we have taken the tough decisions. So the senator’s concern that Work Choices may somehow be unpopular within the community is of course, if your assertion is right, disappointing for the government, but we do not undertake these changes in policies to make ourselves popular today. We do it as an investment for the future of this great country and for the working men and women and the young people of this country. Might I add that one of the statistics I was able to give yesterday on Work Choices was a 25 per cent reduction in the very long-term unemployed. They are the sorts of results you get when you take the public’s— (Time expired)

Senator WORTLEY—Mr President, I ask a supplementary question. Hasn’t the government also refused to release any further information about the content of AWAs, given that they show a reduction in working conditions for Australian men and women? Didn’t details released in May 2006 show that 100 per cent of AWAs removed at least one so-called protected award condition, and over 60 per cent cut penalty rates? Minister, if your government is so proud of Work Choices, why won’t you come clean with the public and release this information that was paid for by Australian taxpayers?

Senator ABETZ—The answer to the first question is no. In relation to the statistic that the honourable senator quotes, you are selectively quoting some of the information provided to the committee. I have used this analogy before, that statistics are a bit like skimpy bathers: what they show is interesting, but what they hide is vital. What is vital in this debate is the benefits to Australian workers, and the benefit is 263,700 new jobs, real jobs—87 per cent full-time. That is the sort of benefit that the Australian people are getting.

Climate Change

Senator MILNE (2.49 pm)—My question is to the Minister representing the Prime Minister, Senator Minchin. I refer to the Prime Minister’s announcement today regarding the spending of $200 million over five years to reduce CO2 emissions from deforestation in developing countries, and particularly to his claim that Australia is leading the world and kick-starting a global effort in relation to forests and climate change. Isn’t it true that in 2005 at the United Nations framework convention meeting in Montreal a global process was launched to design an effective solution to deforestation, that a se-
ries of meetings has been held since, including a subsequent workshop hosted in Australia, in Cairns, a few weeks ago with a view to developing market based mechanisms and non-market based mechanisms like funds of this kind for any post-2012 treaty? Rather than claiming to be kick-starting a global effort, why doesn’t the Prime Minister admit that Australia is part of an existing ongoing process, which will have its culmination at the next meeting of the parties in December in Bali? Will the minister explain why—

(Time expired)

Senator MINCHIN—All I can say is that it must be a miserable existence to be a Green because you can never make them happy. Here we are today, the government has announced a $200 million scheme to ensure that we do something to preserve tropical forests in this region, in the Asia-Pacific, to ensure that we minimise the deforestation and that we make our contribution to sustainable and manageable forestry to do our bit to end illegal logging, and all the Greens can do is get up and complain. I feel sorry for the Greens that their lives are so miserable that they are never able to see any good in anything that anybody else does.

I think the Greens should have stood up today and applauded the government for making an investment of $200 million in this very exciting and very important initiative, a global action on forest and climate change package, which is our demonstrable contribution to ensuring that we do our bit to reduce the CO₂ emissions that are occurring as a result of deforestation. As Senator Milne perhaps knows, deforestation accounts for some 20 per cent of greenhouse gas emissions, so this is a significant and major announcement on our part. It is very pleasing for me, as the finance minister of this great country, to observe that we are in a financial position to make these sorts of international commitments as a result of our successful management of the Australian economy. Unlike many economies in the world which are running deficits and not doing well at all, we are able to make a substantial investment of this kind in reducing the deforestation in our region, most particularly in Indonesia. I call on the Greens to get up and applaud a great investment by the Australian government instead of whingeing, complaining and never being happy.

Senator MILNE—Mr President, I ask a supplementary question. I thank the minister for his answer and I am interested to know why he is still trying to take credit for a global process that is already underway. But he could cheer me up by telling me whether or not Australia has committed to supporting the proposals by Papua New Guinea to have forest protection given credit under any proposed 2012 climate negotiations. That proposal has been put forward. Australia has not given in-principle support. Will it do so?

Senator MINCHIN—Senator Milne asked me if that was the case and then she said it was not the case, so I am not quite sure what she really wants to know. I am no expert on that matter. I am happy to find out for her the truth of the matter and the reasons for the government’s position. As she would know, we are working very closely with Papua New Guinea on a whole range of areas. We have invested a huge amount in our relationship with Papua New Guinea. One of the things we are trying to do in Papua New Guinea is ensure that it has a sustainable forest industry. To countries like Papua New Guinea, Indonesia and the Solomon Islands, sustainable forest industries are vital to their future welfare. We are not telling them to lock up the forests. We want to help them to manage their forests, reduce CO₂ emissions from deforestation and provide sustainable economic futures for their people.
Defence Procurement

Senator MARK BISHOP (2.52 pm)—My question is to the Minister for Finance and Administration, Senator Minchin. I refer the minister to the government’s decision to implement Kinnaird’s two-pass approval system by exposing Defence proposals to scrutiny from other departments, such as the minister’s department, before they are considered by cabinet. Wasn’t this system intended to stop the poor decision making that had occurred? For example, the failed Sea sprites have suffered a cost blow-out, from $400 million to $1.1 billion, and still not one of the 11 helicopters is operational. Would the minister confirm that the decisions taken to spend $6 billion on 24 Super Hornets, $2.2 billion on C17 heavy-lift transport aircraft and almost $600 million on Abrams tanks—a total of nearly $9 billion—were all approved outside Kinnaird’s two-pass approval system? Minister, haven’t you ignored your own rules which were designed to protect taxpayers from further disastrous Defence procurement decisions?

Senator MINCHIN—In relation to the Seasprites, the early work on this project was of course established under the previous Labor government. The requirement for the aircraft was established when the tender for this project was released in 1995 by the previous Labor government, so let us not have any hearsay on that matter.

The Kinnaird review, established by former defence minister Senator Robert Hill, was an outstanding piece of work. The Kinnaird review has introduced for the first time a very strict and proper approach to the DMO’s work. The Defence Materiel Organisation has been restructured to ensure that it really does approach defence contracts in a professional way and that it has the people, the facilities, the capacity and the procedures to ensure rigorous assessment of defence projects when they come before the government. I am pleased to advise that currently 146 acquisition projects, or 72 per cent, are progressing on schedule. Fifty-seven projects are behind schedule. I want to applaud what DMO has done. DMO, which is under enormous pressure, has adapted to the Kinnaird process that we put in place. The NSC now has the benefit of input from my own department when it comes to consider defence projects of this kind.

Because of the government’s very good economic management, our generation of surpluses and our paying off of Labor’s debt we are able to make significant defence acquisitions. We are in a position where we can make a decision to acquire Abrams tanks and additional aircraft for the Air Force to make sure there is no capability gap. So we are not going to be lectured to by the Labor Party on this matter. They presided over a disaster in relation to defence matters. They know full well that the Collins class submarine project, while having now produced world-class submarines, was a disaster in terms of its management. The management of the project under the Labor Party was appalling, so we are not going to be lectured by Labor. We are proud of the way in which we have reformed the acquisition processes adopted by this government, the projects that we have been able to agree on and the funding that we are able to provide for defence while ensuring that this country remains in sound financial health.

Senator MARK BISHOP—Mr President, I ask a supplementary question. Firstly, I want to correct the minister. For the record, the Seasprite project was approved by the current government in 1997. But allow me to cut to the chase. Minister, did the government go through the two-stage process or not in respect of those major procurements that I outlined in my question?
Senator MINCHIN—The government’s policy is to put defence projects through the Kinnaird review. All of those projects were put through a rigorous system of assessment. The government does not make decisions lightly. We are probably the most economically responsible government this country has ever had. We put all these sorts of defence projects through rigorous treatment. In relation to the Seasprites, which are topical today, I confirm that the requirement for the aircraft was established in 1995, but of course it is true that the contract with the chosen supplier, Kaman, was signed in 1997. But I should say for the record that, because of the notoriety that attaches to that contract, the government has not made any decision to cancel or terminate the contract. There is a review of the project. There is no doubt that it is suffering delays, but it is a fixed-price contract. The contractor is not being paid any more than the agreed contract price. We regret the delay in the delivery of those helicopters. We welcome Senator Bishop’s interest in this project. One of the useful things oppositions can do is ensure that the DMO and Defence are on top of their projects.

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

QUESTIONS WITHOUT NOTICE:
ADDITIONAL ANSWERS

Privatisation
Senator MINCHIN (South Australia—Minister for Finance and Administration) (3.00 pm)—On 22 March 2007, Senator Fielding asked a question in relation to private equity. I undertook to obtain further information in relation to Senator Fielding’s question from the Treasurer. I seek leave to incorporate this information in Hansard.

Leave granted.

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

Senator Minchin—The Treasurer has provided the following answer to the Senator’s question:

I do not accept the premise of your question that Australian taxpayers will lose more than $1 billion in revenue as a result of Airline Partners Australia’s (APA) bid for Qantas. APA’s offer for Qantas remains subject to market acceptance and there is no guarantee that it will proceed as it depends on market acceptance.

The tax laws apply to everyone in Australia equally. And the Australian Tax Office (ATO) ensures that everyone pays their fair share of tax in compliance with the tax law. The ATO is well resourced to go after both people and companies that don’t comply with the tax law.

It should be noted that any revenue reductions flowing from private equity buy-outs may be offset by revenue gains flowing from the sale of shares and reinvestment of sale proceeds.

The Council of Financial Regulators is the coordinating body for Australia’s main financial regulatory agencies. The Council of Financial Regulators, consisting of the Reserve Bank of Australia (RBA), the Australian Prudential Regulation Authority (APRA), the Australian Securities and Investments Commission (ASIC) and Treasury, have established a working group to look at private equity investment and any attendant risks.

I have also asked the Treasury to monitor the work being conducted in the United Kingdom.

Senator FIELDING—Why has the Government agreed to tax treaties which limit our tax take on money going overseas to just 10 per cent?

Senator Minchin—The Treasurer has provided the following answer to the Senator’s question:
The general rate of withholding tax on interest paid to non-residents is 10 per cent on the gross interest paid. This is also the rate that is sought in Australia’s tax treaties.

A tax treaty provides for a balanced outcome whereby both countries are required to limit their taxing rights on cross-border interest payments. Thus Australia’s treaty partner countries must also limit their taxation on interest paid to Australian residents to 10 per cent. This treaty practice is in line with international norms, as set out in the OECD’s Model Tax Convention. If Australia did not take such an approach to tax treaties, the taxation arrangements for Australian businesses operating overseas would not be as beneficial. This would lessen the international competitiveness of Australian owned and based businesses.

A tax of 10% on the gross amount of interest could often amount to more than a 30% (the corporate tax rate) tax on the net income, as tax on gross flows does not allow deductions for expenses incurred by the non-resident in earning that interest income in Australia.

Zimbabwe

Senator COONAN (New South Wales—Minister for Communications, Information Technology and the Arts) (3.00 pm)—On 21 March 2007, Senator Stott Despoja asked me a series of questions in relation to sanctions as applicable to Zimbabwe. I undertook to get her some further information, which I now have. I seek leave to incorporate it in Hansard.

Leave granted.

The answer read as follows—

Senator STOTT DESPOJA—Mr President, I ask a supplementary question. I asked the minister to outline the government’s opinion on further economic sanctions that have been called for, including from members in this place. I also ask whether the minister is aware of a recommendation by the International Crisis Group, which actually suggests that members of families who are the subject of those targeted sanctions applied by the EU or the US should have their visas or their residency permits cancelled. Is the government aware of any Zimbabweans currently in Australia who fall into that category—that is, the children or relatives of people who are subject to those particular sanctions? If that is the case, what will the government do about considering or revoking those visas or permits? Once again, I want to clarify: is the government saying that they will not consider a sporting sanction but they are clearly leaving it up to the cricket board, or will our government consider, as they have done previously in relation to South Africa and apartheid, supporting a sporting sanction?

Answer:
Sanctions remain under regular review.

The Government is aware of the recommendations of the International Crisis Group (ICG) of 5 March 2007 to the US and EU to tighten their sanctions by extending them to family members and business associates of targeted individuals, cancelling visas and residence permits of those targeted individuals and their family members, and to add Zimbabwe’s Reserve Bank Governor Gideon Gono to their sanctions lists.

Australia’s smart sanctions are already applied to a broader list of individuals than the US and EU, and already include Mr Gono and the heads of Zimbabwean state owned enterprises. No person on Australia’s sanctions list may travel to Australia.

Our sanctions remain under regular review to ensure they apply the maximum pressure on the Mugabe regime and we are in close consultation with other countries imposing sanctions, including the US and EU, on how our sanctions regimes can be strengthened.

Iraq

Senator MINCHIN (3.00 pm)—On 27 March, Senator Faulkner asked me about the Prime Minister’s response to the Iraqi casualty figures published in the *Lancet* and the public comments made by some members of the United Kingdom Civil Service. In a supplementary question, he asked about intelligence assessments and advice provided to the government about Iraqi civilian casualties.
The government receives, from intelligence and other sources, a wide range of Iraqi related information including estimates on casualties, mainly military casualties, resulting from insurgent and other activities. The government does not comment on classified reporting. I am advised that the US government has not produced an estimate of total civilian casualties in Iraq since coalition military action commenced in March 2003. I am advised that no assessment on the number of Iraqi civilian casualties has been commissioned by the Prime Minister, the Department of the Prime Minister and Cabin et or the Department of Foreign Affairs and Trade. The government remains satisfied with the information provided to it regarding the situation in Iraq by agencies, including the Office of National Assessments and the Defence Intelligence Organisation.

QUESTIONS WITHOUT NOTICE:
TAKE NOTE OF ANSWERS

Answers to Questions

Senator GEORGE CAMPBELL (New South Wales) (3.01 pm)—I move:

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

It is an inconvenient truth for this government that the PM has long said that climate change was nothing more than gloomy predictions. He has only recently even acknowledged that climate change exists or there even may be a connection between events and climate change. They are now awakening to the truth of the matter. The government are trying to play catch-up with their environmental policy. They have rushed to announce some modest environmental initiatives in an effort to buy green credentials but it is not enough; it is too little, too late. They have missed the game. The announcement today of funding to fight international deforestation is welcome but it is not a get out of jail free card for them in dealing with the issues of climate change.

Senator Ferguson—Did you write this?

Senator GEORGE CAMPBELL—Your government has an appalling record, Senator Ferguson, when it comes to environmental policy. You have spent the past 10 years ignoring climate change. In a period when action was required, you have spent 10 years ignoring it. The government will not ratify Kyoto. They will not set targets for cutting greenhouse pollution. They will not increase mandatory renewable energy targets and they have not appointed a minister for climate change.

Your government has failed to take any lead on a national carbon trading scheme. Even businesses such as Rio Tinto are calling for a national trading scheme because they know that it makes sense. So where does your government stand on climate change? One of the key ministers, the Minister for Industry, Tourism and Resources, Ian Macfarlane, continues to deny that climate change even exists, and he is not alone on the government side.

Senator Watson—Look at all his initiatives.

Senator GEORGE CAMPBELL—He is not alone on the government side, Senator Watson. In the absence of strong leadership on this issue, members of the government have come up with their own ideas. What are some of those ideas? They are very interesting. The West Australian Liberal MP Dennis Jensen wants to blast a giant shade cloth into space. Estimates in the US have suggested that this would cost around $US200 trillion to achieve. The Minister for Small Business and Tourism, Fran Bailey, also suggested that a shade cloth to cover the Great Barrier Reef would help with coral bleaching. These are terrific proposals. They would be funny except for the fact that these people are actually
running the country. What novel ideas to face up to and meet one of the greatest challenges that mankind has ever had to face; what politicians, who would prefer to fund a multitrillion-dollar shadecloth mission to space rather than signing up to Kyoto.

While the Prime Minister, John Howard, is happy to dismiss Sir Nicholas Stern as just another expert and brush off his recommendations, the ALP chooses to take note of the overwhelming evidence the scientific community is providing. A Rudd Labor government will ratify the Kyoto protocol. It will cut Australia’s greenhouse pollution by 60 per cent by 2050. It will establish a national emissions trading scheme, substantially increase the mandatory renewable energy target, establish a greenhouse trigger in federal environment laws and set up a $500 million national clean coal fund and a $500 million green car innovation fund.

We are having an environmental conference on Saturday. This is the start of Labor putting together a plan, in conjunction with the community, that will seek to tackle these vital issues that our community faces and that the globe faces. We will seek to put in place the building blocks for the next federal Labor government to make decisions in respect of our environment that will have an impact and lead to change in the environmental circumstances. (Time expired)

Senator IAN MACDONALD (Queensland) (3.07 pm)—Senator George Campbell just let the cat out of the bag. He said that the Labor Party this Saturday are going to start putting together a plan to address global warming. It will be the very first plan they have got. Thank you, Senator George Campbell, for admitting what we on this side—and I think most other Australians—know: the Labor Party has never had a plan or a policy on global warming or, for that matter, on anything else. I know that Senator George Campbell read all of his speech. I do advise him that he does not have to take and accept the claptrap that someone writes for him. He really should think about the issues himself.

To suggest that this government has not had 10 years of action in relation to climate change and greenhouse gas emission simply belies the facts. Senator George Campbell can fool himself all he likes but anyone having a simple look at the facts will see that in 1996 when this government came to power we set up the Greenhouse Office. That was an initiative to make sure that these things were addressed—not next Saturday, as the Labor Party are going to do, according to Senator George Campbell, when for the very first time they are going to start putting together a plan. Unlike the Labor Party, we did this 11 years ago and in the ensuing 11 years there have been any number of initiatives by the Howard government on climate change and low-emission technology.

I say this to Senator George Campbell and all members of the Labor Party over there: at the last election I stood shoulder to shoulder with the ‘F’ part of the CFMEU to save the Tasmanian forests. At that time the Labor Party was totally opposed to forest workers’ jobs and did everything possible to join up with the crazy Greens initiatives to destroy the forestry industry in Australia. I am pleased to say that some of the more sensible people—the one or two of them that there are—in the Labor Party have had the good sense to reverse that. But I stood shoulder to shoulder with the CFMEU to fight Labor to make sure that forestry workers saved their jobs at the last election.

And I can give you this commitment, Mr Deputy President: I will stand shoulder to shoulder with the CFMEU—the ‘M’ part of the CFMEU this time—to save the jobs of workers in my state of Queensland in Bowen Basin coalfields. Following the crazy Greens
initiatives that we have had from Senator Brown, Labor is lukewarm to the clean coal low-emission technology development that the Howard government has introduced. I know that Mr Rudd is on again, off again about that. It depends who he is talking to. If he is talking to the miners, he is going to adopt the Howard government’s clean coal technology initiatives, but when he is talking to the latte set, which have so much influence in the Labor Party these days, then he goes the other way. But there is no doubting Mr Howard’s commitment and there is no doubting my commitment. We will stand shoulder to shoulder with the mining unions to ensure that their jobs are saved.

Our support is not only for their jobs but for the economy of Queensland. Coalmining makes an enormous contribution to the Queensland economy. It makes the Queensland economy the best in Australia—and I know that some of my Western Australians colleagues might challenge that. Certainly it does fabulous things with the export dollars it brings in. It also does sensational things for local development with the miners earning very big wages, more than $200,000 a year many of them—and good luck to them; they deserve it; they work for it. They reinvest the money in local areas, developing local economies and building for the lifestyle of Queensland. Our government will not be fooled by the ridiculous Kyoto proposals of the Labor Party. We will not be fooled by their antidevelopment proposals. We will get good clean technology initiatives up and we will look after the environment and workers jobs as well. (Time expired)

Senator MARSHALL (Victoria) (3.12 pm)—I came into the chamber today thinking that this government were climate change sceptics, but I think that a better description would be ‘climate change deniers’. We had a couple of extraordinary admissions both in question time and in Senator Macdonald’s last couple of comments. We had Senator Minchin earlier today talking about the discussion of climate change being an apocalyptic hysteria. Then we had Senator Abetz trying to convince us that climate change is not true because otherwise Bob Brown would not have his electoral office on the Hobart waterfront. Now we have had Senator Macdonald just tell us about ridiculous Kyoto proposals. All this says to me is that this government is not serious about addressing climate change. They do not believe that climate change is actually happening. They are just trying to catch up with the polls. Everybody is ahead of the game in terms of climate change. Everyone is ahead of this government in terms of climate change. We only have to look at the coal industry itself. It recognises that things need to be done to reduce emissions.

Senator Patterson interjecting—

Senator MARSHALL—Senator Patterson is worried about where I am walking. That is okay, I thought she was actually agreeing with me. If the coal industry can acknowledge that this country should have an emissions trading scheme, wouldn’t you think the government should come on board and actually acknowledge that there would be reasons why they have come to that conclusion? Everybody seems to accept that climate change is a real result of human activity on this planet and unless we start to address these issues, and address them now, then the planet will simply become sicker and sicker, and the economic disadvantage—which the government likes to talk about—will be astronomical into the future. This just demonstrates that this is a government that wants to blame everybody else for its own inaction. The best we get is that some 10 years ago the government set up a climate change office. That is the extent of what they can tell us they are doing in a serious way to reduce our emissions of CO₂ in this country.
It is not good enough. It is clearly not taking us where we need to go—in fact where the rest of the world is going.

What is the main argument for not signing up to the Kyoto protocol? The government say: ‘A number of major emitters aren’t signed up to it, and we’re not going to do anything to disadvantage Australia.’ The problem with that argument is that we will never have a global system which everyone signs up to. If Australia and everyone else takes the view that until the whole world agrees on a process we will not have one, then we will never do anything. While it is true that Australia makes up only 1.5 per cent of the world’s emissions, per capita we are a heavy polluter. Developed nations like Australia need to develop clean technology, develop emissions trading schemes, and assist and lead the rest of the world, especially the developing world, in an effective approach to addressing emissions associated with climate change. If we cannot do it, if Australia as a developed country cannot do it, how do we expect developing countries to be able to do it?

To run the constant mantra that such measures would put us at some economic disadvantage is, again, a hollow excuse, when we see that in Germany they targeted a 21 per cent cut and they will achieve a 19 per cent cut. The UK, Germany, the Czech Republic, Estonia, Hungary, Poland, Slovakia, Sweden—they are all projected to achieve an absolute cut in their 1990 emissions by the 2010 Kyoto deadline. We do not see all those countries going bankrupt. We do not see the economies of those countries being devastated. In fact, they will reap economic rewards into the future for taking the hard steps now to achieve a reduction in their CO₂ emissions.

But what does Australia do? We just merrily march along and say we are going to meet our Kyoto targets even though we will not ratify the treaty. We know and the government know we are not going to come close to meeting those targets. Then they will say, ‘Well, we’ve got to look beyond Kyoto and, when the rest of the world signs up to a scheme, we will get on board then.’ We say that is too late. We say the hard decisions should have been taken years ago, but it is not too late if the government are serious and start taking them now. But they cannot take them because they are not just sceptical about climate change; they deny it is even happening. (Time expired)

Senator WATSON (Tasmania) (3.17 pm)—The scientific jury is still out on whether the warming of our oceans and the higher land temperatures that have been a feature of recent years are really a long-term problem as part of planetary evolution or due to man-made factors. I am not one who sits at either extreme of the debate because I believe that, certainly at the margin, we could all do more individually and collectively to reduce levels of CO₂ emissions. I remind the Senate that the level of CO₂ entering the atmosphere increased substantially because of industrialisation—the Industrial Revolution that started in England. In recent times, because of the growth of industrialisation in China and in newly developing countries, levels of CO₂ have increased at quite a substantial rate.

The point is that there is no single solution to the global climatic change challenge. We have to examine this from a number of perspectives. I think Australian farmers in particular have adapted remarkably well to climate variability and water shortage, sometimes under intense difficulties, by improving the efficiency of water use, holding more water in reserve, having fodder conservation practices and developing new strains of drought-resistant plants. I think of the developments in the rice industry and the progress
there in using less water to produce more rice. Australia has a lot to be proud of, including the farmers for the way they have adapted and managed the variability of our climate—because it is the variability that is the day-to-day problem.

I would draw your attention to a press release by Prime Minister Howard today, launching the Australian government’s Global Initiative on Forests and Climate. The release says:

This represents a material advance in the global effort to tackle climate change and protect the world’s forests.

Some of the biggest problems in terms of forest clearing occur in countries around the equator, in places like Brazil, Indonesia and, to some extent, Malaysia and Thailand. The release continues:

The Australian Government has committed $200 million to kickstart this world leading initiative that will reduce significantly global greenhouse gas emissions.

It is interesting to note that the press release says:

Almost 20 per cent of global greenhouse gas emissions come from clearing the world’s forests—second only to emissions from burning fossil fuels to produce electricity …

The opposition constantly say that the Australian government has not done enough in this area. Let me give you some examples of the initiatives of the Australian government, particularly those under Minister Ian Macfarlane. The government has made six grants worth $410 million, supporting nearly $2.5 billion in private investment in low-emission technologies, including renewable energy. We are leading the world in terms of technologies to lessen CO₂ emissions from coal. The LETDF is a competitive program focused on supporting the best possible flow of emissions technology for Australia’s sustainable energy supplies. We have also funded one of the world’s largest solar power systems, in Northern Australia. The story goes on.

At the extreme we have Senator Bob Brown calling for a shutdown of our coal industry. We have others calling for a shutdown of our aluminium industry but, because aluminium is a world metal, what was not produced by Australia would very quickly be taken up by other countries.

I have taken a lot of interest over the years in the level of rainfall in my state. For example, last year, Burnie had its lowest rainfall on record. The Bureau of Meteorology told me that their studies of over 100 years in Tasmania show that, just south of Oatlands, rainfall has been reducing slowly. (Time expired)

**Senator CAROL BROWN** (Tasmania) (3.22 pm)—I also rise to take note of answers on climate change. It is clear from the answers given here today and, indeed, from comments by the Prime Minister, Mr Howard, that the government does not have the capacity to deal with the opportunities or recognise the challenges of climate change.

The Howard government still does not get it on the serious issue of climate change. It is still willing to ignore the mounting evidence and the cold hard facts that tell us the threat posed by climate change is real. Most importantly, the government is willing to put its head in the sand and ignore the growing concerns of the Australian people—the people in whose interest it is meant to act.

The Prime Minister yesterday, when asked whether he agreed with British economist Sir Nicholas Stern and whether he would join Labor in making a commitment to reduce Australia’s greenhouse pollution by 60 per cent by 2050, again demonstrated his shortsightedness and ignorance about the seriousness of climate change and the real threat it poses to Australians. The government, with
its usual arrogance, effectively dismissed the majority of Sir Nicholas Stern’s claims and proceeded to assert that it would do what was in the nation’s interests.

How can ignoring the growing evidence being put forward about climate change and, most importantly, ignoring the mounting public concern about the issue be, as the government claims, in the national interest? It simply is not. The government has made it abundantly clear that it has neither the ability, nor the political will, nor the leadership to tackle this issue. The government simply does not understand the importance and seriousness of the issue of climate change. This is evidenced by the fact that the government is happy to acknowledge only those comments of Sir Nicholas Stern that fit with its own political agenda.

This proves that the government is not and will never be fair dinkum when it comes to climate change. Any action that it decides to take is motivated purely by protecting its own political interests rather than by promoting the interests of the Australian people. Its ignorance of the importance and seriousness of the issue of climate change is evidenced again by its inaction on the issue over the past 11 years. As noted by the shadow minister, during its time in government the coalition has failed to introduce a single piece of legislation on climate change. This despite the fact that way back in 1996, 11 long years ago, the then Minister for the Environment stated that he believed this was an urgent matter. I would hate to see what the government’s approach would have been over the past 11 years if climate change had not been considered urgent.

The growing scientific evidence is clear. There is a need for urgent action to address the issue of climate change; to reduce greenhouse emissions; for an emissions trading scheme; and for a portfolio approach to climate change which includes clean coal, renewable energy and energy efficiencies, all of which are part of Labor’s climate change policy suite. We now have an announcement from the government that is all about pragmatic politics. It is all about strategy for the election. Mr Howard and the government do not believe in the science, and the announcement is not about combating climate change; it is about winning an election. Labor, on the other hand, is about initiatives that work and about good policies that protect jobs and combat climate change. This weekend, experts from around the world and leading businesspeople will attend Labor’s national climate change summit to talk about these issues and about possible policy responses. It is in the national interest that we work together.

In 11 long years, this government has failed to manage a comprehensive response. The government has now come out with an announcement because it is severely embarrassed, but it still does not recognise the problem. It is pure politics and the voters will see through it. The voters know that Mr Howard and the government have no comprehensive agenda. They know that Mr Howard does not believe in the science. Australians know that the inaction and complacency of the government and its lack of leadership over the last 11 years are going to cost them jobs and living standards and they are going to cost the environment. The challenges that face us need strong, committed national leadership, but this government cannot or will not take up the task. The government is unable to work in the national interest.

Only a Rudd Labor government can provide policies to address climate change. The climate change issue needs to be urgently
addressed with intelligent, well thought out and viable solutions to ensure a sustainable future. The issue of climate change is one that is all about time. The time to act is now.  

(Time expired)

Question agreed to.

Climate Change

Senator MILNE (Tasmania) (3.27 pm)—I move:

That the Senate take note of the answer given by the Minister for Finance and Administration (Senator Minchin) to a question without notice asked by Senator Milne today relating to carbon dioxide emissions and deforestation.

I want first to make the point that any effort made by anyone anywhere to reduce deforestation is extremely welcome, but the hypocrisy of the government’s move today is breathtaking, especially given that, as I stand here now, there are at least 14 burns being lit in Tasmania which will increase carbon dioxide emissions into the atmosphere as a result of deforestation in Tasmania. Helicopters fly over with incendiaries and drop them onto forests that have been pushed up into rows. When these burn there are huge clouds of smoke over southern Tasmania, as there are today. There were 17 or so fires lit yesterday. Yet we have the government standing up here and talking about deforestation in developing countries. Yes, it is a terrible problem, but it is a terrible problem in Australia as well.

The effort to address deforestation globally has been going on for many years. Under the United Nations Framework Convention on Climate Change in Montreal, a global initiative was launched in 2005 and there have been several meetings around the world since. Most recently, Australia hosted the workshop of SBSTA in Cairns in March to talk about how we advance in terms of avoided deforestation.

Australia put in a submission to the UNFCCC effort in February this year which talks about the need for more substantial negotiations regarding designing, agreeing and implementing an effective solution to deforestation. The SBSTA workshop that happened in March is feeding into another workshop in May and it will go to Bali, to the United Nations Framework Convention on Climate Change meeting, and to the meeting of the parties to the Kyoto protocol. They are looking both at market based mechanisms like emissions trading in the post-2012 period and at funds—non-market based mechanisms—to address this issue.

So Australia rushing out and pre-empting a global meeting process to score political points in an election year is disgraceful. That is what Australia did last year in Nairobi when the Prime Minister and Minister Campbell announced they were taking a new Kyoto to Nairobi. It almost derailed the discussions in Nairobi because people there thought that Australia was bringing new text. People asked: ‘Is Australia bringing new text? Are they trying to undermine the negotiations?’ I said, ‘Don’t take any notice; it’s just for public relations. It’s a press release; it’s meaningless.’ That was exactly the case. When the minister got up to make his speech there was one sentence in it about new Kyoto—seven words; that is what new Kyoto was worth.

That is what is happening here again. The world is moving to try and set up an effective mechanism to deal with deforestation and the Prime Minister, having had the benefit of that meeting in Cairns in March—a global workshop including 58 countries with submissions, many of them asking for a global fund to deal with deforestation—comes out and says: ‘Australia is leading the world. We’re going to take on this global initiative.’
I see in the statement of the Minister for the Environment and Water Resources, to be tabled shortly, that he says we are going to be working with several countries in this regard. He talks about the United Kingdom, the United States, Germany and Indonesia and other international organisations. That is quite right because they are all involved in the SBSTA and the UN Framework Convention on Climate Change process. So by rushing out and claiming that we thought of this all by ourselves and we are setting up a global fund all you are doing is grandstanding and annoying everybody else trying to do something on deforestation.

Sir Nicholas Stern has said we need at least $10 billion to $15 billion every year to deal with deforestation. That requires a market mechanism—putting a price on saving forests to compete with the price on logging forests. That is what we need globally to deal with this issue, not a grandstanding Prime Minister pretending to the Australian population that we are leading the way when all he is doing is pre-empting an extremely valuable and complex global process for cheap political ends. At the same time he has given no in-principle support to our neighbour Papua New Guinea, which is trying to get up market mechanisms to protect forests in New Guinea. Surely that is what Australia and the world need.

Question agreed to.

NOTICES
Presentation

Senator BRANDIS (Queensland—Minister for the Arts and Sport) (3.33 pm)—by leave—At the request of the Manager of Government Business in the Senate (Senator Abetz), I give notice that, on the next day of sitting, he shall move:

That the hours of meeting for Tuesday, 8 May 2007 be from 12.30 pm to 6.30 pm, and 8 pm to adjournment, and that:

(a) the routine of business from 8 pm on Tuesday, 8 May 2007 shall be:
   (i) Budget statement and documents 2007-2008, and
   (ii) adjournment; and
(b) the routine of business from 8 pm on Thursday, 10 May 2007 shall be:
   (i) Budget statement and documents—party leaders to make responses to the statement and documents for not more than 30 minutes each, and
   (ii) adjournment.

MINISTERIAL STATEMENTS

Global Initiative on Forests and Climate

Senator BRANDIS (Queensland—Minister for the Arts and Sport) (3.34 pm)—I table a ministerial statement made by the Minister for the Environment and Water Resources (Mr Turnbull) on global initiatives on forests and climate and seek leave to have the statement incorporated in Hansard.

Leave granted.

The statement read as follows—

The forests of the world are the ‘lungs of the earth’. They breathe in the carbon dioxide in our atmosphere, they store the carbon they need for their growth and they emit the oxygen which we need for life.

Mr Speaker, we need to breathe new life into the lungs of the world.

We need to give the world a breathing space.

And we will do so.

Around the world these lungs of the earth are being ripped from the forest floor at a rate of 71,000 football fields every day. In just the past hour forests covering the area of 3,000 football fields has been lost.

The world’s forests play a vital role in addressing climate change because they store vast amounts of carbon for long periods of time. The carbon currently stored in forests around the world exceeds the levels of carbon in the earth’s atmos-
Dense tropical forest areas contain particularly high levels of carbon. As forests are unsustainably logged and as they are burned, they release large amounts of carbon into the atmosphere, contributing to global warming. Deforestation is also contributing to global poverty.

Around 20 per cent of global greenhouse gas emissions (about 6 billion tonnes per year) currently come from clearing the world’s forests – around 13 million hectares or an area twice the size of Tasmania. This is second only to the emissions produced from burning fossil fuels to produce electricity, and more than all of the world’s emissions from transport.

Globally, more than 4.4 million trees are removed each day - 1.6 billion trees each year – and almost 1 billion of these are not replaced. This must be turned around. And it can be. Countries can turn their forests, very quickly, from being net emitters of carbon to net absorbers of carbon. Up until the 1930s it is estimated that North America and Europe accounted for the bulk of carbon emissions from deforestation. Within 30 years their forests had become net absorbers of carbon, carbon sinks, as a result of tree planting and natural regeneration.

But today, deforestation is greatest in Africa, South America and South-east Asia. It is driven in large part by a demand for agricultural land in developing countries but is also a result of unsustainable forest practices and in particular, illegal logging.

Illegal logging is a serious issue for industrialised as well as developing countries. It degrades the environment, endangers plant and animal life and adversely affects the social and economic wellbeing of local communities.

The World Bank estimates that illegal logging costs the global market more than US$10 billion a year. Further the International Tropical Timber Organisation estimates that nearly 82 million hectares or 85 percent of natural forests around the world are not being managed in a sustainable way.

Sir Nicholas Stern in his report on the economics of climate change last year also noted that the emissions from deforestation globally are significant and that action to address this is needed urgently.

The Australian Government has been working with countries around the world to improve forest management practices and combat illegal logging but a renewed effort is needed to curb the emissions from deforestation around the world.

Today the Australian Government announced a major international initiative to do just that. The new Global Initiative on Forests and Climate will reduce greenhouse gas emissions in developing countries through reducing illegal logging and destruction of the world’s remaining great forests; increasing new forest planting; and promoting sustainable forest management practices worldwide.

The Australian Government will contribute $200 million in funding to the Initiative and work closely with developed and developing countries, businesses and other international organisations to reduce emissions from deforestation and to help manage the world’s forests in a sustainable way.

This funding of $200 million will be committed to working with developing countries to:

- build technical capacity to assess and monitor forest resources, and to develop national forest management plans;
- establish effective regulatory and law enforcement arrangements to protect forests, including through preventing illegal logging;
- promote the sustainable use of forest resources and diversify the economic base of forest-dependent communities;
- support practical research into the drivers of deforestation; and
- encourage reforestation of degraded forest areas.

The funding will also support:

- positive incentives for sustainable forest practices in developing countries and reducing net forest loss;
- the development and deployment of the technology and systems needed to help developing countries monitor and produce robust assessments of their forest resources.
• piloting approaches to providing incentives to countries and communities to encourage sustainable use of forests and reduce destruction of forests;
• collaboration with the Global Forest Alliance of the World Bank and the International Tropical Timber Organisation on deforestation projects; and
• cooperation with governments and businesses in other developed countries to build support for and expand the reach of the Initiative.

As the world continues to develop and deploy the low emissions energy technologies needed to achieve the deep cuts in greenhouse emissions needed in the future, reducing deforestation (combined with planting new forests and encouraging sustainable forest management) is one of the most cost-effective ways to reduce global emissions now.

Australia is well placed to lead the Global Initiative on Forests and Climate. Australia has a strong record in sustainable management of our forests.

We have put in place a world-class regime for sustainable land use and forest management, including through Regional Forest Agreements (RFAs), the National Framework for the Management and Monitoring of Australia’s Native Vegetation, and the National Biodiversity and Climate Change Action Plan.

This Government has made multi-billion dollar investments in environmental programmes and scientific research. For example, over the life of the Australian Government’s Natural Heritage Trust and the National Action Plan for Salinity and Water Quality programmes, we will invest $3.7 billion to address pressing environmental problems, including habitat restoration and sustainable forest management. Over the past 11 years, the Australian Government has invested a total of almost $20 billion on environmental activities.

As a result of these efforts, we have substantially reduced broadscale land-clearing of woodlands in agricultural areas, for the benefit of both our climate and our biodiversity. In 1990, greenhouse gas emissions from deforestation were 129 million tonnes. These will fall by 65 per cent by 2010.

Since 1990, more than 1.1 million hectares of new forests have been planted in Australia. By 2010, new forest plantings will remove 21 million tonnes of carbon dioxide from the atmosphere each year.

Our forest management is world-leading. Some 13 per cent of Australia’s native forests – more than 22 million hectares – are protected in conservation reserves, including World Heritage sites and forested land under Indigenous ownership. Almost half of Australia’s tropical and temperate rainforests are protected.

This includes more than 2.9 million hectares of forest (including 90 per cent of our high quality wilderness and 68 per cent of old-growth forest) added to conservation reserves since 1996 through our RFA system.

This system has achieved a balance between the long-term protection of our unique forest biodiversity and providing a sustainable future for forest industries. We have overcome past unsustainable forest practices, while supporting the growth of internationally competitive and sustainable forest industries which currently employ more than 83,000 people and have an annual turnover of more than $18 billion.

Australia has been pressing for urgent global action on forests and climate change for many years. Since Kyoto negotiations began a decade ago, Australia has led the push for effective international action on deforestation.

There are few frameworks internationally that address emissions from deforestation. It is a fact that the Kyoto Protocol provides no incentive for developing countries to reduce deforestation, yet this represents one of the best opportunities for real progress over the next decades.

This deficiency in Kyoto has been widely recognised. The Humane Society’s Michael Kennedy recently wrote “The Kyoto Protocol, through this CDM funding, is effectively financing…massive amounts of greenhouse gas emissions.”

This Global Initiative will do for the planet what Kyoto couldn’t. It is often forgotten that the earth’s carbon is cycled between the ocean, biosphere and atmosphere. Reducing the amount in
the atmosphere is not only possible via reduced emissions but also through increased uptake in the terrestrial biosphere.

Let there be no mistake - successfully addressing deforestation and forest management is an essential part of any effective global response to climate change.

If we could only halve the current rate of global deforestation, and our goals are much more ambitious than that, this new Global Initiative on Forests and Climate could lead to reductions in annual global greenhouse gas emissions of 3 billion tonnes a year – or around 10%.

This would lead to global emission reductions five times greater than Australia’s total annual emissions and almost 10 times as large as those achieved under the first commitment period of the Kyoto Protocol, which will only reduce annual emissions by 1% by 2010.

Through this initiative we will work with like-minded countries, such as the United Kingdom, United States, Germany, Indonesia, and international organisations and businesses to reduce emissions from deforestation and to sustainably manage the world’s forests.

We will also work closely with the World Bank which has stated its intention to expand its efforts on deforestation.

Through working together – with developed and developing countries across the world – we can harness the collective effort and resources to make a potentially massive contribution to addressing climate change and sustainable forest management.

As part of the initiative Australia is announcing today, we will be offering to nearby developing countries access to high-quality satellite measurement data on their forests and the technical help to use it to underpin sustainable forest management.

We have the forests, we have the history, we have the runs on the board and we have valuable experience to share. Through this initiative, Australia is delivering practical action that will make a real difference to global greenhouse gas emissions.

The Global Initiative on Forests and Climate builds on the Australian Government’s comprehensive climate change strategy that:

- is supporting world-class scientific research to build our understanding of climate change and its potential impacts, particularly in our region;
- has Australia tracking well to meet our Kyoto greenhouse gas emissions reduction target;
- is supporting the development of the new low emissions technologies Australia and the world will need in the future, including renewable energy technologies and clean coal;
- is identifying those regions and industries that are most vulnerable to the impacts of climate change, and helping them adapt to those impacts; and
- is continuing the push for an effective international agreement that will see all major greenhouse gas emitting countries reducing their emissions.

This strategy is underpinned by an investment of more than $2 billion, which in turn is leveraging more than $7.5 billion in additional investment.

The Australian Government is committed to addressing climate change and to making a significant and material difference to the global reduction of greenhouse gas emissions. Today’s announcement represents a quantum step in the international effort to addressing this serious environmental challenge. This is an initiative that the entire world can embrace because it is one that will make a difference.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (3.34 pm)—by leave—I move:

That the Senate take note of the document.

This statement from the Minister for the Environment and Water Resources is on today’s announcement by the Prime Minister of what is called a global initiative on forests and climate. It is not anything of the sort. It seeks to paint the Australian government as having taken a lead in funding the start of a program to end the massive loss of forests around the
world, as called for by many people, including Sir Nicholas Stern, who is currently visiting Australia.

The amount that the government is putting up is $200 million. As Sir Nicholas Stern outlined yesterday, the amount for halfway achieving the task would be $10,000 million. In other words, this statement of global initiative is actually a two per cent commitment to get half the job done. It does nothing of the sort. This allocation of money is effectively the federal government using $200 million of taxpayers' money to try and divert attention away from the very learned and frightening forecasts of economic as well as environmental damage which are coming to us now and which will accelerate and accumulate over the coming centuries, according to Sir Nicholas Stern, who is former Chief Economist of the World Bank.

The proposal here is to go offshore to deal with the burning of forests. But the problem is that this same government, since the last election, has put $100 million into promoting the burning of forests here in south-east Australia. The focus of attention on South-East Asia ought to have begun in south-east Australia.

Who promoted that $100 million to accelerate the woodchipping and burning of forests in south-east Australia? It was done under the signature of the Hon. John Howard, Prime Minister. That is what Gunns and others involved in the destruction of old growth forests in Australia wanted of him. There are lucrative profits to be made from exporting woodchips to Japan. They wanted it of him and they are getting it. The crass hypocrisy of the Howard government that is written into all of this is there for everybody to see. It is an astonishing effort by the Hon. John Howard, when faced with growing public restiveness about climate change, to try to buy his way into fooling the Australian public, which will not be fooled but is an active agent that deserves accolades on climate change.

The fact is that the marauding of South-East Asian forests by logging corporations and by slash-and-burn accelerated acquisition of Indigenous people's forests for agricultural enterprises—including palm oil, which Minister Malcolm Turnbull refers to in his report—has been not only going on apace but also accelerating under the last 11 years of this government. Indeed, it has become such a huge problem that clouds of smoke have been closing Singapore and Jakarta airports and creating massive health problems. Just a year or two ago, the smoke swept down over Darwin and Northern Australia, creating newspaper headlines. What did Prime Minister Howard do then, because climate change was not so much on the agenda? Absolutely nothing.

What the Prime Minister has done in Tasmania, Victoria and south-west Western Australia is put money into those benighted forest authorities like the Lennon government and eventually into the pockets of Gunns Ltd to cut down enormous native forests—the biggest terrestrial living carbon banks in the Southern Hemisphere, which are holding back carbon and greenhouse gases out of the atmosphere. Some of the bigger trees are dynamited, using explosives as a means of reducing the workforce and increasing the profit line. Then, Gunns moves in and takes what woodchips it wants—more than 80 per cent, and sometimes more than 90 per cent, of the forest is extracted, but a vast amount is left there lying on the forest floor.

At the moment, we are seeing an obscene spectacle: the firebombing of these remnant forests, under the Prime Minister's authority—his own signature, most recently applied to an amendment to the regional forest agreement this year—all along with the Premier
of Tasmania, Paul Lennon. They got together to do it. The remains of these tall forests are tall enough to reach up into the arch of the Sydney Harbour Bridge and would over-tower the flagpole on this parliament. The remnants are being firebombed. That happened yesterday and is happening today and will happen tomorrow.

Yesterday, as Senator Milne pointed out this morning, 14 broadscale clear-felled logged areas in Tasmania were firebombed from helicopters or from the ground to create an intensely hot fire to eliminate and eradicate the wildlife as well as the plant life in these forests—and with that goes the destruction of the habitat of rare and endangered species. It is being done illegally. It is a breach of Commonwealth law. The penalty is $5.5 million for those who engage in it, but nothing is being done about it because this government does not observe that law. It does not uphold that law, even though a Federal Court finding before Christmas with regard to Wielangta found that it was wrong. The behaviour at Wielangta was illegal and the logging had to stop because of the destruction of the habitat of rare and endangered species.

The minister claims in his statement that, under the clean development mechanism of the Kyoto protocol, some companies are being paid to actually deforest areas to put in palm oil. It is not true. The clean development mechanism, which is part of the Kyoto protocol—which, by the way, the Minister for the Environment and Water Resources and the Prime Minister reject and will not ratify—is explicit about the need for clean development mechanism funds not to be awarded where native forests are being cleared. In fact, two per cent of the fund goes towards regrowing forests on not immediately previously deforested lands. That two per cent of the carbon credits, awarded under a CDM project allocated to help cover the costs of adaptation in countries severely affected by climate change, enables, for example, the reconstitution of forests. That protocol was entered into in 1997—10 years before this so-called world initiative announced here today.

This government should be ashamed of itself. This opposition, which supports this government in the destruction and burning of forests in Australia, should be ashamed of itself. This minister should be ashamed of himself. The shadow minister should be ashamed of himself. How can members of this Senate and this parliament when confronted with this extraordinary threat—a real one, as outlined by Sir Nicholas Stern in this city yesterday—put their heads in the sand and continue to fund the burning of the great forests of southern Australia, with the consequent injection of millions of tonnes each year of greenhouse gases and particulate matter into the atmosphere, accelerating the economic, social and environmental penalty to this nation now, to our children and to our children’s children? Just today, the government and the opposition, as if to underline their conscious complicity in going in the wrong direction, rejected an inquiry into the impact of sea levels rising in this country, with all the economic and social dislocation that will come out of that. This government should be ashamed of itself. *(Time expired)*

**Senator WONG** (South Australia) *(3.44 pm)*—I rise to speak on the statement which has been tabled in the Senate by Mr Turnbull in relation to the government’s announcement today. Obviously, given the short time the opposition has been provided with to consider this statement, I am not going to comment on it in great detail, but I do want to make a number of comments given that the Senate is taking note of the statement.

What we have before us today is a ministerial statement which commits $200 million
to a so-called global initiative from a government whose response to climate change can be characterised as one of scepticism and inaction. They are now desperately scrambling to try and demonstrate to the Australian people that they actually care about climate change and that they want to do something about it. That is the context of this announcement and, frankly, it is the context of a range of announcements we are likely to see from the government between now and the election. We know the truth from previous statements by the government: the government is filled with ministers and backbenchers who do not regard climate change as a significant issue; it is filled with people who believe that this is an issue that can be doubted; it is still filled with members who are climate change sceptics. That is the reality.

Senator Brandis—That’s not true.

Senator Wong—I will take that interjection. The minister, Senator Brandis, says, ‘That’s not true.’ I would invite him to consider some of the previous statements of the Prime Minister and the Minister for Industry, Tourism and Resources on this issue, including the dismissive way in which the film An Inconvenient Truth was discussed, and some of the dismissive statements of senior members of the government on these issues. The reality is that they are shifting position from climate change sceptics to believers, not because they actually do believe but because they think it is politically necessary. We know one thing about this Prime Minister: he is a very clever politician. That is what marks the government’s approach to climate change: clever politics, but lacking in substance.

It is interesting to read Minister Turnbull’s statement, because he refers to Sir Nicholas Stern. We saw the papers and some of us saw the television news. There has been quite a lot of media interest in Sir Nicholas Stern’s visit to Australia. His report can, I think, be regarded as having shifted this debate internationally quite significantly. It is interesting that on the one hand, on page 2 of this statement, we have Minister Turnbull referring to Sir Nicholas Stern in a way that says: ‘He said this, so therefore we should do it.’ Isn’t it interesting how selectively the government chooses to take Sir Nicholas Stern’s advice? On the one hand they want to use him in a ministerial statement in this way, as justification or to add support to the position, but they do not want to take his advice when it comes to ratifying the Kyoto protocol—something which Sir Nicholas Stern spoke to the Press Club about at some length in terms of the way in which the government’s position has been commented on, indicating that it was not a position that made Australia a world leader. They do not want to take his advice on the Kyoto protocol or on implementing market mechanisms to drive reductions in carbon emissions, such as a carbon trading scheme—the government do not want to take Nicholas Stern’s advice on a whole range of issues—but they are happy to put his name in a statement, selectively, to support one aspect of what is clearly a clever political announcement.

The reality is that the government has been sceptical of climate change, and that, unfortunately, has affected its response. It is now responding only because it recognises that the people of this country recognise that this is an issue that requires urgent political leadership—which, I am sad to say, has been significantly lacking by the Howard government.

One of the things that the government does—and we saw it in question time again from Senator Abetz; he seems to have a few standard lines that he trots out on this—when criticised about climate change is to refer to the Australian Greenhouse Office. That was
a good initiative when Senator Hill put it in place. I would have liked to have been a fly on the wall when he and Senator Minchin argued in cabinet about that issue, because everyone knows that Senator Minchin is one of the great climate change sceptics within the government. Anyway, Senator Hill might have won that first round, but what have we seen since then? I have some knowledge of this because, as a backbencher, I in fact attended the environment estimates. Many of the programs within the Australian Greenhouse Office were characterised by under-spending and that great term ‘rephasing of funding’, which is public servant or government speak for: ‘We haven’t been able to actually spend the money, so we’re going to put it out to another year.’ That was what characterised a range of programs funded through the AGO and the department of the environment.

We have also seen—and the government do not mention this when they seek to put forward the AGO as their great emblematic answer to climate change—the AGO downgraded and moved into the department. I would invite those who want to look at the government’s record on these issues to consider the approach the government have taken to the funding of research into renewables, particularly solar energy. This has certainly been raised with me by a number of scientists in the area, in that the government’s record, in terms of supporting solar research and commercialisation initiatives, has been extremely poor. The reality is that the government do not have a coherent position in relation to climate change. What they have is a cobbled together range of political announcements. One only has to look at the buffet of positions they have had in relation to carbon trading over the last two years. Have a look at what the Prime Minister, Senator Minchin and Senator Ian Macdonald said, and then look at the current lines. The reality is that they have refuted the prospect of a trading scheme out of hand—they said, ‘We have to have the international framework in place first’—and now they are countenancing the possibility, or some of them are, of a national scheme as part of the move to an international scheme.

This government has no clear position. Only now, because they are under political pressure in relation to climate change, are they undertaking consideration of this through the prime ministerial task force—many years after many people, including the opposition, members of the Australian community and members of the business community, have been calling for this sort of action to be taken.

So, when Australians read the minister’s statement about it and see in press clippings various articles about it—because I am sure that Mr Turnbull, who loves the camera so much, will be out spruiking this as much as possible—I would invite them to look at all that this government is not doing in relation to climate change. This government has an incoherent and ad hoc approach to climate change that is driven by politics and not by substance. And I suggest that, as time goes on, the Australian people are becoming more and more aware of the way in which these clever political announcements do not address the substantial issues and substantial challenges this nation faces into the future.

Senator MILNE (Tasmania) (3.52 pm)—I also rise to take note of the minister’s statement, and this follows from remarks I made following question time. I would like to point out to the Senate that, when the Kyoto protocol was negotiated, there was a considerable debate globally about whether, under the flexible financial mechanisms of the protocol, protection of forests could earn carbon credits. It was determined that that
would not be included in the protocol for several reasons.

The first reason was: how could you guarantee permanence? Someone might say they would protect their forest, but then a fire or disease might go through that forest, it might be illegally logged, and so on and so forth; you could not guarantee the forest was permanently there. The second reason was leakage. You could protect some of your forests, but if that meant that the whole logging effort went into the rest of those forests, then you would have leakage and you would have no more improvement. You had to prove addi-
tionality—that the efforts to protect forests were additional to what you were going to do anyway, and it was deemed too technically difficult to be able to do those things. And so, under the flexible mechanisms of the Kyoto protocol, they decided to go with re-
forestation and afforestation. But the key thing is: you only got credits for reforesting or afforesting land that did not have forest on it in 1990. So I suggest the minister goes back and studies that more carefully before he becomes an expert on the Kyoto protocol and what perverse incentives apply.

It is certainly true that the efforts under the protocol to reduce carbon dioxide emissions have led to the development of biofuels, and that the push for biofuels globally is driving deforestation and conversion of forested areas to palm oil plantations and soya plantations and so forth. But that is not under the mechanisms for reforestation and afforestation under the protocol; it is a perverse outcome of the fact that countries are trying to reduce their emissions by switching to biofuels. That is why, if you were really interested in this, you would put money into lignocellulose research, which would mean you could protect your forests, stop the conversion of forests for biofuels and still get biofuels from lignocellulose products.

I want to talk particularly about the claims that the government is making in relation to the regional forest agreement. I see that the claim is, once again: ‘We have a world-class regime for sustainable land use and forest management.’ I note, from the agenda for the Cairns meeting, that Australian representa-
tives went along to tell the 58 countries’ representatives gathered there what a fabulous sustainable forest and land management regime we have—not admitting, of course, that last year a federal court found that logging in Tasmania was illegal because it did not conform to the requirements of the regional forest agreements to adhere to provisions to protect threatened species. Instead of moving to do that, the government just changed the words to make legal that which was illegal. And one could not help thinking today, when they declared the logging in Indonesia illegal, that, if they applied the same mechanisms, then they would just get Jakarta to change the law to declare that all that is illegal is now legal, which is what we did in Australia. So do not be surprised if other regimes do exactly the same and then point the finger at us and say, ‘Well, that is what you did in Australia, so why wouldn’t we do it here?’

Furthermore, I note the minister’s saying that, since 1990, more than 1.1 million hectares of new forests have been planted. Again, I think Minister Turnbull needs to go and study what a forest is. What have been planted are tree lots. They are monoculture plantations. They are not forests. A forest is a complex and diverse ecosystem. A monocul-
ture is no different from any other agricul-
tural crop, except that it is longer standing than an agricultural crop and, in many cases, has worse biodiversity outcomes because of the chemical regime used in its establish-
ment, and because of the amount of water it takes up. So let us not have a nonsense state-
ment like, ‘We have planted 1.1 million hec-
tares of new forests. No; we have planted trees in tree lots or plantations.

Saying that they will remove carbon dioxide from the atmosphere is true, but what is not being acknowledged is the amount of carbon we are losing from the clear-felling and burning of old-growth forest. In an old-growth forest, you not only have the carbon above ground; you have vast amounts of carbon below ground in the soil carbon, accumulated over hundreds of years. The equation is: it is, by many, many factors, an advantage to preserve old-growth forests rather than convert them. And you will find that to be true.

I noticed earlier, when Senator Bob Brown was speaking about the dropping of incendiaries in Tasmania and the idea that explosives are being used in logging, that Senator Parry had an amused look on his face. Perhaps that is because he does not know that in Tasmania some of those big old trees are so substantial that the forest industry actually places explosives in the base of them and blows them out of the ground, shattering them to smithereens. They are not used for furniture and sawn timber as the government would have you believe. They are shattered into fragments everywhere and then pushed up into rows and burnt, because often they are not even deemed suitable to send off to the woodchippers.

One good thing has happened recently. I note the government has been touting the technology in which you can get DNA from wood and you can determine where, which forest, it came from. I really look forward to DNA tests being done at the woodchip mill in Tasmania. I hope that some of the money that the government is going to use to get rid of illegal logging will be spent on determining the DNA of the wood that turns up at the export woodchip mills, because that will prove, once and for all, what we are saying—that the trees going through the woodchippers in Tasmania are from old-growth and high-conservation-value forests.

It was an absolute disgrace in here yesterday when the Minister for Agriculture, Fisheries and Forestry made a complete fool of himself by standing up and trying to ridicule my colleague from Tasmania Peg Putt, the leader of the Greens there, who was talking about regrowth forests being areas of high conservation value. Apparently the minister did not realise that, under the dodgy definitions we now have, a regrowth forest can be defined as one which a fire went through some 100 years ago. It does not necessarily have to have been logged. Apparently the minister for forests has yet to catch up on the detail in his portfolio and is unaware of that.

The final point I would like to make is in relation to how, in the ministerial statement, the minister talked about Australia taking on leadership. He said that we will work with like-minded countries such as the UK, the US, Germany and Indonesia and international organisations and businesses and so on. That is because that is what is already happening. The fear I have with Australia rushing out and pre-empting the global negotiations looking at market based mechanisms, as well as non-market based mechanisms, post 2012, is that it is going to frustrate and annoy the other countries involved in the process that are working very hard. Papua New Guinea, Costa Rica and Brazil have put forward proposals for the 2012 treaty—a legally binding treaty—to include protection of forests as gaining carbon credit under a post-2012 regime.

I asked the minister in question time whether Australia, with its new-found enthusiasm for stopping deforestation, got in touch with PNG to back that proposal that they have taken to the world community to say Australia wants to protect PNG’s forests and
that Australia will work with PNG and Costa Rica to make sure that the proposal gets up. No, that will not have happened, because Australia does not want to see all of PNG’s forests protected at all. That is why the thrust of this is about tree planting and forest management; it is not about protection of old forests. Australia wants to facilitate the logging and so-called management that we see in Tasmania’s forests, which are losing so much carbon every year from conversion of old growth, and they want to take forest practices, like dynamiting old trees, into areas such as PNG under so-called forest management. Can we get a sense from the Australian government whether, when we go to Bali in December this year, Australia will back PNG and Costa Rica in getting forest protection and whether Australia will agree to a legally binding treaty post 2012 that does exactly that?

Senator PARRY (Tasmania) (4.02 pm)—I wish to make a brief personal explanation as I claim to have been misrepresented.

The ACTING DEPUTY PRESIDENT (Senator Barnett)—The honourable senator may proceed.

Senator PARRY—I claim to have been misrepresented by Senator Milne during her last speech. I gave her the respect of not interrupting her during her answer, but the facial expression that she attributed to me in her comments is incorrect. I think it needs to be clearly stated on the record that that was her interpretation and that the facial expressions that she described do not necessarily reflect what the facial expression was actually meant to be.

Senator ALLISON (Victoria—Leader of the Australian Democrats) (4.03 pm)—I rise to take note of the statement by the Minister for the Environment and Water Resources today. I doubt that I have ever seen such a cynical exercise. The government is obvi-ously showing signs of panic. Could it be a response to the fact that Sir Nicholas Stern was here in Canberra yesterday—speaking at the Press Club and making a great deal of sense—that there was suddenly an announcement made to suggest that this government is serious about not only climate change but also forests? I seek leave to continue my remarks later.

Leave granted; debate adjourned.

COMMITTEES

Reports: Government Responses

Senator MASON (Queensland—Parliamentary Secretary to the Minister for Health and Ageing) (4.05 pm)—I present three government responses to committee reports as listed at item 13 on today’s Order of Business. In accordance with the usual practice, I seek leave to have the documents incorporated in Hansard.

Leave granted.

The documents read as follows—


Recommendation

The committee recommends that the Department of the Prime Minister and Cabinet amend the Legislation Handbook to provide further guidance on the matters that the committee considers should be addressed in explanatory memoranda, including those matters that have been identified in paragraphs 2.10 and 2.11 of this report.

Response

Agreed. The Department of the Prime Minister and Cabinet proposes to review and update the chapter in the Legislation Handbook which sets out the requirements for preparing an explanatory memorandum. It is intended that the chapter will provide examples of the types of matters of interest to the committee.
Recommendation
The committee recommends that the Department of the Senate develop a set of guidelines to assist senators in the preparation of private bills

Response
The government has no comment on this recommendation.

Recommendation
The committee recommends that information relevant to the preparation of explanatory memoranda currently contained in the Legislation Handbook, Legislation Circulars and OPC Drafting Directions be consolidated into one primary source of information, namely the Legislation Handbook.

Response
Agreed in principle. As part of the review of the Legislation Handbook, it is proposed that the chapter on preparing explanatory memoranda be rewritten to include matters raised in Legislation Circular No. 7 of 2003. Legislation Circulars are a useful mechanism for providing current information to departments. Material found in OPC Drafting Directions would be drawn on to the extent that inclusion in the Legislation Handbook would be of continuing assistance to instructing departments. The Department of the Prime Minister and Cabinet would welcome periodic input to the Legislation Circulars from the committee or the secretariat to the committee about ways to improve the standard of explanatory memoranda.

Recommendation
The committee recommends that, before a bill is introduced into the Parliament, an appropriately qualified person should check the explanatory memorandum accompanying that bill to ensure it explains fully the effect and operation of the proposed legislation and complies with the requirements contained in the Legislation Handbook, as amended.

Response
Agreed. Explanatory memoranda should, wherever possible, provide a clear, accurate and complete explanation of measures included in a bill and address matters covered in the committee’s terms of reference. Responsibility for ensuring that this requirement is met resides with each agency. The Department of the Prime Minister and Cabinet will take the opportunity of the review of the Legislation Handbook to remind departments of the need for explanatory memoranda to be checked by an appropriately qualified senior executive officer before being submitted to the relevant minister for approval.

Recommendation
The committee recommends that consideration be given to developing a course to train departmental officers in the preparation of explanatory memoranda.

Response
Not agreed at this stage. The government considers that the changes agreed to in response to the committee’s report will result in an improvement in the quality of explanatory memoranda. Consideration will be given to this recommendation should standards not improve.

Joint Standing Committee on Foreign Affairs, Defence and Trade Report on Australia’s free trade agreements with Singapore, Thailand and the United States

Recommendation 1
That, where possible, trade figures identify the items that fall within the scope of an FTA.

Proposed response:
The Government agrees that it is desirable that the Department of Foreign Affairs and Trade provide trade statistics and other relevant information that assist balanced assessments of our trade with the United States, Singapore and Thailand following the implementation of FTAs with those countries.

The Joint Standing Committee will note that the Department has recently produced reports on our bilateral trade with the United States, Thailand and Singapore, including an assessment of the pattern of trade since the implementation of FTAs with those countries. These reports appeared in the Spring Edition (United States) and Summer Edition (Thailand and Singapore) of Trade Topics – A quarterly review of Australia’s international trade. Copies of these articles are attached.

The reports on our bilateral trade with the United States and Thailand include a statistical annex
which sets out trends in trade under selected import and export merchandise items where there have been market access gains under the Australia-United State Free Trade Agreement (AUSFTA) and the Thai-Australia Free Trade Agreement (TAFTA) respectively. Market access gains under the Singapore-Australia Free Trade Agreement (SAFTA) are concentrated in the services sector. The commitments made in these areas generally take the form of qualitative commitments and undertakings to reduce discriminatory treatment which do not lend themselves to statistical concordance.

Recommendation 1
In recognition of the growing importance of the Australia-Republic of Korea defence relationship, the committee suggests that Defence continues to explore opportunities to enhance participation in bilateral defence exercises.

Australia values our bilateral defence relationship with the Republic of Korea, which has deepened in recent years, as illustrated by the visit to Australia by Defence Minister Mr Yoon Kwang-ung, in June 2005 and then Defence Minister Hill’s visit to South Korea in October 2005. We also conduct regular senior level discussions with South Korea and the most recent political-military talks were held in Seoul in August 2006. While there currently are no plans to engage in major joint military exercises, our shared strategic interests in the Asia-Pacific region provide a firm basis for developing practical cooperation in areas of mutual benefit – particularly in the fields of peace operations, consequence management, defence science, professional exchanges and industry cooperation. A mechanism for sharing classified information with South Korea is being developed to facilitate activities such as these.

As a first step in deepening our cooperation, we have indicated that we would welcome increased South Korean participation on our training courses, as we are conscious of the value that the Republic of Korea’s experience would bring to these courses. Invitations have been extended to a number of courses include the International Peace Operations Seminar, the Military Observers Course, and the Defence Management Seminar.

South Korea has indicated a willingness to increase defence capability cooperation in areas such as our respective advanced Destroyer and Airborne Early Warning and Control programs. We are pursuing opportunities to engage in lessons learnt exchanges in these and other material programs. In the longer term, we will seek to identify opportunities to further increase our practical defence engagement with South Korea.

Recommendation 2
At the first opportunity, the Australia-Korea Foundation ensure its board membership includes more members with an intimate knowledge of Korean society and culture.

Following head-of-government-level visits in 1988-89, the Governments of Australia and the Republic of Korea agreed to establish a group of influential members from the business, academic, cultural and media sectors of Australia and Korea to identify new directions and areas of cooperation in the relationship between the two countries. The group - the Australia-Korea Forum - subsequently met in Canberra and in Sydney and brought down a series of recommendations aimed at broadening and strengthening bilateral ties, including a recommendation that each side establish a foundation to promote the relationship.

The function of the Australia-Korea Foundation Board was initially set-out by an Executive Order-in-Council in May 1992, with the Board’s current statement of objectives being:

- to promote within Korea an increased understanding of contemporary Australia and its importance to Korea, as well as of its history, culture, traditions and languages, particularly through targeted educational and media activities;

- to develop within Australia a better appreciation of contemporary Korea and its importance to Australia, and to promote understanding of Korean traditional society, culture, history and language especially through
educational initiatives, media activities and the promotion of Korean language studies;

• to promote better understanding and more extensive discussion of mutual economic and foreign policy interests between Australia and Korea, and to encourage the development of closer associations between Australian and Korean business;

• to foster opportunities for increased collaboration between Australia and Korea in industry, science and technology through greater mutual awareness and through collaborative ventures; and

• to present Australia to the Korean people as a nation capable of outstanding creative and innovative achievement in cultural and artistic spheres, and a source of high quality productions in these areas.

To meet these objectives, the Australia-Korea Foundation is governed by a Board consisting of nine part-time members, assisted by a secretariat located within the Department of Foreign Affairs and Trade. The Chairman is appointed by the Governor-General on the recommendation of the Prime Minister and the Minister for Foreign Affairs. Board members are appointed by the Minister for Foreign Affairs. The Board meets three to four times annually to consider policy directions, and to decide on projects and grants.

Board members are drawn from a diverse cross section of the Australian community. All Board members are highly experienced in their respective fields, which include commerce, industry, tourism, science, technology, arts, media and sport. Board members are chosen on the basis of their standing in the community, their understanding of Korean culture and affairs, and their ability to contribute to the development of exchanges and understanding in their areas of expertise. Board members not only need a comprehensive understanding of modern Korea, but also the ability to project Australian values and interests. In addition to the knowledge, expertise and initiative that board members bring to Foundation, most Board members also travel regularly to Korea (generally, at least annually), which has proved useful in fostering and maintaining a contemporary knowledge of the country.

The Board is an outcomes-focussed institution, with a consistent track record of meeting or exceeding its objectives. Crucial to this achievement is the Board’s ability to harness each individual member’s experience and skills in their own professional field and frame this against the greater collective understanding.

Where vacancies on the Board appear in the future, knowledge of Korea and its society will continue to be used as key criteria to identify and select successful candidates.

**Recommendation 3**

The Department of Foreign Affairs and Trade provide all possible assistance, via organisations such as the Overseas Korean Traders Association, to small businesses exporting or wishing to export to the Republic of Korea.

Austrade assisted 257 companies to make export sales to Korea in 2005-06 including 70 companies which made their first ever export sale. The majority of these companies are small and medium sized businesses. Austrade provided services to 77 Korean-Australian clients, resulting in export success for 62 companies, including 24 first time exporters.

Austrade Seoul has a clear strategy for servicing small and medium sized exporters in the Korean-Australian community and has regularly conducted both formal seminars and more regular informal meetings with members of these groups over the last four years.

The first seminar series was held in August 2003 in Brisbane, Sydney and Melbourne. The most recent of these multi-city promotions was held in June 2006 in Brisbane, Sydney and Adelaide. Members of the Overseas Korean Traders Association (OKTA) have attended these events, all of which included information on Austrade’s services and how to access the Export Market Development Grant (EMDG) scheme from Austrade specialists in this area.

Austrade Seoul has also been in touch with local Korean language press and SBS in Australia to generate information broadcasts aimed specifically at the Korean-Australian exporting community, which also constitutes the OKTA membership base.
Austrade representatives delivered a presentation to OKTA on business opportunities in the Korean market to more than 70 Korean business leaders in Melbourne on 27 August 2006. Other presentations were made by the Korea Trade Centre (KOTRA), the National Australia Bank and the Victorian Government.

Austrade will continue to work closely with local Korean business organisations and current and potential exporters to assist in international business activities.

**Recommendation 4**

In the event of the Commonwealth Government commencing free trade agreement negotiations with the Republic of Korea, Australian cultural industries (as well as Korean cultural industries) be protected, and issues relating to agriculture be determined at an early stage of negotiations.

The Australian Government pursues a combined multilateral, regional and bilateral approach to trade policy. This means that Australia is open to concluding regional or bilateral agreements that deliver substantial gains to Australia which cannot be achieved in a similar timeframe through the multilateral system.

The Australian Government examines Free Trade Agreement (FTA) proposals against clear criteria. FTAs should:

- have the potential to deliver substantial commercial and wider economic benefits to Australia in a shorter timeframe than multilateral trade negotiations;
- be fully consistent with World Trade Organisation (WTO) principles and rules, and build on WTO outcomes;
- be comprehensive, delivering substantial liberalisation across goods, services and investment, with all sectors considered at the start of the negotiations; and
- significantly enhance Australia’s broader economic, foreign policy and strategic interests.

Comprehensive free trade agreements can complement and give momentum to our wider multilateral trade objectives. Australia expects that any progress in regional trade liberalisation should be multilateralised, in due course, through WTO negotiations.

Australia believes that it is important that FTAs contribute to the multilateral system. Ensuring that FTAs meet WTO rules and procedures that apply to these agreements is one of the best ways to achieve this. Australia is an active participant in the WTO Doha Round of negotiations which, inter alia, claim to clarify and strengthen these rules.

Against these criteria, any FTA that Australia would seek to negotiate with Korea would need to be comprehensive and deliver substantial liberalisation across all goods, services and investment.

The agreement would cover trade impacting on both Australian and Korean cultural industries. Such coverage would help maximise the gains to both countries, and add to the cultural and social understanding between each country. We do not envisage any particular sensitivities with respect to each other’s cultural sectors.

The Korean agricultural sector is heavily protected and enjoys considerable political support. As a consequence, Korea’s approach to agricultural trade and its sensitivity over its rural industries is well understood. These sensitivities would need to be balanced against Australia’s agricultural interests and our need for a comprehensive agreement.

**Recommendation 5**

Australian Education International create an Internet-based forum for Korean students returning from Australia. Comments on this forum should be regularly reviewed and followed up if necessary with Australian educators.

The Department of Education, Science and Training has considered a variety of means to build linkages with and obtain feedback from Korean students returning from Australia. The Department considers that the most comprehensive and cost-effective mechanism to achieve this will be our planned ongoing engagement with alumni of Australian education through the enhanced alumni network to be developed under the Australian Scholarships initiative.
Recommendation 6
The Department of Education, Science and Training develop a memorandum of understanding with its Republic of Korea counterpart with a view to the mutual recognition of educational qualifications.

The Department of Education, Science and Training (DEST) updated its Country Education Profile (CEP) for South Korea at the end of 2006. The CEP provides information on a country’s education system as well as assessment guidelines for overseas qualifications and will be essential in determining the Australian position on granting reciprocal recognition to Korean qualifications.

Recent exchanges between DEST and the Korean Ministry of Education indicate agreement that a formalised Memorandum of Understanding would not provide additional benefits for what is already a strong and effective education, science and training relationship with Korea.

Recommendation 7
The Department of Immigration and Multicultural Affairs review the risk presented by students from the Republic of Korea who are accompanied by a guardian when they study in Australia. The result should be incorporated into the overall risk assessment for such students.

The Department of Immigration and Multicultural Affairs (DIMA) is currently conducting a review of the Assessment Level methodology for international students which is expected to be completed by April 2007. DIMA will consider the issues raised by the Sub-Committee as part of that review.

Recommendation 8
The Department of Education, Science and Training promote school exchange visits between Australia and the ROK through direct funding, or by facilitating sponsorship from non-Commonwealth Government bodies.

The Australian Government recognises that education in a global community brings with it an increasing need to focus on developing inter-cultural skills and understanding in our students. Language education plays a key role in developing these important skills. School exchange visits and in-country study opportunities can provide school students with particularly rich learning experiences.

The Australian Government, through the provision of targeted funding, assists in the achievement of specific objectives as agreed with the States and Territories. The Government supports Languages education in Australian schools and after-hours ethnic schools through its School Languages Programme (SLP) and over $112 million is being distributed to State and Territory education authorities over the next four years to support languages education including Asian, European and Indigenous languages.

AEI South Korea has also been actively encouraging a variety of interested parties including Australian and South Korean schools, government and other bodies such as Rotary Clubs to consider establishing sister relationships and/or other grass roots exchange programs.

The Department of Education, Science and Training supports exchanges through awareness raising and information exchange. State and Territory school education authorities carry the primary responsibility for schooling in Australia. They are responsible for the day-to-day management of schooling, including curriculum requirements and guidelines for student excursions, including overseas trips. This includes sponsorship arrangements for overseas trips.

The Department also notes for the information of the Committee that the Australia-Korea Foundation funds annual primary and high school student and teacher exchanges between Australia and the Republic of Korea.

Recommendation 9
The Department of Education, Science and Training coordinate a review of the breadth and depth of science and technology research collaboration between Australia and the Republic of Korea with the purpose of providing strategic leadership through the development of an action agenda.

During 2006 the Prime Minister’s Science, Engineering and Innovation Council (PMSEIC) established a new working group on Australia’s S&T Priorities for Global Engagement. This working group presented its report on international science and technology issues and options to PMSEIC in December 2006. The findings of the PMSEIC
working group will be considered by the Department over the course of 2007 and will inform future science and technology engagement with the ROK.

The terms-of-reference of the working group are to:

(1) Consider how Australia can get the best value in a strategic sense from partnering with other countries to further the national interest. This should include:

• an examination of Australia’s areas of existing and emerging science and technology strength;
• identification of those countries which have the most to offer Australia; and
• consideration of the issues that could make Australia an attractive partner from their perspective.

The approach will focus as much on potential industry and economic benefits as on building Australia’s research capability.

(2) In light of (1) above, identify opportunities for Australia to increase its level of global engagement or shift the focus of existing activity in the national interest. This process should take account of the likely impact of multinational “big science” projects and issues as well as Australian science and technology programmes and policy initiatives such as the National Collaborative Research Infrastructure Strategy.

(3) Identify problems or challenges which may prevent Australia taking advantage of these opportunities, and consider how government with industry and other support can most usefully intervene to facilitate global S&T engagement.

The findings of this PMSEIC working group will inform the Department of Education, Science and Training’s future international engagement strategy, including any strategy or action agenda related to Korea.

Community Affairs Committee
Membership

The ACTING DEPUTY PRESIDENT
(Senator Barnett)—Order! The President has received a letter from a party leader seeking variations to the membership of a committee.

Senator MASON (Queensland—Parliamentary Secretary to the Minister for Health and Ageing) (4.05 pm)—by leave—I move:

That Senator Siewert replace Senator Allison on the Community Affairs Committee for the committee’s inquiry into the Food Standards Australia New Zealand Amendment Bill 2007 and the provisions of the Families, Community Services and Indigenous Affairs Legislation Amendment (Child Support Reform Consolidation and Other Measures) Bill 2007, and Senator Allison be appointed as a participating member of the committee.

Question agreed to.

DOCUMENTS

Department of the Senate

The PRESIDENT—I present two reports relating to training provided by Senate officers for overseas legislatures. In tabling these two reports, I would like to alert honourable senators to the excellent work that has gone on for many years by Senate officers in training and supporting staff from other legislatures abroad. Department of the Senate staff have, as we all know, a special professionalism in supporting us in our work in this chamber, but the work they do in training clerks and other staff in foreign parliaments is much less known. Like my predecessors as President, I am an enthusiastic supporter of these initiatives and I take this opportunity to thank the Clerk of the Senate and all of the departmental officers involved, past and present, for their contribution in this field. I particularly thank the staff of the Senate Procedure Office, which has responsibility for coordinating the training assistance the department provides. The annual report of the Department of the Senate will henceforth include a list of such training programs under-
taken, for the information of senators and others. I commend the reports to the Senate.

Department of the Senate

The President (4.07 pm)—I table the following document:


I draw the attention of the Senate to the following statement:


The Committee in its report recommended that the Department of the Senate develop a set of guidelines to assist Senators in the preparation of private bills. As Senators would be aware, in October 2004, the Department of the Senate developed and published a set of guidelines to assist Senators with the preparation of private bills and forwarded this to the Committee, and the intranet link to all Senators.

I remind Senators that the Guide remains available on the Senate Intranet.

As the Government is today tabling a government response to that report, I take the opportunity to also table the Department of the Senate’s guidelines—Preparing Private Senators’ Bills, Explanatory Memoranda and Second Reading Speeches.

AUDITOR-GENERAL’S REPORTS

Report No. 31 of 2006-07

The President—In accordance with the provisions of the Auditor-General Act 1997, I present the following report of the Auditor-General: Audit report No. 31 of 2006-07: Performance Audit: The conservation and protection of national threatened species and ecological communities: Department of the Environment and Water Resources.

Senator Bob Brown (Tasmania—Leader of the Australian Greens) (4.09 pm)—by leave—I move:

That the Senate take note of the document.

This report is a damning indictment of the failure of this government to properly conserve and protect nationally threatened species and ecological communities in this country. The report repeatedly points to the failure of the government to, amongst other things: adequately fund the protection of listed rare and endangered species in Australia—now the list is much greater than 1,000; keep their list of threatened species and ecological communities in up-to-date condition; adequately survey species on Commonwealth land; and complete recovery plans in the required time frames. It is an enormous list of failures by this government. One cannot blame the department for this. What is clear from the department’s response is that this government has been miserly in its attitude toward the department protecting our environment and has failed to respond to its own legislation passed in 1999 for the protection of the biodiversity of this great nation.

We are in a period of ecological collapse around the world—with global warming, the potential for 25, 30 or 40 per cent of species to disappear off the face of the planet. This nation is one of 17 which have, beyond other countries, an enormous list of rare and endangered species facing threat of extinction. This report nails the government. It cannot even get its own recovery plans going. In fact, there appear, according to a graph in the report, to have been none completed in the last two years for which records are shown. It is a farrago of failures by this government. This is a world which is extremely concerned about the extinction of species. We have been talking about the destruction of forests and their rare and endangered species—
financed by this government, under the signature of this Prime Minister. This is a damning report of neglect, starvation of funds, a total unfairness to the good-hearted people in the bureaucracy trying to carry out the mandate of the national legislation for the protection of species, ministerial failure and neglect and—one would have to say, from reading this report—deliberate flouting of the requirements of the law that this government not only move to list and protect rare and endangered species but develop recovery plans which actually bring the species back from extinction.

If one just goes to page 133—a random opening—in this report, one finds this statement:

Clearing of native vegetation results in the spread of dryland salinity, soil loss and erosion ... et cetera. It goes on:

Clearing for agriculture, is the single greatest threat to Australian woodland birds. For every 100 hectares of southern woodland cleared an estimated 1 000–2 000 birds die as well as many other organisms.

Above that is a graph showing that in New South Wales in 2005 there were 30,000 hectares of woodland cleared illegally. Above that in the report it says it is very likely that that included communities that were so-called protected under this government’s legislation. This is a massive failure of government responsibility. Putting the responsibility back to the states—something it does not do when it comes to business; it wants to go the reverse direction in relation to water—is no excuse for this government. This is an appalling indictment of this government and its failure to protect Australia’s environment, its plant life, its wildlife and, in particular, those species on the brink of extinction.

Question agreed to.

In relation to the investigative capability within the ADF, the recent audit found that that investigative capability was indeed in serious decline. It stressed that despite being reviewed, reorganised, restructured and downsized over the last 15 years, service police still lacked:

... clear purpose and direction, a senior ‘champion’ or advocate to advance their interests, adequate leadership, and modern policy, doctrine, training and tradecraft.

The findings of the board of inquiry into the death of Private Jacob Kovco further underlined concerns about the capacity of investigating authorities in the ADF. It found shortcomings in ADF processes concerning the handling and preservation of serious incident sites and physical evidence and of the passage of information about the details of serious incidents.

Without doubt, the findings of these two recent reports add significantly to the long-standing and increasingly urgent call for the investigatory competence of the service police to be addressed. The committee believes that the intended and promised reforms must be implemented on this occasion or the operation of the service police will be fatally imperilled.

Although the committee is cautious in accepting that this time real and effective reforms will lift the standard of the SP’s investigatory capability to an appropriately high standard, it commends the Chief of the Defence Force, Air Chief Marshal Angus Houston, for making public that audit report which exposed these inadequacies. The committee recommends in this report that the ADF follow up its audit of the ADF’s investigatory capability with another similar, comprehensive and independent review in three years time which would use this recent audit as a benchmark.

In relation to the independence of investigating officers, I raise a number of matters. During our public hearing on 26 February 2007 the committee raised the matter of the independence and impartiality of an investigating officer involved in the inquiry into the death of Trooper Angus Lawrence. Trooper Lawrence died from acute heatstroke while attending a subject one course for corporal. According to evidence given to us at the hearing, the Chief of Army asked the initial investigating officer to inquire a third time into the circumstances leading to the death.

It is the committee’s view that this request goes to the heart of the matter of an investigator’s independence. While the committee’s main concerns centred on the independence of the investigator, it also had serious misgivings about other aspects of the investigations into this death. They relate not only to the independence of an investigator reviewing their own investigation but to the work done by Army in preparing a report for the coroner, Army’s response to the coroner’s findings and the manner in which, after its third review, Army chose to inform the coroner of ‘new evidence’. The committee states quite clearly in this report, and I reiterate this for the chamber, that it intends to pursue this matter further. It will be seeking additional information from Army and will report in greater detail on these matters.

In relation to the Defence Force Discipline Act, the Report of an audit of the Australian Defence Force investigative capability found that the Defence Force Discipline Act, the
DFDA, had ‘simply had its day’. It described the document as ‘outdated and anachronistic’ and suggested that it ‘does not match modern disciplinary, legal and policing requirements’. The committee supports the call for a comprehensive review of the DFDA and hopes that the intention is for a very independent, thorough and complete review of the act rather than the making of ad hoc changes to it. The committee suggests that any independent review should be made public.

In our first progress report on these matters the committee commended the ADF on efforts to improve Australia’s military justice system. We were concerned, however, that reforms to processes would not of themselves tackle the deeper problems of an entrenched culture within the ADF that we saw may well have the potential to undermine the success of current reforms. A recently conducted audit into the learning culture of the ADF reinforced this view. The committee notes that, while the audit found that a culture of bullying and harassment did not exist in the respective training establishments, there are ‘isolated incidents from differing individuals that highlight inappropriate behaviour by individuals’. These examples which describe a culture that ‘seems to be so judgemental and disrespectful’ toward those deemed to be, in the terminology of the ADF on occasion, ‘on the wrong bus’ is of continuing concern to the committee.

It is now over three years since the 2003 report into the death of Jeremy Williams, and after much publicity there are still worrying elements detected in ADF training schools. The findings of that inquiry into the learning culture in the ADF underscored the need for the ADF to continue and strengthen its endeavours to change its culture. The committee on this occasion commends the ADF and, in particular, the CDF for commissioning the recent audit and for making public its findings. It also notes the firmness and the resolve of the CDF in asserting that the military justice system will be improved:

Let me assure you, this is the most comprehensive implementation we have ever had of the military justice system in the ADF. The chiefs and I get a report every month from Admiral Bonser on how the implementation is going. We are leaving no stone unturned. We are totally committed to fixing the system.

The committee encourages the CDF to continue the practice of independent review of key aspects of the ADF. The committee also notes the chapter in Defence’s annual report devoted to the military justice system that includes information such as the Defence attitude survey. Again, the committee encourages Defence to continue this type of open reporting. It is very valuable both to us and the Australian community that they are able to see those reports made public.

I want to place on record the committee’s appreciation for the time and effort of the CDF, the chiefs of service and Admiral Bonser and the Military Justice Implementation Team in relation to these matters. It assists the committee enormously, when we hold a public hearing, that the CDF and his most senior officers make themselves available to answer the committee’s questions on these very important issues. This matter has been proceeding since late 2005, when the committee tabled its first report, and the ongoing assistance of the Chief and Admiral Bonser in particular is much appreciated.

I also want to place on record the committee’s appreciation for the hard work of Senator David Johnston, my predecessor as Chair of the Senate Standing Committee on Foreign Affairs, Defence and Trade. With his recent promotion, Senator Johnston felt that he was able to leave the committee! In succeeding him in this role, I note that he has dealt with the very difficult issue of military justice in a highly professional and very sen-
sitive way. For the participants in the committee process, for the members of the ADF who come before us to assist us with our inquiries, for the members of the ADF who work under the military justice system and their families, some of whom are still looking for answers to questions that would challenge the strongest amongst us, it is very important that these matters be handled appropriately—and I commend Senator Johnston for his efforts in that regard. I commend the report to the Senate.

Question agreed to.

Selection of Bills Committee Report

Senator NASH (New South Wales) (4.23 pm)—by leave—At the request of the Chair of the Selection of Bills Committee (Senator Ferris), I present the sixth report of 2007 of the committee.

Ordered that the report be adopted.

Senator NASH—I seek leave to have the report incorporated in Hansard.

Leave granted.

The report read as follows—

SELECTION OF BILLS COMMITTEE REPORT NO. 6 OF 2007

1. The committee met in private session on Thursday, 29 March 2007 at 3.15 pm.

2. The committee resolved to recommend—

(a) the provisions of the Corporations (NZ Closer Economic Relations) and Other Legislation Amendment Bill 2007 be referred immediately to the Economics Committee for inquiry and report by 4 May 2007;

(b) the provisions of the Families, Community Services and Indigenous Affairs Legislation Amendment (Child Support Reform Consolidation and Other Measures) Bill 2007 be referred immediately to the Community Affairs Committee for inquiry and report by 8 May 2007;

(c) the provisions of the Native Title Amendment (Technical Amendments) Bill 2007 be referred immediately to the Legal and Constitutional Affairs Committee for inquiry and report by 8 May 2007;

(d) the provisions of the Tax Laws Amendment (2007 Measures No. 2) Bill 2007 be referred immediately to the Economics Committee for inquiry and report by 30 April 2007.

The committee recommends accordingly.

3. The committee deferred consideration of the following bills to its next meeting:

Parliamentary Delegation to the United Kingdom and Poland

Senator NASH (New South Wales) (4.24 pm)—by leave—On behalf of Senator Ian Macdonald, I present the report of the Australian parliamentary delegation to the United Kingdom and Poland, which took place from 25 June to 8 July 2006.

COMMITTEES

Economics Committee

Membership

The ACTING DEPUTY PRESIDENT (Senator Barnett)—Order! The President has received a letter from a party leader seeking variations to the membership of a committee.

Senator MASON (Queensland—Parliamentary Secretary to the Minister for Health and Ageing) (4.25 pm)—by leave—I move:

That Senator Allison replace Senator Murray on the Economics Committee for the committee’s inquiry into the provisions of the Liquid Fuel Emergency Amendment Bill 2007, and Senator
Murray be appointed as a participating member of the committee.

Question agreed to.

(Quorum formed)

MIGRATION AMENDMENT (REVIEW PROVISIONS) BILL 2006 [2007]
MIGRATION AMENDMENT (BORDER INTEGRITY) BILL 2007

Second Reading

Debate resumed.

Senator FIERRAVANTI-WELLS (New South Wales) (4.29 pm)—I rise this afternoon to speak on the Migration Amendment (Review Provisions) Bill 2006 [2007] and the Migration Amendment (Border Integrity) Bill 2007. The current multilayered approach of entry into Australia incorporates such innovations as advanced passenger processing, a universal visa system and the coordination of DFAT and the Australian Customs Service. This continues to ensure that Australia has one of the most comprehensive, successful and sophisticated entry systems of any nation in the world. Additionally, these processes continue to ensure that the systems controlling Australian border integrity remain synonymous with notions of safety and security tempered by the values of justice and making sure that fairness is observed.

Consistent with the principles of safety, security and fairness this bill proposes to amend the Migration Act 1958 in two ways to further preserve the integrity of Australia’s border. This will be achieved through the introduction of new facial recognition technology and an amendment to the act in relation to special purpose visas. This government has a strong record on border security and has proactively pursued measures to guarantee the continuing integrity of our strategic frontier. The coalition has funded major expansions in the use of the technologies in support of those wonderful and selfless Australian men and women of the Australian Federal Police and Customs who serve at the very coalface of border security in the fight against terrorism and serious crime.

The government has further taken action to shield Australians against such criminal trends as identity fraud, money laundering and the production of illegal drugs. We have also developed and implemented one of the world’s toughest and most effective national aviation security systems to protect and provide peace of mind to Australians and overseas travellers alike.

This is in stark contrast to the legacy Labor left for us. Labor failed to have a coordinated, forward-looking or flexible approach to border security. It failed to address the risks facing Australia as a destination for people smugglers or to work with other countries in our region to tackle the issue of people-smuggling at its source. During its time in office, Labor’s bad economic management meant that the funding needs of our law enforcement agencies were unfulfilled, leaving Australia a soft target for transnational criminal syndicates and organised crime.

At a time when federal law enforcement and border protection should have been boosted, Labor cut staff numbers in Customs by more than 1,000 between 1990-91 and 1994-95, seriously undermining the ability of Customs to do its vital work in protecting our borders. Of all the issues, none has provided a clearer demonstration of the Labor Party’s lack of leadership than border security. In the midst of the Tampa crisis in 2001 when the government introduced the Border Protection Bill, Labor was initially supportive, as shown in the Hansard of 29 August 2001:

In these circumstances, this country and this parliament do not need a carping opposition; what
they actually need is an opposition that understands the difficult circumstance in which the government finds itself...

Within the space of hours, Mr Beazley had made a spectacular backflip. He said:

The opposition will not support the Border Protection Bill 2001.

The fact is that the coalition government’s tough stance on excision and the Pacific solution is working. It has had a demonstrable deterrent effect on would-be people smugglers. Yet Labor calls it a disaster and wants to replace it with an arrangement whereby a coastguard greets unauthorised vessels and escorts them to Australian territory and the Australian legal system. Such a proposal would mark a return to the past where Australia was a soft target for people smugglers.

It is estimated that by 2009 the number of arrivals and departures at Australian international airports will increase by up to 23 per cent. This will obviously pose additional challenges to immigration clearance systems in relation to both security and the ability to conduct the efficient processing of passenger numbers. Current immigration clearance processes at the border are all performed manually. However, with the introduction of the SmartGate system that has recently been trialled at both Sydney and Melbourne airports, facial recognition and new passport technologies will prove a viable, secure and convenient method of immigration clearance.

The proposal to use an automated system in immigration clearance not only strengthens but streamlines Australia’s border control measures. The proposed amendments are designed to allow for the expansion of this new technology to all Australian citizens and selected noncitizens provided that they hold an eligible e-passport. This convenient and streamlined alternative to the manual processing of immigration clearances is a key budget initiative of the Howard government.

Current Australian passports all contain an embedded microchip that stores much of the same data as that which is contained in the printed version. This includes such data as your photograph, passport number, name, gender, date of birth, nationality and passport expiry. SmartGate’s facial recognition technology verifies a face to passport check of a person’s identity using the biometric data stored in the chip.

In addition to verifying identity, SmartGate also forwards passport details to Customs and the Department of Immigration and Citizenship border systems where the passport and visa details are verified in much the same way as they would be if they were done manually. Once processed, SmartGate will not collect or store any personal information or identifiers from these passports. In fact, the amendments do not introduce any new processing requirements but simply enable eligible passport holders the choice of automated, quick and convenient immigration clearances instead of through a clearance officer.

In addition to enhancing the convenience of immigration clearance throughput, this technology will greatly contribute in combating fraud and act as a deterrent against the use of stolen or forged passports. In addition, this bill also provides for New Zealand citizens who hold an e-passport to apply for and be granted a special category visa using the ease of the automated system.

This bill also seeks to further secure and control the issue and management of special purpose visas. Special purpose visas are temporary visas that allow lawful status to non-Australian citizens of a particular and selected class to travel to, enter and remain in Australia. They cover such traditionally low-risk characters as crew members of non-military ships and airlines, guests of government, and even athletes competing in in-
ternational sporting fixtures. However, for reasons such as national security, public safety, potential health risks or even character concerns, there are times when it will be appropriate for the minister to cease a person’s special purpose visa.

The act currently provides for the minister to make a declaration that it is undesirable for a person or any class of persons to remain on a special purpose visa. The consequent effect of this declaration is for the ceasing of the special purpose visa. However, where such a declaration is made, the current provisions of the act provide that the special purpose visa remains in effect until the end of that day in which the declaration is made. This is an anomaly that we seek to remedy as no other type of visa remains in effect until the end of the day in which it was ceased. Consequently, as it currently stands, the person who has their visa ceased cannot be lawfully detained until the end of that day even if that person poses some immediate threat to the Australian community or even themselves.

This is of particular concern where, for example, a master of a vessel has reported a crew desertion. In such circumstances Department of Immigration and Citizenship officers would usually cease that person’s special purpose visa and commence processes to locate the person. However, if the person is found on the day their special purpose visa is ceased, the officer cannot detain the person until midnight of that day. This has left Department of Immigration and Citizenship officers with no choice other than to encourage the relevant crew person to go back to a vessel. This is undesirable from a border integrity perspective. The amendments will provide that a subsection declaration takes effect at a time specified in the declaration. However, it is notable that the specified time cannot be a time before the declaration is made. The legal effect will be that the special purpose visa will cease at the time specified in the declaration. If no time is specified in the declaration it will take effect at the end of the day on which it is signed.

The government also seeks to amend the Migration Act to allow flexibility and the more efficient application of procedural fairness to both the Migration Review Tribunal and the refugee tribunal. Under existing provisions of the act and as interpreted by the Federal Court in the Al Shamry case and in the High Court in SAAP, the tribunals are now required to provide information and invitation in writing. The requirement to provide information and invitation in writing applies even if the issues have been dealt with at the hearing.

The practical effect of these court decisions is creating considerable operational difficulties for the tribunals in their ability to comply with the statutory requirement that their hearings be economical and quick as well as fair and just. Thus, delays are being caused by matters that have already been covered exhaustively at tribunal hearings having to be put to the applicants again in writing following the hearing. The effect of the courts’ interpretation of the procedural fairness requirements has led to a highly technical application of the law in circumstances where no practical injustice can be found in the way the tribunals have dealt with a matter. The proposed bill will amend the act to align the technical provisions with a sensible and practical way that the tribunals can provide procedural fairness. The amendments will insert new provisions which will provide a discretion for the tribunals to orally give information and seek comment from the applicant at the time the applicant is appearing before a tribunal. However, if the tribunals decide not to orally give information and then seek comment from an applicant at hearing, they must do so in writing under existing sections 359A and
The corollary is that if the tribunals do give information and seek comment from an applicant at hearing they will not be required to also do so in writing under the same sections.

Outside of the context of hearings, the tribunals will still be required to provide procedural fairness to applicants in writing. The Senate Standing Committee on Legal and Constitutional Affairs handed down its report into the review provisions bill on 20 February 2007. The committee recommended that the bill be passed with an amendment so that adverse material may only be provided orally at the election of the applicant. However, the government supports the passing of the review provisions bill in its original form. This is because the recommendation would, to a large extent, nullify the objective of the bill to allow the tribunals flexibility in how they give procedural fairness to review applicants. In addition, the committee’s recommendation would add an impractical process and introduce greater complexity to the conduct of tribunal hearings.

The amendments in these bills are designed to ensure the continued safety and security of our nation, tempered by values of justice and fairness. The use of modern digital facial recognition technologies will streamline and improve the security of our future border entry practices. Tightening the provisions for the cessation of special purpose visas in line with all other visa requirements will only assist our border security agencies in providing a safe and secure environment for all Australian residents. And, finally, the review provisions bill will restore the tribunal’s ability to comply with the statutory requirements to provide a review that is fair, just and economical as well as being informal and quick—as was parliament’s original intention.
already provided by the applicant to the Department of Immigration and Multicultural Affairs… as part of the process leading to the decision under review, other than information that the applicant has given orally to the Department…

With regard to the first key element, it was argued by the department and the tribunals in their submissions to the Senate committee inquiry into this bill that the High Court’s interpretation of procedural fairness in what is now known as the SAAP case has placed an undue burden on the MRT and the RRT and has created, according to Minister Ellison, then the minister responsible, serious operational difficulties for the tribunals, as the MRT and the RRT continue to struggle to meet the statutory 90-day limit for finalising decisions.

With regard to the second key element, in lay terms, this is essentially an attempt by the government to remove the requirement to, firstly, deliver the reasons for a decision by the tribunals in writing and, secondly, stop the applicant from providing to the tribunals information previously submitted to the department. So what are the implications of changes of this nature to this system?

This takes me to the second issue I want to raise in the chamber, and that is the response from the relevant stakeholders and the legal minds of this country who presented submissions to our inquiry into this legislation. A cursory examination of the submissions to the inquiry is indicative of the response that this bill has received—that is, only the government department and bodies are supportive of these amendments. All other submissions—let me make that really clear: every other submission we received to this inquiry, including submissions from the broader legal community—demonstrate that there is a very legitimate concern that this bill is simply an attempt by this government to sacrifice procedural fairness and natural justice in the name of flexibility and efficiency.

We heard evidence from pre-eminent legal minds on the area of migration law and administrative law—from well-respected bodies such as the Human Rights and Equal Opportunity Commission, Australian Lawyers for Human Rights, the Refugee Council of Australia and the Law Council of Australia, to name a few. The response of these organisations to the bill was one of grave concern. We were told by Australian Lawyers for Human Rights that this bill ‘represents a regrettable attempt to narrow the scope of the merits review process’ and:

… the Bill fundamentally alters the role of the MRT to the detriment of applicants and the review process more broadly.

The Human Rights Commissioner, Mr Graeme Innes AM, put his view to the committee by stressing that the bill was ‘contrary to the rules of natural justice’ and will lead to unfairness in some cases.

HREOC, in its submission, also stated that, even if the bill does improve efficiency, it is likely to create ‘an unfair process’. In particular, the bill’s ‘reliance on oral communication’ in migration and refugee cases is unfair. This is because there is a grave danger that an applicant may not fully understand the meaning or significance of what they are being told or of what they are responding to. Even when an applicant does understand the case against them, the charges may mean, as HREOC says, that ‘they may not have the chance to fully or adequately put their case to the tribunal’. The Castan Centre for Human Rights Law submitted that the bill’s reliance on oral communication ‘may obfuscate the process and lead to misunderstandings between tribunal and applicant’.

The list of comments indicating concerns with this bill goes on. In fact, I highlighted
this to the department when they appeared before the legal and constitutional committee. I highlighted that suggestions include: that speed does not lead to fairness; that there will be flawed decisions in the future; that questions of jurisdictional error will be asked; that there is ambiguity in the use of oral evidence—particularly when you may not be able to speak the language or when English may be your second, third or even fourth language, if you understand it at all; that interpretive skills are lacking in some cases, and we heard many evidences of that during this inquiry; and that there are numerous inconsistencies between tribunal members in the way they conduct the tribunal, in the way they handle cases and in the way they inconsistently deal with individual cases.

I clearly remember asking the department during the hearing that, if so many eminent lawyers and legal practitioners in this field do not believe that the changes to this act are in the best interests of the people to whom they are most applicable, why was it that the department’s submission was the only one we had before us that responded positively to such changes. I think the answer was quite clearly inadequate. The response of the department to these concerns was simply: If you follow the logic of a lot of the submissions you have received we would not have hearings at all because everything could be done in writing.

I think that was a pretty poor response, but it was indicative of most of the responses from the department. They did not try to provide a factual response to moot the points raised, and they failed to engage with most of the concerns raised by our non-government legal and academic minds in this country.

All of the non-governmental agencies and groups resoundingly agreed that, under the status quo, if you were to measure procedural fairness against administrative efficiency, the scales are currently equally balanced. If you were to add further weight to procedural fairness, this would tip the scales and result in undue administrative complexities and red tape. But, on the other hand, if you were to add to administrative efficiency then you would tip the scales the other way and compromise any attempt to establish a just and fair outcome for applicants.

I believe that, as the workloads increase for the MRT and the RRT, the solution is not to add or subtract from either procedural fairness or administrative efficiency but to get a better set of scales that balances the outcome and benefits both the tribunal and the applicant.

What I believe is needed is the adequate provision of resources to the MRT and the RRT by this government. That is really the nub of the problem here; not amending legislation so that applicants are unduly biased or disadvantaged in order to cover up the inefficiencies of the MRT and the RRT. By looking at the annual reports for the tribunals, it can be observed that staffing levels are under budget. For example, 73 members of the tribunal are part time and only 24 are full time. The reports also show that the tribunal, which is predominately staffed by part-time employees, is required to adjudicate many of the department’s mishandled decisions. In fact, it was put to us at the inquiry that more than half of the department’s decisions are overturned. The tribunals surely need to have better resources available to them, rather than simply moving resources back and forth between the MRT to the RRT, like a little butter that is spread over too much bread. I believe this is completely unacceptable.

What we have got here is a government that is not dealing with the real issues at heart: the under-resourcing of the MRT and the RRT, the inadequacy of the number of part-time members of the tribunal and the
total inadequacy of the decision-making processes and the outcomes within the department. So what this government is doing is in line with its philosophy of always attacking the victim, of blaming the victim, of having a go at these people who are seeking to prove their refugee or migration status. They are having a go at these guys now and, instead of being required to provide everything they want to communicate to them in writing, now there is an option to do it orally.

It is no wonder that the Senate committee’s report recommended that the main guts of this legislation—the main elements of this legislation—be deleted. Although it is only three lines, the committee recommended that the proposed sections 359AA and 424AA be amended. That might seem fairly innocuous, but that is really the hub of this legislation. It goes to the fact that adverse material may only be provided orally at the election of the applicant. The Senate committee wanted to put the onus back on the applicant, to say that if they actually requested it orally—that is, they understood it and they were happy to have it orally—so be it. But that is not the way this government wants to operate, and I have no doubt that they will not pick up the recommendation of the Senate committee report.

What can we observe of this government from the introduction of this bill? We can see that this government has failed to address the big picture problems. It is not introducing a bill to properly resource the MRT and the RRT. It is not introducing a bill which will reduce the amount of inaccurate decisions made by the department. Instead, this government is only tinkering at the edges. The government is introducing a bandaid solution at the cost of procedural fairness and natural justice.

This takes me on to my third and final point, which goes to the heart of the legal principles that are being undermined by this bill and this government. I stress that I support the tribunals in the exercise of their responsibilities, and you would have to concede that the workload of the tribunals is significant. I also believe the tribunals should be just, fair, informal, cost-efficient and speedy, in ways that cannot be facilitated by the judicial system. However, I do not believe that procedural fairness or natural justice need to be compromised in this manner for the sake of speed.

It has been the express purpose of this bill to attempt to give the tribunal the ability to opt out of the fundamental legal principles upheld by the High Court in the SAAP v MIMIA case. The Legal Aid Commission of NSW stated in its submission that the bill removes an important protection for applicants that was established by that case:

... applicants are notified in writing of information ... which can be used to refuse the review application.

It is rightly pointed out by the commission:
Natural justice requires that applicants are afforded a meaningful opportunity to respond to adverse information.

I believe that this is a fundamental tenet of our legal system. However, the government wishes to fly in the face of this legal principle by introducing an oral process, a process which the commission believes:

... will not allow many applicants the opportunity to comment on the [Tribunal’s] concerns.

I know that in defending this legislation the minister will say that that is not the case, but one needs to look at the critical comments we received about the inadequacies of some of the interpreters that are used, the lack of understanding of English by some of the applicants and also just the cultural background of some of the applicants, who are pretty stressed. By the time your case gets to the
MRT or the RRT, you are pretty stressed about this.

There was evidence that a lot of applicants actually just agree and say ‘yes’ to anything that is said to them, mainly those who come from South-East Asia and Asia. Because of their cultural background they are not used to challenging or questioning a body of the status of the tribunal or questioning a government. In fact, a lot of them have been through torture and trauma and so, out of politeness, because they do not know otherwise or because they are too frightened to say otherwise, they will not question decisions. So to now put the onus back on the applicant is an extremely unfair way to deal with this situation.

Natural justice and procedural fairness are long-held tenets of our legal system. It should be an upheld and maintained right that every person should be given the opportunity as best as practicable, whether that is orally or in writing, to receive adverse information about their application for review in a form which they desire and can best understand. However, this government tarnishes natural justice with this bill.

The Migration Review Tribunal and the Refugee Review Tribunal by the nature of their jurisdiction have a significant burden to discharge. Not only do the tribunals have a responsibility to make the correct or preferable decision; they have to fulfil this responsibility in an environment where they are dealing with many applicants who have extremely limited or no English language skills. Similarly, the tribunal is also communicating with applicants with very little experience in dealing with bureaucracies in democratic nations. Instead—and this is particularly relevant to the RRT—they may have only experienced dictatorial regimes, as I said before, and may come from a background or a culture where it is considered polite to simply agree with authority figures.

To implement oral communication as a means of delivering outcomes is an obvious attempt to discharge this responsibility in favour of expediency. Rather than recognising that language and cultural barriers create a gap that needs to be filled, the tribunals have tried to ignore their responsibilities in this area and have failed to see the bigger-picture justice issues that arise from this legislation.

It should be the responsibility of the tribunal to stand in the shoes of the government department and of the applicant, and also to take a de novo, or fresh, approach to decisions under review so that the correct or preferable decision is made. It is not acceptable that the obligation of the tribunal to hear, examine and consider correspondence from the applicant to the department be removed, as the tribunal must be able to review all of the factors before it and respond to the applicant in a manner which reflects all considerations that are relevant to the case at hand and in accordance with procedural fairness rules. However, this government through this bill undermines the function of the MRT and the RRT and waters down procedural fairness requirements in order to ensure that the MRT and the RRT can fulfil their statutory obligations without adequate resources.

Let’s be fundamentally clear about this. This is about the government getting around or getting out of the requirement in the decision of the SAAP case, where it was ruled that there were serious operational difficulties for the tribunal and it must provide communication in writing to the applicants. This government wants to step around that decision by the introduction of this bill. Also, this is another way of papering over the cracks of the inefficiencies of the department, which
we have seen time and time again, particularly in the last two years. You have a situation where most of the decisions of the department are overturned—and we know that funding has shifted between the MRT and the RRT, instead of providing adequate funding for both tribunals, and also that a lot of people are on those tribunals in a part-time rather than a full-time capacity.

This bill is flawed. It is purely a bandaid solution by this government to a significant resourcing issue that the tribunal faces. It shows that the government is uninterested in correcting the poor track record of the department on migration and refugee applications. And it shows the callous disregard that this government has not only for legal principles but also for applicants who seek to migrate to this country under this process.

Senator NETTLE (New South Wales) (5.05 pm)—I will speak first to the Migration Amendment (Border Integrity) Bill 2007 and then to the Migration Amendment (Review Provisions) Bill 2006 [2007]. The Australian Greens will support the Migration Amendment (Border Integrity) Bill 2007 in order to facilitate security at our airports. The SmartGate technology which this bill facilitates uses electronic facial recognition technology, in conjunction with electronic passports containing biometric information, to check passengers entering Australia. SmartGate will only work if the technology is truly smart. If it is not truly smart then it may cause disruption and have the potential for lapses in airport security.

The Greens have concerns that the technology for facial recognition is not as reliable as the government would like us to believe and that Australia should not rely on any half-baked technology to ensure airport security and safety. We note the concerns that facial recognition technology has a success rate that is much lower than other biometric technologies such as fingerprints and iris scans. We also note that the ability of facial recognition technology to function properly can be hampered by lighting effects, eyeglasses, facial hair, make-up, cosmetic surgery, ageing and even a person’s facial expression.

Facial recognition technology is based on statistical probability rather than an exact match. It essentially converts measurements from a photograph of a person’s face into a series of numbers and then compares those numbers against the face as measured by the facial recognition technology. If it is statistically probable that the numbers match then SmartGate will allow the person to enter Australia. If they do not match, it will alert a Customs officer of the need to process the person manually.

A 2002 study conducted by the US government’s National Institute of Standards and Technology and the Pentagon’s Defense Advanced Research Projects Agency looked at a range of biometric facial recognition technologies commercially available and found significant error rates. They found that even the best technology still had high error rates with a 10 per cent false rejection rate and a one per cent false acceptance rate. That would mean that one in 100 people would be falsely accepted, despite the photo on their passport and the image taken at the airport gate not matching. That is a significant problem if you look at Sydney airport as an example. Nearly one million passengers passed through the international terminal in January of this year. Such an error rate could result in up to 10,000 people a month being allowed into the country despite their passport photo and their face not matching. Other problems that the national institute report identified included the fact that female face matching had a higher error rate than male face matching and that younger people were up to 20 per cent harder to match than older people.
According to media reports in late 2005, a study commissioned by the Dutch Ministry of the Interior and Kingdom Relations raised fresh concerns over a number of technical issues related to the issuance of biometric passports. According to the study, the results of the first biometric passport trials conducted in 2004 and 2005 showed that the biometric documents were less robust than traditional passports. The quality of digital photographs was a concern, as unclear backgrounds, insufficient contrast and other problems such as reflection from spectacle lenses resulted in about 1.6 per cent of photographs being unsuitable for automated biometric matching.

In the United Kingdom, the findings of a biometrics enrolment trial published early in 2005 revealed that biometric technologies were still not foolproof and that large-scale issuance of biometric identity and travel documents would inevitably run into some glitches. In Germany, concerns over the government’s biometric passport program were voiced by security and privacy experts, parliamentary committees and the federal data protection commissioner, who even called for a moratorium on the introduction of biometric passports in light of the still immature state of the technology and a number of unresolved data protection issues.

One concern is that facial recognition technology will give a lot of false negatives—meaning manual checking for Customs officers and perhaps few efficiency gains. Too many false negatives may lead to inefficiencies in the flow of people through our airports and to unnecessary embarrassment, suspicion or delay for those wrongly picked out by the SmartGate system. Another more troubling concern is that the technology may allow false positives, where a person who is not the passport holder may be able to fool the SmartGate facial recognition system and enter Australia illegally.

During the trials of this technology, two Asian businessmen participating in the trial were able to swap passports and be accepted by the SmartGate system. We certainly hope that these glitches have now been ironed out, and, as I indicated, I will ask some questions about this in the committee stage.

I note that Murray Harrison, the Chief Information Officer of the Australian Customs Service, told a conference on 7 March 2006: SmartGate doesn’t enhance security. It helps flow and efficiency in the limited space available in airports.

The Australian Greens are in favour of efficient and fast processing at our airports. However, we are not in favour of implementing technology that may be detrimental to airport security. We therefore assume that the government will not roll out the SmartGate system into all our airports until the technology has been proven to be absolutely foolproof. We hope that we will not have a fiasco like we did with the Customs cargo management IT system.

As with the ID card, or the smartcard or the access card, the Australian Greens are concerned that technologies such as SmartGate may lead to the construction of massive databases of biometric and other personal information which infringe on our civil rights and right to privacy. Therefore, we welcome the fact that SmartGate will be legislatively prohibited from collecting and storing biometric and other data. If SmartGate were allowed to collect such data, we would have much greater concerns about its implementation.

I note, as others have, that there has been a tendency over the years for legislative and feature creep—that is, new laws and systems are implemented on the proviso that their function is strictly limited, but with the passing of time the government comes back to parliament asking for an extension of powers.
beyond what was originally agreed to and set.

The Australian Greens would be wary of any future attempts to allow SmartGate and similar technologies to collect and store information without the Australian public having a rigorous and open debate about whether they wish their government and its agencies to collect biometric and other data and hold it in such databases. The Australian Greens support this bill, but urge caution in the implementation of the SmartGate technologies it allows. As I indicated, I will ask more questions on these issues in the committee stage of this bill.

I will now address the second bill, the Migration Amendment (Review Provisions) Bill 2006 [2007]. The Australian Greens oppose this bill on the grounds that it further erodes the ability of people to get natural justice before the Refugee Review Tribunal and the Migration Review Tribunal. The extensive Senate inquiry into the administration and operation of the Migration Act reported in March 2006. We are still awaiting a government response. That inquiry found many problems with the administration of the Refugee Review Tribunal and the Migration Review Tribunal. It made a total of eight recommendations specifically about the RRT and the MRT, none of which have been taken up by the government.

Witnesses provided submissions and gave evidence about a raft of inadequacies in the Refugee Review Tribunal and the Migration Review Tribunal processes and told of how people had been denied natural justice by these tribunals. Many witnesses suggested that the best solution to these problems was to abolish the tribunals and refer cases either to the Administrative Appeals Tribunal or directly to the Federal Magistrates Court.

Recommendation 22 recommends that applicants appearing before either the Refugee Review Tribunal or the Migration Review Tribunal should be entitled to legal representation. Recommendation 23 recommends that the Commonwealth legal aid guidelines are amended to provide for assistance in migration matters, both at the preliminary and the review stages. Recommendation 24 recommends that applicants have a right to be provided with copies of documents, the contents of which tribunal members propose to rely upon to affirm the decision that is under review. The government has so far ignored the recommendations from the Senate Standing Committee on Legal and Constitutional Affairs. Instead, it is asking the Senate to pass a piece of legislation which will further erode the semblance of natural justice in these review tribunals.

Proposed sections 359AA and 424AA grant the tribunals the discretionary power to provide information to applicants orally and receive a response orally instead of in writing. The government wishes to do this in order to facilitate faster and more efficient processing of cases. The Senate inquiry into the Migration Amendment (Review Provisions) Bill 2006 heard evidence that these changes may deny applicants natural justice, adversely affecting the ability of many applicants to make their case and understand the workings of the tribunal, and that they would perhaps also lead to refugees being mistakenly returned to countries where they face persecution.

There is pressure upon the tribunal system to process claims more efficiently and faster. For example, A Just Australia told the Senate inquiry into the legislation that they feared:

This pressure will result in more and more oral directions being given, despite written direction being a better guarantor of real procedural fairness, in order to achieve set targets and so maintain funding rates. In time, any written direction will become an anomaly.
Several lawyers and migration agents expressed concern that these provisions will make it far more difficult for their clients to understand the proceedings of the tribunal and to provide suitable evidence and information to the tribunal. This is a particularly pertinent point when you consider that many applicants do not have a good understanding of English and must use an interpreter. Indeed, 60 per cent of Migration Review Tribunal hearings and 90 per cent of Refugee Review Tribunal hearings require the services of an interpreter. To be given oral information via an interpreter on the spot rather than written information, which can be explained by advocates, is a distinct disadvantage.

Many applicants will also be unfamiliar with the workings of the tribunal and not fully aware of their rights and what is expected of them. Regarding the value of written communication, in 2005 Justice Michael Kirby, in the case of SAAP v the Minister for Immigration and Multicultural and Indigenous Affairs, wrote:

*A written communication will ordinarily be taken more seriously than oral exchanges. People of differing intellectual capacity, operating in an institution of a different culture, communicating through an unfamiliar language, in circumstances of emotional and psychological disadvantage will often need the provision of important information in writing. Even if they cannot read the English language ... the presentation of a tangible communication of a potentially important, even decisive, circumstance from the Tribunal permits them to receive advice and give instructions.*

The Human Rights and Equal Opportunity Commission were concerned that increasing the reliance on oral communication in tribunal hearings would create a ‘grave danger’. HREOC said it was concerned that, by replacing written communication with oral communication, applicants ‘may not fully understand the meaning or significance of what they are being told or of what they are responding to’. I am sure members of the Senate could imagine how difficult it would be to confront a tribunal in a foreign country, being conducted in a foreign language, where an intensely personal judgement about their future is being made.

It is partly because of the difficulty that applicants face when appearing before Migration Review Tribunal hearings or the Refugee Review Tribunal that the Senate inquiry recommended that legal representation is made available so that applicants could be assisted through the complex process. This bill risks the danger of making the tribunal system even more unintelligible for applicants. Surely any system that wished to produce fair and considered judgements would want to make it as understandable and intelligible to applicants as possible.

This bill also risks the danger of increasing the amount of litigation regarding Refugee Review Tribunal and Migration Review Tribunal decisions. The department of immigration acknowledged that in the short-term these amendments will result in more complex and costly litigation. David Manne of the Refugee and Immigration Legal Centre told the Senate inquiry into this legislation that reliance on oral particulars could result in more uncertainty about the legal status of decisions and whether there was jurisdictional error or not. Of course, this would result in more court appeals.

Instead of obscuring the review tribunal processes further, such as the measures in this bill have the potential to do, the government should be making the processes more transparent. By allowing proper legal assistance and more robust rules of evidence in the first place, tribunal decisions would be likely to face fewer appeals and operate more efficiently. If applicants feel like they have had a fair hearing, they will be less likely to lodge an appeal. Written particulars provide
black-and-white clarity that oral particulars do not.

The senate inquiry into this piece of legislation acknowledged many of the issues that I have spoken about. The inquiry recommended that proposed sections 359AA and 424AA are amended so that adverse material may only be provided orally at the election of the applicant. This amendment would improve this piece of legislation, and the Australian Greens will move such an amendment in the committee stage of this bill.

Last year, the Senate Legal and Constitutional Affairs Committee inquiry into the Migration Amendment (Review Provisions) Bill 2006 heard a lot of evidence about the culture and the operations of the department being oriented toward finding reasons to reject applicants. The committee heard—and I have spoken on this before—about a culture of suspicion, emanating from government ministers, permeating through the department. We heard about officers looking for a reason to catch someone out, rather than assessing each case with an open mind. We have all seen, from tribunal hearing transcripts, that there has been a concentration, in some of those cases, on small contradictions and anonymous dob-ins rather than the bulk of the evidence. The ministerial intervention process remains a black hole for transparency, and I have spoken much about that issue before in the chamber.

We should be amending the Migration Act to improve processing, not only in terms of speed and efficiency but also in terms of fairness. Certainly, we should not be passing amendments that sacrifice natural justice for efficiency.

The report of the Senate inquiry had 62 recommendations to improve the Migration Act. The government should be implementing these recommendations and, in the Greens’ view, abolishing failed policies, such as mandatory detention, off-shore processing and temporary protection visas, rather than making the system even more complicated for people who wish to call Australia home.

Senator ELLISON (Western Australia—Minister for Human Services) (5.23 pm)—in reply—I thank senators for their contributions to the second reading debate on the Migration Amendment (Review Provisions) Bill 2006 [2007] and the Migration Amendment (Border Integrity) Bill 2007. In order to achieve some brevity, I seek leave to incorporate my summing-up speech.

Leave granted.

The speech read as follows—
I thank the Senators for their contributions to the second reading debate on these bills. Australia has the most effective and comprehensive entry system in the world. The measures contained in the Border Integrity Bill seek to further strengthen this entry system, and maintain Australia’s position at the forefront of border control technology and initiatives.

The automated border processing system “Smartgate” takes advantage of new passport technology and facial recognition technology to enhance the way in which passengers’ identities are verified. These new processes will aid in combating identity fraud and act as a deterrent to the use of forged or stolen passports. Furthermore, automated clearance at the border will allow greater volumes of passengers to be processed and decrease passenger processing time, while enhancing the integrity of border processing.

The Border Integrity Bill also amends Special Purpose Visas. The Minister can issue a declaration which has the effect of ceasing a person’s Special Purpose Visa or preventing the grant of a Special Purpose Visa to a person. The Bill will allow the Minister to specify a time at which the declaration will take effect. This will provide the department with the authority to better manage the Special Purpose Visa client base.

The measures proposed in the Border Integrity Bill are designed to further strengthen the integrity of Australia’s borders, whilst also improving
the efficiency of immigration processes and administration.

The Review Provisions Bill strikes a practical balance between continuing to ensure that review applicants receive procedural fairness and ensuring that the Tribunals are able to provide procedural fairness in a way which is sufficiently flexible to be appropriate in each individual case. This is achieved by providing a discretion to the Tribunals to deal with adverse information orally at a hearing. The Bill also clarifies that adverse information which has already been provided by the applicant (other than orally) for the purposes of the decision under review, does not have to be given to the applicant for comment or response.

The Senate Standing Committee on Legal and Constitutional Affairs handed down its report on the Review Provisions Bill on 20 February 2007. I wish to record my thanks to the Committee for the valuable work which it has done throughout its inquiry into the Bill. I would also like to thank those people and organisations who provided thoughtful and considered input to the Committee.

The Committee recommended that the Bill be passed with an amendment so that adverse material may only be provided orally at hearing at the election of the applicant. However, the Government supports the passing of the Review Provisions Bill in its original form. This is because the recommendation would, to a large extent, nullify the objective of the Bill to allow the Tribunals flexibility in how they give procedural fairness to review applicants.

The Committee’s proposed amendment would remove the ability of the Tribunals to control the process by which adverse information is provided to applicants. Those applicants who wish to deliberately delay the review process could simply refuse to respond to adverse information put to them orally at hearing, even where they are perfectly capable of doing so. The Government’s long-standing objective of maintaining the integrity of the migration review process could be undermined because the Committee’s proposed amendment has the potential to be open to such abuse. In addition, the Committee’s recommendation would add an impractical process and introduce greater complexity to the conduct of Tribunal hearings.

Finally, I would remind the Senate that this Bill does not affect an applicant’s right to seek judicial review of a Tribunal decision. Access to the Courts remains intact.

I commend these Bills to the Senate.

Question agreed to.

Bills read a second time.

Ordered that consideration of the bills in committee of the whole be made an order of the day for a later hour.

BUSINESS
Rearrangement

Senator ELLISON (Western Australia—Minister for Human Services) (5.24 pm)—by leave—I move:

That the Senate continue to sit between 6.30 pm and 7.30 pm.

Question agreed to.

MIGRATION AMENDMENT (REVIEW PROVISIONS) BILL 2006 [2007]
MIGRATION AMENDMENT (BORDER INTEGRITY) BILL 2007

Consideration resumed.

In Committee

MIGRATION AMENDMENT (REVIEW PROVISIONS) BILL 2006 [2007]

Bill—by leave—taken as a whole.

Senator NETTLE (New South Wales) (5.24 pm)—by leave—I move Greens amendments (1) and (2) on sheet 5238 together:

(1) Schedule 1, item 2, page 4 (after line 2), at the end of section 359AA, add:

(2) Information adverse to the applicant may be provided orally only at the election of the applicant.

(2) Schedule 1, item 18, page 6 (after line 23), at the end of section 424AA, add:
(2) Information adverse to the applicant may be provided orally only at the election of the applicant.

As I indicated in my speech in the second reading debate, these amendments are recommendations of the Senate inquiry. They are about allowing information which is adverse to the applicant at the Refugee Review Tribunal or the Migration Review Tribunal only to be provided orally rather than in a written form at the election of the applicant. We believe that, as I indicated in my speech, these amendments improve the bill. We still have concerns around the bill.

These are the recommendations of the Senate inquiry that looked at this legislation. We think it is very difficult for applicants in the review tribunals on migration and refugees, particularly when they have language difficulties, to understand what is going on. We are not saying that you cannot have oral evidence, but we are saying it has to be the choice of the applicant that adverse information come through in oral rather than written form. I have outlined a number of these issues already in my speech in the second reading debate, and I am happy to simply proceed with the amendments.

Senator ELLISON (Western Australia—Minister for Human Services) (5.27 pm)—As Senator Nettle said, this was the subject of comment by the Senate committee. I have covered that in the speech in reply which I incorporated earlier. But I will go over that again.

It is the government’s view that these amendments would largely nullify the objective of the bill to allow the tribunals flexibility in how they give procedural fairness to review applicants. In particular, the proposed amendment removes the ability of the tribunals to control the process by which adverse information is provided to applicants. We believe it introduces a process which would involve greater complexity and would prove to be impractical. It could introduce a process that could be abused and it could result in applicants who wish to deliberately delay the review process simply refusing to respond to adverse information put orally at the hearing, even where they are perfectly capable of doing so at that time. So it is a situation where we believe the flexibility of the tribunal should be maintained, and the tribunals should govern the process by which the adverse information is provided to applicants. I understand that is a fundamental difference from what the Greens are saying, because they are saying the applicants should have that choice. We believe that if that is provided for in the manner that is stated, then the situation could prove to be not only impractical but also somewhat complex.

So, for those reasons, the government opposes these two amendments. I understand the Greens’ amendments cover much the same ground as those to be put by the opposition, and the comments I have made apply to the opposition’s amendments as well.

Senator LUDWIG (Queensland) (5.29 pm)—I understand that the Greens’ amendments and our amendments are similar, in the sense that they cover the same area. Since Senator Nettle has moved the Greens’ amendments I will speak to them now, and so, when I move Labor’s amendments, I will not speak to those at length—unless the chair can suggest another way of proceeding?

The TEMPORARY CHAIRMAN (Senator Hutchins)—No; you may proceed, Senator Ludwig.

Senator LUDWIG—Senator Nettle raised the fact that, in the Senate Legal and Constitutional Affairs Committee report, there were concerns about the bill which ultimately led to the committee recommending that the discretion to communicate adverse information orally should only be enlivened
if the applicant consents. If the applicant did not consent then the tribunal’s obligations would default back to the requirement to communicate in writing. The committee only made two recommendations: (1) that the bill be amended so that adverse material may only be provided orally at the election of the applicant and (2) subject to the preceding recommendation, that the bill pass.

It is one of those areas where, on the one hand, you want proceedings to be as informal as they can be so that parties can be heard and decisions made. It is supposed to be a place where people can get a decision relatively early in the process. But, on the other hand, you do not want parties to lose any rights along the way either. One of the concerns is that, if adverse communication is provided in writing, a person can reflect upon it, take it away to get legal advice and at least pause and think about it, but, if it is not, we could quickly find that the ability to correct the record has been lost. You would then have to go through some other mechanism to do that. There is that concern. I do not think the government has been able to provide a sufficient and cogent argument to persuade Senator Nettle or the Labor Party that this process that we are adopting is the best. We will ultimately support the bill, but we would prefer that the government adopted the committee recommendations in this area.

I also foreshadow the Labor amendments which give effect to the committee recommendation that the applicant be able to elect for the tribunal to communicate the information orally. The government has already indicated that it will not be backing that committee recommendation. It seems that it has the numbers today to be able to ensure that is the outcome. We believe that amendment should be supported though because it is likely to assist in ensuring the applicant understands the process and it would assist the applicant in trusting the tribunal’s decision.

They are the broad sweep of matters. We might end up revisiting this if it does not work. I do not want to see a situation in estimates where we start inquiring about how this process works and whether or not it works effectively. Estimates is a process where we do get that opportunity, but it is not one that I want to use for this. There are other areas that we can explore with the government during estimates. If the government can provide, or undertake to provide, information on how the process works, it would be helpful. If they could provide statistics on the number of times this device is used and whether or not there are complaints in the system, those types of things would help applicants understand. Additionally, I am sure that the government will go through a process of advising applicants in the system that this will be a particular way that information can be orally provided. Those are the types of things I expect them to do. I will certainly have the opportunity to check on whether they are doing it. Perhaps if I mention it now, it can forewarn them at least. With those words, I commend the Greens amendment, which we will support.

Senator ELLISON (Western Australia—Minister for Human Services) (5.34 pm)—I can give the undertaking which was sought by Senator Ludwig. Of course it is a process which we will keep under review. The process, and the various statistics which apply to it, will be made available. I see no problem with that.

Question negatived.

Senator LUDWIG (Queensland) (5.35 pm)—by leave—I move opposition amendments (1) and (2) on sheet 5239:

(1) Schedule 1, item 2, page 3 (line 17), before “the Tribunal”, insert “if the applicant consents.”.
I have already spoken in part on these amendments. The bill seeks to ameliorate the anomaly caused by the High Court and Federal Court decisions that have imposed a rigid requirement. That is what we are debating today. There is an overly onerous administrative burden on the MRT and RRT in order to satisfy statutory due process requirements and hence the bill confers a discretion on the tribunals to the effect that they can only orally communicate the particulars of any information that would be the reason, or part of the reason, for affirming the decision under review and invite the applicant to comment on the information. These amendments, which seek to give effect to the Senate Legal and Constitutional Affairs Committee recommendation, recommend that sections 359AA and 424AA be amended so that the discretion to communicate orally can only be enlivened when the applicant has given permission.

It would be a far better position for the government to adopt. I understand that the government has, then, at least listened in part to the debate in respect of the Greens amendment and provided some undertakings. As I said, in the event that our amendments are unsuccessful, we will nevertheless support the bill because it does go to at least ameliorating the anomaly that has been thrown up.

Question negatived.

Bill agreed to.

MIGRATION AMENDMENT (BORDER INTEGRITY) BILL 2007

Bill—by leave—taken as a whole.

Senator NETTLE (New South Wales) (5.38 pm)—I have outlined some of my concerns already my speech in the second reading debate. I wanted to hear from the government on the error rates for facial recognition technology in the trials of SmartGate. The information that the minister’s office provided to me earlier is an Australian Customs Service document, Overview of SmartGate trial, from February 2004. Is there anything more recent than that? This is a technology that is changing—I hope that it is improving—and I wondered about the current status of the error rates.

Senator ELLISON (Western Australia—Minister for Human Services) (5.39 pm)—I think the report that Senator Nettle is referring to, and the most recent evaluation, is that carried out by the Defence Science and Technology Organisation. That was a technical evaluation of SmartGate. The results showed that the percentage of users incorrectly rejected by the system was two per cent and the percentage of falsely identified users was less than one per cent for each presentation of the passport. So in the first case the accuracy was 98 per cent and in the second case it would have been 99 per cent. I think those statistics were referred to by Senator Nettle in the second reading debate. That is the current assessment that we have.

Of course this is technology which is, like any technology, evolving. We will have the trial in Brisbane, and the rollouts in Sydney and Melbourne will follow. Certainly we will have an evaluation from that trial and that will give us an ongoing assessment of it. It is the government’s view that this is technology which is proven—it has been part of a comprehensive three-year trial at Sydney and Melbourne airports. They were much smaller trials, involving a discrete group of passengers, if you like. The ones that we are embarking upon in Brisbane and subsequently in Sydney and Melbourne will be much bigger.

Senator NETTLE (New South Wales) (5.41 pm)—Could the minister indicate
whether the government is prepared to table the technical assessment by the Defence Science and Technology Organisation about SmartGate. I accept what the government is saying, but this is, as you indicated, a complex and changing technology. It would be useful to have the information on board, if that was possible.

Senator ELLISON (Western Australia—Minister for Human Services) (5.42 pm)—I do not have that report with me, but I can undertake to table it.

Senator NETTLE (New South Wales) (5.42 pm)—The Customs Service information that I got also refers to the expert evaluation done by Dr James Wayman and Dr Anthony Mansfield. Is it possible for that to be tabled? The reason in particular I am asking about tabling that piece of advice is that there are comments by Dr James Wayman, the Director of Biometric Identification Research at San Jose State University in California, in the Washington Post about this issue. In that he indicated that facial recognition technology was not reliable enough to be used on a wide scale. His comments as reported in the Washington Post were:

“Facial recognition isn’t going to do it for us at large scale,” Wayman said. “If there’s a 10 percent error rate with 300 people on a 747, that’s a problem.”

I note the comments in relation to his report in this Customs document that we have and the discrepancy in the comments he has made there and the comments he has made in the Washington Post. Does the government have an explanation for that discrepancy? Were they different trials he was talking about? Was it a different type of evaluation? I understood those comments were about SmartGate. I could be wrong. I wondered whether there was any possible explanation for that discrepancy. In order to assist with that process, is it possible to table the expert evaluation that was done by Dr Wayman and Dr Tony Mansfield?

Senator ELLISON (Western Australia—Minister for Human Services) (5.44 pm)—Certainly I have the report by the authors, Dr Wayman and Dr Mansfield, here, I will table the report. The report mentions the recent recommendation by the International Civil Aviation Organisation that facial recognition is the preferred biometric measure for border-crossing documents. That is quite an interesting recommendation by that body, because it controls aviation internationally.

I am not aware of the article in the Washington Post. The only thing I can say is that he may well have been referring to a system of comparing faces on a database rather than face to face, which is the SmartGate situation, where you place your passport down on the reader and the camera then reads your face as you stand in front of it. If I am wrong I will certainly clarify that but, as I understand it, comparing faces on a database is much like ‘face in the crowd’ technology, where you look at a database of faces. It does not present in the same way as with SmartGate. A consequence of that could be different results.

Senator NETTLE (New South Wales) (5.45 pm)—Thank you, Minister; I appreciate that. As far as the Washington Post article is concerned, I do not know either, so if there is any more info on that that would be great. I have a couple of other questions. As I mentioned in my second reading debate contribution, I understand there was an incident using SmartGate when two Asian businessmen swapped identities and were accepted through. Have the problems that led to that circumstance been addressed in any way: the operation of the system or the technology? That is just one situation I am aware of. There was public debate at the time that pointed to some difficulties with SmartGate.
I just wondered if the difficulties that led to that instance have been identified, improved or addressed.

Senator ELLISON (Western Australia—Minister for Human Services) (5.46 pm)—I have sought advice from the officials, and we are not aware of that situation. We will have to take that on notice. I am sorry we cannot give an answer here and now, but we will get back to Senator Nettle.

Senator NETTLE (New South Wales) (5.47 pm)—I have two other questions to ask in this arena. The first is: because the idea is that the SmartGate technology will replace the manual checks that Customs officers would normally do, has there been any assessment in the process of setting up SmartGate of the potential for the skills and the judgement of Customs officers to be undermined because they are not regularly involved in manual checking? The idea is that people will use SmartGate rather than manual checking. Everyone accepts that where there is an error there will need to be manual checking. Is that an issue that has been addressed in any of the assessments? Is it of any concern?

Senator ELLISON (Western Australia—Minister for Human Services) (5.47 pm)—In relation to the primary line at the airport, there will still be many passport holders who will have to be manually checked because the SmartGate system will only apply to a passport with an e-chip in it. That is what we are doing with Australian passports. If there is a rejection then that person is directed to a Customs officer, so there will still be training of Customs officers to deal with people in the time-honoured fashion. The SmartGate approach also involves the training of Customs officers so they will be ‘ambidextrous’. I still see many people being processed at the primary line by Customs officers because their passports are not capable of being part of the SmartGate process, so the skills will not be lost.

Senator NETTLE (New South Wales) (5.48 pm)—The final question I have is: how will you cope in a circumstance where the SmartGate system breaks down? What do you do at that point? Obviously the whole idea is to speed up the efficiency of the process. Every technology breaks down every now and again. Do you then have to triple the number of Customs officers? Is that part of the strategy of the way it is implemented, that you have a scenario for what you do in this instance, so that you have the capacity for your staff to come in and deal with that situation? Has that been part of the assessment and implementation process?

Senator ELLISON (Western Australia—Minister for Human Services) (5.49 pm)—I think it is fair to say that the only thing certain about an IT system is the lease payments. I see Senator Ludwig having a good laugh there. We have a capacity to take over and do things manually, as the Customs officers on the primary line have been doing in the past, and we can do that quite easily. You cannot say that any system is totally foolproof. If there were an outage of the system of some sort, Customs would have no trouble in manually processing people. It might not be as quick, but it would still do the job and border integrity would remain.

Senator NETTLE (New South Wales) (5.50 pm)—I just want to thank the minister for the answers to those questions. I am sure we will continue to pursue how the technology goes during estimates and through other processes.

Bill agreed to.

Bills reported without amendment; report adopted.
Third Reading

Senator ELLISON (Western Australia—Minister for Human Services) (5.50 pm)—I move:
That these bills be now read a third time.
Question agreed to.

HEALTH INSURANCE AMENDMENT (PROVIDER NUMBER REVIEW) BILL 2007

Second Reading

Debate resumed from 26 March, on motion by Senator Colbeck:
That this bill be now read a second time.

Senator GEORGE CAMPBELL (New South Wales) (5.51 pm)—I seek leave to incorporate Senator McLucas’s speech.
Leave granted.

Senator McLUCAS (Queensland) (5.51 pm)—The incorporated speech read as follows—
I rise today to speak to the Health Insurance Amendment (Provider Number Review) Bill 2007.

This Bill proposes that the biennial review process contained in section 19AD(1)—which reviews the operation of the Medicare provider number legislation—be replaced with a review process every five years, with the next review to commence in 2010.

The Health Insurance Act 1973 is the key legislative instrument providing for payments by way of Medical Benefits and payments for Hospital Services. Sections 19AA, 3GA and 3GC of the Act are collectively known as the Medicare provider number legislation. The sections were inserted by the Health Insurance Amendment Act (No. 2) 1996 in December 1996.

Section 19AA requires that medical practitioners who first obtained registration in Australia after 1 November 1996 have to satisfy minimum proficiency requirements, having either obtained a fellowship as a specialist, a consultant physician or a general practitioner, or registering on the Register of Approved Placements, before being eligible to access Medicare benefits. This covers both Australian and overseas trained doctors. Previously, new medical graduates had been able to apply for a Medicare provider number upon receiving their basic medical registration.

Section 3GA provides for a Register of Approved Placements, where doctors subject to section 19AA who are undertaking training towards Fellowship can provide professional services in approved placements.

Section 3GC provides for a Medical Training Review Panel whose functions are to compile information on the numbers of medical practitioners who are enrolled in, or undertaking, courses and programs, and the type and availability of such training. The Medical Training Review Panel also may establish and maintain a register of employment opportunities for medical practitioners, in such a form and containing such information as the Minister determines.

When Minister Wooldridge gave his Second Reading Speech on the Health Insurance Amendment Act (No. 2) 1996 he outlined the Government’s policy rationale underpinning the introduction of the sections outlined above:

Firstly, he argued then that the changes would increase the quality of health care available to the Australian Community by making sure that, in future, all general practitioners were properly trained and recognised the reality that a basic medical degree was no longer adequate for a doctor to practise unsupervised in the community.

Secondly, he argued that the new provisions would help correct some of the distribution problems with the medical workforce, noting the absurd situation of having to import more than 500 overseas trained doctors on temporary visas each year to work in our public hospital system, even though we had something like 4000 more doctors than our population would require.

Finally, the then-Minister Wooldridge argued that the measures would reduce one of the major growth pressures on Medicare, making it more sustainable in the longer term.

In 1996 Labor was wary of these changes. And while there has been some progress—the requirements of section 19AA continue to ensure that Australia’s GP workforce is well trained, and
the restrictions on provider numbers have served to curb one of the growth pressures on Medicare—there is more to do.

Australia remains beset with problems concerning the distribution of our medical workforce. In 1996, when the provider number legislation was first introduced, there was a recognised oversupply of general practitioners with an undersupply of GPs in rural and remote areas. Since then the situation has changed to an across the board undersupply of GPs, with shortages most acute in rural and remote areas and now also in many outer metropolitan areas.

We’re seeing this sort of problem across the country, where insufficient planning by the Howard government has resulted in doctor, dentist and nurse shortages impacting on the health of communities.

This is particularly so in regional, rural and remote Australia.

But the overall undersupply of GPs is all of this Government’s making.

Health workforce planning has been limited and ineffective in the life of the Howard Government.

Whilst health workforce planning is a complex task but we all know that it takes at least 10 years to train a GP. We also know that the increase in the number of female GPs resulted in overall less hours of practice. This is in no way a criticism of those women doctors. Their more family friendly work practices are to be commended and are also being adopted by their male counterparts.

It takes 10 years to train a doctor.

There are more women training and practicing as GPs. We know the ratio of GPs to potential patients by region. We know the number of specialists who are being trained.

There can be no excuse for the dire undersupply of GPs.

This undersupply can be sheeted directly home to poor planning by the Howard Government.

The introduction of section 19AA in 1996 was met with widespread concern among the professions that the new provision may adversely affect the future employment prospects of medical students and interns who were already in the system.

To address these concerns, and as a result of amendments in this Chamber, a sunset clause was attached to section 19AA, which was to expire on 1 January 2002. The sunset clause acted as a safeguard to ensure that the legislation would be revoked automatically unless it was demonstrated to Parliament that there were no significant adverse impacts on doctors affected by the changes.

The Senate also required a review of the operation of the legislation to be undertaken by the end of 1999. The mid-term review undertaken in 1999 recommended, among other points, that the sunset clause be removed so as to end the uncertainty faced by junior doctors and medical students.

In 2001 the Act was amended by the Health Legislation Amendment (Medical Practitioners’ Qualifications and Other Measures) Bill 2001, removing the sunset clause in section 19AA, and inserting a requirement in section 19AD(1) that requires that the impact of sections 19AA, 3GA and 3GC of the Act to be reviewed on a biennial basis, with a report be presented to Parliament by 31 December of the review year. Under these arrangements, biennial reviews were completed in 2003 and 2005.

Undertaken by a consultant appointed by the Minister for Health and Ageing—the review process has been well supported by stakeholders. The first mid-term review in 1999 received 15 written submissions, the 2003 review received 41 submissions, and the 2005 review received 24 submissions. On each occasion the review found continuing support for the operation of the Medicare provider number legislation as contained in sections 19AA, 3GA and 3GC of the Health Insurance Act. Each review made a series of wide-ranging recommendations concerning vital workforce issues, some of which have been adopted and implemented by the Government.

That is the background to this Bill. This Bill’s objective is now to replace the biennial review process in section 19AD(1) with a review process every five years, with the next review to commence in 2010.

Schedule 1 Item 1 specifies a five year review period, with the report for the next review due to be laid before the Parliament by the Minister no later than 31 December 2010.
So the major change is the period of review.
It is significant to note the 2005 review, for the
first time, commented on the level of support for
the review process itself. Notably, the review
found “unanimous support for the continuation of
the Biennial Review process” which was seen as
“useful means of monitoring the operation and
impact of the Medicare provider number legisla-
tion and a significant forum for advancing the
quality objectives of section 19AA of the Health
Insurance Act 1973”.

The review noted that some stakeholders consid-
ered that the reviews were too close together—
not allowing enough time between reviews for
recommendations to be implemented or evalu-
ated—while other stakeholders considered that a
longer period of time between reviews would
effectively act as a brake on the implementation
of recommendations arising from the review
process.

Notably, the report stated that “All agreed that
with the projected increase in medical graduates
from 2008, the Biennial Review would become
even more relevant in 2007 and 2009.”

Given these findings in the 2005 review it is curi-
ous, to say the least, that this proposal for a five
year interval has been put forward by the Gov-
ernment. Such a proposal was neither flagged nor
recommended by the 2005 Review process.

We have heard speculation from some stake-
holders that these changes to the review process
will in due course be followed by amendments to
the operation and mandate of the Medical Train-
ing Review Panel which operates under section
3GC. Perhaps that speculation provides some
explanation for the options that the government is
pursuing. Typical of this government, it has not
been forthcoming with this information.

Having said that, there is evidently support
amongst some stakeholders for a longer interval
between reviews, and the Government’s assertion
that the legislation is less contentious than it once
was appears from recent reviews to be legitimate.

The Explanatory Memorandum to this Bill states
that the review process takes nine months to
complete and requires significant Departmental
staffing resources. The 2005 review process cost
the Department $80,000 (including an independ-
ent reviewer, transport and accommodation costs)
and required the full-time secondment of two full-
time senior Departmental officers for approxi-
mately nine months for secretariat duties. Accord-
ing to the Minister’s second reading speech “In
total, the 2005 biennial review process exceeded
$180,000.”

With the changes proposed in this Bill the Gov-
ernment contends that “this financial impact will
be incurred every five year rather than every two
years”, a modest saving that Labor supports.

Accordingly, we are prepared to support the Bill.
But we do note some wariness in doing so, given
the review recommendations, given the changing
number of professionals that will be coming into
the sector and given our concerns that the issues
of workforce shortages and, in particular, distribu-
tion have still not been solved. They were not
solved by the original introduction of these provi-
sions and they will not be in any way further im-
proved by this bill.

Senator GEORGE CAMPBELL (New
South Wales) (5.51 pm)—I seek leave to
incorporate Senator Sterle’s speech.

Leave granted.

Senator STERLE (Western Australia)
(5.51 pm)—The incorporated speech read as
follows—
I rise to speak to this Bill which proposes that the
two year review process of the Medicare provider
number legislation, contained in section 19AD(1)
of the Health Insurance Act 1973, be replaced
with a review process every five years.

Before I go on to outline my concerns about this
Bill, I would like to draw the attention of Senators
to the Government’s response to a number of
facts and figures I presented when I spoke last
week, on a package of private health insurance
bills being moved by the Government.

To illustrate my points, I relied on officially pub-
lished statistics from the Australian Institute of
Health and Welfare, as I intend to do again today.

Upon the conclusion of my speech Senator Bran-
dis labelled my contribution as “silly”.

CHAMBER
When confronted with the facts, the best Senator Brandis could do was to try to gloss over them with nothing other than petty school boy taunts. I can tell you that having toughed it out with the best of them at Thornlie Senior High School in the 1970s, getting inane comments thrown at you from the likes of Senator Brandis is like a touch up with a scented silk handkerchief. All Senator Brandis proved is that Government Senators have nothing of substance to say when presented with the facts about how they have failed Australians in the last 11 years.

The Bill I rise to speak on today is about doing even less. And hasn’t this been a trademark of the Howard Government. As far as medical services are concerned, this Government has spent more and done less. So if it wants to do less about monitoring the provision of medical practitioner provider numbers it will be simply following the pattern of the last 11 years.

When the Howard Government came into office it started on its course of trashing the things that are so important to the lives of Australians, young and old.

Let me tell you—and the Australian people need to know this—that under this Government, Australia’s GP workforce has gone into free fall. It is critically ill and this is easily illustrated. At the risk of more schoolyard taunts from some of the sillier Senators opposite, and that’s a risk I am more than prepared to take—I refer Senators to the Howard Government’s own statistics, which show that in 1995/96 20% of Australia’s GP workforce were over the age of 54 years.

In the 2005/06 Government statistics this figure is shown to have risen to 32%. If this pattern continues almost a third of Australia’s GPs can be expected to leave the workforce within the next 10 years. Who is going to replace these doctors? The fact is, we don’t know. Over the past 10 years there hasn’t been enough young doctors entering the GP workforce to replace those who will leave.

In 1995/96 17% of the GP workforce was under the age of 35 years. In 2005/06 this figure had fallen to 7%.

This is a disaster. Over the next 10 years, somewhere in the order of 5000 experienced GPs can be expected to leave the profession yet they will be replaced by fewer than 1000 experienced doctors, who by that time will be in the 35-44 year age bracket. Under this Government, the only thing that is certain is that we are losing more experienced doctors than we are gaining.

The Government knows full well it takes from nine to 13 years for a doctor to be fully educated and trained. Spending a decade pursuing a culture of “she’ll be right mate” and letting the number of doctors dwindle, is not something that can be fixed in one or two years or on the eve of an election. A whole generation of potential new doctors has been lost through the inaction of a Government with a simplistic ideology that private health care is the answer to all health care.

To illustrate just how much this Government has been asleep at the wheel on the issue of medical practitioner training over the past 11 years, there are now less Australian trained GPs in the GP workforce than there were in 1996—when Labor was in Government.

What a testament to abject policy failure by this worn out, tired Howard Government. How a Government that is responsible for medical training policy and funding can manage in 11 years to reduce the number of Australian trained GPs in the workforce is beyond comprehension. In 1995/96 the number of overseas trained GPs was 24% of the GP workforce. By 2005/06 this figure had increased to almost 31% of the GP workforce.

At this rate, within another 10 years or so, more than half of Australia’s GP workforce will not come out of Australian universities but from overseas universities. Australians deserve much better than this.

Australians are now realising that the remedy will only come from a change of Federal Government. Because of the Howard Government’s health policy failure, Australia is going to have to depend on an increasingly high proportion of overseas trained doctors for decades to come.
But Australians are used to this from the Howard Government.

It’s the same Government who has been at the wheel while Australia has plunged head first into a massive skills shortage in other key trades and professions. While sufficient numbers of Australians were not given the opportunity to be trained in the required skills, the supply has had to come from beyond our shores.

Where is this deepening doctor supply crisis hitting worst?

I can tell you—in Australia’s rural and remote areas, like the Federal Electorate of Kalgoorlie. That electorate takes in the booming areas of the North West. Rich in iron ore and other minerals as well as natural gas, there is a screaming demand for workers—they can’t get enough.

But there is also a screaming demand for GPs to service the health needs of that growing population.

It is hard enough to get the workers in those areas, and the Howard Government’s failure to fund the training of enough doctors makes it even harder—families won’t go to areas if they think the health services are not adequate and there are not enough doctors.

In 1995/96 33% of GPs in rural and remote areas were overseas trained. By 2005/06 this figure had risen to 58%.

There is no doubt that a high proportion of overseas trained doctors provide high quality medical care.

Nonetheless, from the numerous events in recent years, the growing dependence by rural and remote communities on overseas trained doctors has resulted in far too many instances of very serious harm to patients.

The Howard Government has to take responsibility for this situation. It is the Commonwealth that funds medical practitioner training places.

It is the Commonwealth that runs the medical fee for service system.

It is the Commonwealth that issues Medicare provider numbers.

And it is the Commonwealth that controls the strategic policy and funding levers as far as medical services are concerned in Australia.

I particularly want to point out the mess the Howard Government has made of GP services in my home state of Western Australia.

According to Australian Institute of Health and Welfare published statistics, the number of employed medical practitioners to population in Western Australia, has fallen dramatically below the national average in the last 11 years.

In 1995/96 the number of doctors per head of population in Western Australia was 9% below the national average.

On the latest figures, the number of doctors per head of population in Western Australia is now 16% below the national average.

This is a telling indicator of the ineffectiveness of WA coalition members of parliament, in representing the essential interests of Western Australians.

It is also a telling indicator of the effectiveness—or lack of it—of the Federal Health Minister, who used some comments of mine to the Senate last week on private health insurance to suggest Labor is against the private health insurance rebate.

Let me tell Senators opposite and the Health minister that Labor is not against the private health system as a compliment to a strong public health system—so, as far as that goes, Labor agrees with the very same comment made in the other place by the Health Minister.

But what this Howard Government—and its Health Minister have failed to do is ensure that the public health system remains strong.

They should hang their heads in shame.

They have been total non-achievers in carrying out their obligations and duties to the community who rely on them.

This Government is always quick to blame the States and Territories when there is any problem with Australia’s health services.

But the Howard Government’s claim that their private health insurance policies have taken pressure off public hospitals doesn’t stack up.
It is most instructive to note that in the period 2000/2001 to 2004/05, because of the absolute failure of the Howard Government's private health insurance changes to relieve pressure on public hospitals, public hospitals have had to increase their medical practitioner workforce by 24% in just four years.

Since the introduction of the Howard Government's much crowed about private health insurance changes, public hospitals have had to embark on a massive exercise to increase medical practitioner numbers to cope with service demand growth.

What a piece of policy brilliance!

The Federal Government pours billions into the private hospital sector while the private hospital sector neatly cost shifts to the public hospital sector.

From 1995/96 - 2005/06 the cost of Medicare benefits for GP services increased by, wait for it ... over $1.8 billion.

Over the same period there was no actual increase in the number of services provided by GPs despite the fact that the nation's population grew by around 11%.

In other words in the ten years to 2005/06 the Government almost doubled the cost of its GP services bill and got no additional services for this extra expenditure.

How is this situation expected to take the pressure off public hospital emergency departments? We all know that it doesn't so why won't the Howard Government fess up?

If a private or public company was run like this, the clown at the top would get a multi-million dollar payout and be sent packing; while there would be a clean-out of the board.

The longer this Government is in power the more secretive it has become. It has developed and earned a reputation for treating members of the Australian community like mushrooms. Just keep feeding them the proverbial and keep them in the dark. The Australian public only gets information from this Government after it has been heavily filtered or is so out of date as to be almost useless.

Senators would be interested to note that back in 2001 the Federal Government had some very insightful things to say about medical workforce planning.

A report prepared by the Department of Health and Aged Care, titled “The Australian Medical Workforce”, says and I quote:

“Governments plan and intervene in medical workforce matters with the objective of ensuring access by the whole community to quality medical services. This objective is central to our health care system and enjoys consistent community support”

The report goes on to say:

“Universal access (to medical services) requires:

• A medical workforce which matches population need—that is, enough doctors of the right kinds in the right places”

I'd like to see that in Western Australia, enough doctors in the right places!

Back to the report and the requirements of universal access, it also says:

• The best expenditure of finite public resources—applying the rationing principle that services are accessible on the basis of individual need rather than ability to pay; and

• Medical services which are safe, of high quality and culturally appropriate.

And later in the report and I quote:

Without intervention by governments and other bodies these outcomes cannot be assured.

So there we have it. The Government department responsible for Australia's health care system had, back in 2001, no misunderstanding about the principles of universal access to health care and the philosophy behind the Medicare scheme.

We know that, because they published a very considered paper on it.

However, it's not words that count—and Senator Brandis should take particular notice of this—it's actions that count.

And what action has the Howard Government taken?
The answer is very simple - the progressive dismantling of the Medicare principles and universal access to health care.

Here we are, six years after the publication of a departmental report on Australia’s medical workforce and what does Australia have?

- The medical workforce does not match the population need;
- Access to government subsidised medical care does not match the objective of individual need over the ability to pay; and
- The safety, quality and appropriateness of medical services in many parts of the country have been compromised.

On this side of the Chamber we are not going to let the Government get away with endlessly snowing the electorate. We are going to continue to expose this Government and make them accountable.

The Howard Government has torn up their accountability contract with the Australian people and it’s time for the writ to be served.

As the Shadow Minister for Health, the Member for Gellibrand, said in the other place, Labor is prepared to support this Bill but in doing so we note that concerns about medical workforce shortages and in particular, distribution, remain unsolved.

Question agreed to.

Bill read a second time.

Third Reading

Bill passed through its remaining stages without amendment or debate.

APPROPRIATION BILL (No. 3) 2006-2007

APPROPRIATION BILL (No. 4) 2006-2007

Second Reading

Debate resumed from 28 February, on motion by Senator Brandis:

That these bills be now read a second time.

Senator GEORGE CAMPBELL (New South Wales) (5.54 pm)—I seek leave to incorporate speeches by Senators George Campbell, Ludwig, Murray and Stott Despoja.

Leave granted.

Senator GEORGE CAMPBELL—The incorporated speech read as follows—

The debate on the Appropriation Bills Numbers 3 and 4 gives us an opportunity to have a look at the Government’s claims of superior economic management.

We have heard the poll tested lines, it’s time to look at the substance of the economy, minus the spin.

From foreign debt to household affordability, from interest rates to industrial relations, the Government has demonstrated that it is out of touch and out of its depth.

Our net foreign debt is rising, rising, rising. Before John Howard became Prime Minister he was asked what he would do about our foreign debt.

JOURNALIST: Can you promise that foreign debt will be lowered in the first year of the Howard Government?

HOWARD: I can promise you that we will follow policies which will, over a period of time, bring down the foreign debt.

JOURNALIST: Over what time frame?

HOWARD: I can’t put figures on it in months, I can’t. I think it’s unreal to do that.

He has now had eleven long years. Let’s look at how much effect his policies to bring down foreign debt have had:
Our net foreign debt has nearly trebled from $193 billion to $522 billion.

Our foreign debt is now equivalent to more than 53% of GDP.

It’s a whopping $24,000 per person.

That’s the equivalent of a new hatchback for every man woman and child in this country. The debt truck is no longer a little van, it’s a fully laden car carrier.

So I guess we can say that the Prime Minister’s promise was non-core. Say it because it sounds nice, but forget about it when you get in.

But back in 1995 Mr Howard was very keen to talk about debt. In a speech to the Real Estate Institute on 17 October 1995 he had this to say:

‘The debt truck has helped heighten in the eyes of the Australian community the link between our level of overseas debt and the high level of interest rates ... obviously if one has to borrow money from a situation where one is already in debt, when one is heavily mortgaged ... obviously one is going to be charged a premium ... The same thing applies for a nation.’

Where one is already in debt, when one is heavily mortgaged, obviously one is going to be charged a premium.

The current account deficit tells the same story.

At a doorstep in Melbourne nearly exactly 12 years ago on the 24th March 2005, he was asked about the current account deficit.

JOURNALIST: Do you think there is pressure on interest rates at the moment?

HOWARD: Well, there is because there is concern that the Current Account Deficit is unsustainably high and there’s a very clear message unless the Government takes strong action on the spending side of the Budget there will be enormous pressure on interest rates and that will be bad news for home buyers and for the economy generally.

Notice that he said that high current account deficits place pressure on interest rates? Notice that he said that without action it would be bad news for the economy and for home buyers? Notice that he said that the only solution is ‘strong action on the spending side of the Budget’?

This Government has lost all credibility to speak on economic matters. The current account deficit is another example of why that’s the case. Since the Howard-Costello Government came to power, they have let the Current Account Deficit blow out to record levels.

The latest figure is $14.7 billion. This amounts to nearly 6% of GDP. And the trend line of the Current Account looks a lot like the Government’s polling numbers—a spike here or there, but mostly a big slide.

It’s fitting really that the Government should be under pressure at the moment when these things are impacting so heavily on Australian families.

This is the classic do-nothing Prime Minister. He long ago forfeited claims to fiscal rectitude with his infamous election year tactics—marginal seat residents know well to beware the attack of the pork barrel.

Remember the regional rorts last time around?

The bags of money thrown at the railway that was already bankrupt, the dredging of a creek that didn’t need dredging and the milk plant of a mate of the Minister’s?

The Government doesn’t run the economy for the benefit of the people of Australia. It runs the economy for the benefit of itself, have a snooze for two years and then turn the hose on to spray cash across the country in election years.

We all remember the speech Mr Howard gave at the last election launch where he committed to spend $6 billion in 60 minutes, going at $100 million a minute.

We can expect more of the same this year I’m sure, as the Government tries hard to put some speed-bumps in the road marked ‘terminal decline’.

It’s little wonder then that Saul Eslake, ANZ Chief Economist, was less than complimentary about their economic stewardship. In The Age on the 7th May last year we saw the following:

‘The resources boom has dropped $100 billion into the Government’s lap that they hadn’t expected in 2002 and they’ve spent all of it and a bit more.’ Mr Eslake says. ‘And I honestly and genuinely struggle to find anything that has been done with it bar win elections.’

CHAMBER
And yet the Government had the hide to criticise Labor’s $4.7 billion plan for a National Broadband Network. We plan to invest in the future, invest in productivity and invest in future growth, not buy votes.

The Government have no right to criticise the Opposition on the grounds of fiscal responsibility when experts agree with us that the Government aren’t doing anything barring pork-barrelling.

But even the Government’s pre-election pronouncements can come back to bite them. Remember at that same launch of the 2004 election campaign when the Prime Minister asked:

‘Who do you trust to keep interest rates at record lows?’

It’s apparent in hindsight that he can’t have meant that we should trust him. His implication that he is the man to keep interest rates low has been shown to be false.

Since that day in September 2004 the Reserve Bank has seen the need to raise interest rates not once, not twice, but four times.

Interest rates are now at their highest point in nearly ten years. But this doesn’t tell the whole story.

Household debt is much, much larger than ten years ago. The average household has a much greater sensitivity to interest rate rises than the Government realises. They can drag out old numbers and drag out old stories but they don’t understand the new interest rate reality.

Families are paying more interest now as a proportion of their income than ever before. Never under Paul Keating, not even under John Howard himself, when the cash interest rate hit its record of 20.77% in August 1982, have households paid out so much interest out of their incomes.

The Reserve Bank tells us that families are paying 9.3% of their disposable income on interest payments—53% more than they ever did under Paul Keating.

And every rise in interest rates is a sledgehammer to the foundations of family budgets. Every rise is another whack, driving cracks deep into families’ financial security. Every impact makes it that much harder to afford childcare, to afford school books and to afford dental care. Australian families are under stress, but this Government doesn’t get it.

Interest rates are also putting housing out of reach of a whole generation of Australians. The rise in house prices has given many Australian families significant equity in their homes, but it has also made entering the housing market incredibly difficult for young Australians.

On a $450,000 home loan, the four interest rate rises have added $80,000 in interest payments. In Sydney, you need an income of $145,000 to buy a median priced home.

The steps have been cut out of the ladder, a generation of young Australians may simply never live the great Australian dream of owning their own home.

Of course it doesn’t help when wages are being squeezed by the Howard Government’s radical and extreme industrial relations policies.

From November 2005 to November 2006, Average Weekly Ordinary Time Earnings rose by 3.0%. Total adult full-time earnings rose by only 2.6%. The Consumer Price Index measure of inflation rose by 3.3%.

So it is clear that in ordinary time terms real wages fell by 0.3%, and in total earnings terms real wages fell by 0.7%.

The numbers make it clear—Australian families’ pay packets are worth less than they were before WorkChoices.

It’s interesting that total earnings fell faster than ordinary time earnings. This could be a function of workers losing penalty rates. It could also be a function of workers losing leave loading. It could also be a function of workers losing shift loading, allowances, public holiday pay or overtime loading.

Whatever it’s a function of, it means less money in the hand at the end of the week. That’s less money to cover the mortgage, the private health insurance, filling the petrol tank and so on.

The Howard Government’s IR policies have been particularly bad for women.

There has been a 1.7 per cent increase in the gender pay gap over the last two years. The ABS Average Weekly Earnings data tells us that in May 2006 Australian women were earning 83.6
cents in the male dollar compared with 85.3 cents in May 2004.

The data show that Australian women working full time under an AWA earn $2.30 less per hour on average than those on collective agreements. This is $87.40 less per week based on a standard 38 hour week.

Australian women working part time under an AWA earn $3.70 less per hour or $85.10 less per week based on an average 23 hours per week.

Women working as a casual employee earn $4.70 less per hour for every hour they work.

We know that AWAs cut conditions. The Office of the Employment Advocate told us in Senate Estimates back in May. From the sample of AWAs they had taken:

- 51% cut overtime loadings
- 63% cut penalty rates
- 64% cut annual leave loading
- 46% cut Public Holiday payment
- 52% cut shift work loadings
- 40% cut rest breaks
- 46% cut incentive based payments and bonuses
- 48% cut monetary allowances
- 36% cut declared public holidays

More jobs, better pay? Not likely. Just more and more cuts to the take-home pay of working Australians.

We wanted to get updated figures on this, but conveniently the Government have stopped collecting the statistics. The Government is afraid of the truth on AWAs, though we all know what it is—AWAs cut conditions.

Labor plans to rip up AWAs and instead focus the industrial relations system on collective bargaining. We’ve got good reasons for doing this.

Firstly, collective bargaining balances the workplace. Employers and employees can come to the table on a level basis. The imbalance in bargaining power is removed.

Secondly, collective agreements boost productivity and allow employers and employees to come to flexible arrangements to best suit their circumstances. Australia had a spectacular burst of productivity growth from the time that Labor introduced enterprise bargaining in the early 90s. This productivity growth has slowed to a stop.

Yet the Government continues its baseless scare campaign on industrial relations. They and their market fundamentalist mates preach that fire and brimstone will be the result of Labor’s promise to do away with AWAs. But they are wrong, and don’t ask us, ask one of their AWA ambassadors.

If Senators had read the Sydney Morning Herald this week, they might have found a story titled ‘Poster boy reverses over work laws’.

In this story we see how Mike O’Hagon, ‘an industrial relations poster boy for the Federal Government’ finds that Labor poses no threat to his business.

Mr O’Hagon runs the MiniMovers removalists business in Queensland, which he started in 1985 with $200 and a ute and has progressed to a $23 million turnover business with 350 employees, most of whom are on AWAs.

Far from concerned about Labor’s plan to rip up AWAs, Mr O’Hagon says: ‘it wouldn’t make any difference to us as long as collective agreements are available’.

He also said: ‘As long as there is flexibility it will be all right and I think both sides of politics are agreed on that.’

Mr O’Hagon is right—Labor created the modern enterprise bargaining system and stands by it. Enterprise bargaining overseen by an independent umpire is the best way to ensure productivity and flexibility in the workplace.

Labor wants to put forward a positive agenda for the country.

We want to see the focus of the economy put on to promoting productivity growth.

We want to boost export growth, so neglected under this Government.

We want to boost investment in education and training to keep up to pace with our competitors and ensure that we develop skills and capacity in our people.

We want to fix up the infrastructure gaps that the Government has left to fester and rot so that in-
industry is not held up for want of essential infrastructure.

We want to put Australia on track for a renewed wave of growth. Australia cannot rely on the resources boom forever. Australia needs a government looking forward to opportunities for growth and development.

Australia needs a government willing to lead to provide a modern, competitive and productive economy. Australia needs a government willing to build a fair and balanced industrial relations system. Australia needs an education revolution to help us hit the next gear and drive this nation forward.

Only Labor can do all this. Only Labor understands the needs of Australian working families. Only Labor is committed to ensuring everyone gets a fair go and that our prosperity benefits all of us. Australia needs a Rudd Labor Government.

Senator LUDWIG (Queensland) (5.54 pm)—The incorporated speech read as follows—

I would like pay tribute to a truly remarkable young Australian.

Earlier this year I was amazed by a speech I heard while attending Australia Day Ceremonies on the Gold Coast.

Like many in this chamber, I have heard quite a number speeches in my time.

But there was something unique about this speech and it wasn’t just the way that it captured what it means to be an Australian.

What made this speech particularly remarkable was that it was written and delivered by a 12 year-old primary school student, Jack Harbour.

Jack is now a high school student at Merrimac State High, but he was only a year 7 student at Benowa State School when he wrote this speech for a speech writing competition.

It’s worth noting that Jack came second, so congratulations Jack for your achievement.

I have spoken to Jack’s mother Debra, and she has given me permission to have his speech about what it is to be an Australian recorded in Hansard:

You can’t tell an Australian just by looking at him. He might look like me—or you—or you. Just as you can’t tell an Australian who to vote for, what food to eat or even what footy team to follow. In fact, you can’t tell us much at all! And what it is to be Australian is different for every one of us here today, but we Australians share a feeling. A feeling of being ‘lucky’ because we live in the lucky country.

But it wasn’t always like this. Our earliest inhabitants suffered starvation and hardship under England’s rule. During the gold rush days, the people revolted and The Eureka Stockade was the first seed of freedom for this country.

But, it was our war heroes who gave us our freedom. I think the Australian spirit was born in the trenches of Turkey and France. Great men like John Simpson and Sir Edward Weary Dunlop portrayed the true Australian spirit, with their mateship and courage.

Since WW2, Australia has prospered. People from all over the world have flocked to the Lucky Country in search of a new life where hard work was rewarded. Multiculturalism has given us new talents, new foods and new mates.

We are the lucky Australians, because we have in this country what so many others don’t. We have wide open spaces to play sport, clean beaches and rivers to fish and swim in, clean streets to walk in and policemen and fireman to look after us. We have awesome food from all over the world, and we have bikes and computers and I pods to entertain us. Some of us even have mobile phones—unfortunately I am not quite that lucky yet—but I’m Australian so it’s only a matter of time before my mate Dad comes good with that!

We can ride horses, and we can play any number of sports, and when we’re a bit older we can choose what subjects we want to study. I’m hoping they’re going to let me choose to drop MATHS because then I’d feel real lucky! She’ll be right mate, we’ve got calculators!!

But most of all we’re lucky because we’re free. I think to be Australian is to have the same spirit as our soldiers, We need to be proud of this country, and preserve its history. We need
to care about the animals, birds and plants, but most of all we need to care about other Australians. We need to help our mates when they’re in trouble. And we need to laugh with our mates if they’re not in too much trouble!! We need to respect everyone from all cultures, because they have all contributed to our Lucky Country.

I am from English and German descent. My school teacher is from South Africa, and my French teacher from Greece. My best mates are Serbian, Filipino, and Australian, and I can thank the Japanese and the Italians for my favourite foods of sushi and lasagne. I like Shotokan Karate and my Shihan is British. I have a german dog, a korean TV, and an American computer. My shirt today was made in China, and I ride an Australian bike, probably made from imported parts!

I am free to change my music, my clothes, my sport and my opinion - and I am free to speak my mind in a forum like this, to Australians like you.

You are free to agree with me, or you may choose not to – we’ll still be mates. Because what it means to be Australian is to have that feeling. And - oh, what a feeling - Australia!!

Congratulations Jack, keep up the great work, you have a bright future ahead.

Senator MURRAY (Western Australia) (5.54 pm)—The incorporated speech read as follows—

As the Finance spokesperson for the Australian Democrats, I rise to speak to the Appropriation Bill (No. 3) 2006-2007 and the Appropriation Bill (No. 4) 2006-2007, which I shall discuss concurrently.

The Appropriation Bill (No.3) appropriates sums additional to those sought through the Appropriation Act (No. 1) 2006-2007 for the ordinary services of the Government.

Similarly, the Appropriation Bill (No. 4) appropriates sums additional to those sought through the Appropriation Act (No. 2) 2006-2007 to fund unbudgeted administered expenses and non-operating costs, that is, for purposes other than the ordinary services of government.

The additional amounts to be appropriated are valued at approximately $1.84 billion with $1.2 billion sought through Bill number three and $637 million sought requested through Bill number four. After accounting for savings, the net additional appropriations represent approximately 2.1% in additional funding requirements, a reduction from the 4.7% that was sought in the previous fiscal year.

It is important to remember that appropriations bills are not as important as one might think. The money bills in totality, that is all annual appropriation bills as a category, only represent a rough rule approximately 20% of annual Commonwealth spending.

Thus the $1.84 billion that we are deliberating over here today represents a mere one half of one percent of the total funding needs for this Government for the 2006-2007 fiscal year. Small bickies, relatively speaking, to a large bickie tin.

Now that we have some perspective on these additional appropriations, there are a couple of points that I wish to make. Firstly, we are here under the guise of good governance to approve an extension of budgetary spending by the Government.

These two bills only offer a semblance of good budgeting governance because 80% of Government funding, the critical mass, bypasses annual parliamentary approval and oversight as it is channelled via standing appropriations.

This Government’s excessive use of Standing Appropriations, in preference to Annual Appropriations via parliamentary money bills is the antithesis of good governance.

In a landmark report titled Transparency and accountability of Commonwealth public funding and expenditure tabled in March this year, the Standing Committee on Finance and Public Administration was unequivocal in its recommendations to Government that transparency and accountability needs to be improved when it stated: The Committee has made several recommendations and a number of suggestions which, if adopted, would go some way to restoring the Parliament’s constitutional and historical prerogatives with regard to the control of the Executive’s funding and expenditure.
There is no administrative or other merit in seeking to exempt the use of public funds from regular parliamentary scrutiny and approval. Yet standing appropriations have this very consequence and continue to grow unchecked.

In the words of Professor Stephen Bartos, a witness at the committee’s inquiry:

The implications of this are that there should be correspondingly greater attention paid to the performance of government programs funded via special appropriations (Professor Bartos, quoted at paragraph 3.14).

To this end the Committee’s Transparency and accountability of Commonwealth public funding and expenditure report recommended that:

The government produce and table with the annual budget documents a document that sets out the past and expected expenditure from all Special Appropriations. The data in that document should be set out against the programs that are funded from the relevant appropriation.

The committee’s recommendation was prefaced by the following words:

Government’s increased reliance on special appropriations as a main source of funding, together with the growth in cross portfolio programs with the attendant obstacles these pose for Parliamentary scrutiny, makes it important that the Parliament and its committees have readily available to them a consolidated document of special appropriations.

A document such as this would at least inform Parliament of the use of special appropriations, and this is a step in the right direction, albeit a rather small one, for the true goal to my mind, is to re-establish Parliament’s fiduciary role entrusted to it by the people to both authorise and supervise the raising and use of public funds.

This is not the role of the executive, because in the hands of the executive all control and accountability by parliament is lost, as is apparent by the quantum and value of the special or standing appropriations that have steadily grown over the life of the Commonwealth.

Indeed, they have grown to the extent where today we find ourselves in the ridiculous situation of participating in a parliament that is to all intents and purposes hamstrung when it comes to ensuring that the Government remains accountable for its use of public funds.

This situation is implied in yet another recommendation made by the recent Finance and Public Administration Committee report, which states:

The Committee recommends that the Government implement a system of review for standing appropriations to ensure that access to the CRF is withdrawn when no longer required and to ensure that standing appropriations are subject to periodic government and parliamentary review.

A more useful reading of this Committee recommendation is to rearrange the statement to highlight what Parliament presently lacks, that is to say:

The Government lacks a system of review for standing appropriations, the mechanism which is employed by Government to spend over 80% of public funds;

That access to the Consolidated Revenue Fund is not withdrawn because of the open-ended nature of standing appropriations; and finally

That standing appropriations are not subject to periodic government and parliamentary review.

The due process of parliament approving additional Government expenditure is supposed to be a significant and important occasion.

Other countries, some of our close peers, acknowledge and understand the corrosive effect of standing appropriations. In the United Kingdom for example, standing appropriations only amount to approximately 25% of total government expenditure, the inverse of our experience here in Australia.

More matters of concern are to be found in a report on the financial management of special (standing) appropriations in November 2004, the Australian Audit Office found widespread illegalities and lack of accountability and control in the management of these appropriations.

More than half of the appropriations were not properly reported by departments and agencies in their annual financial statements.

Returning for the moment to the matter of annual appropriations, the committee was concerned that agencies have had the ability ever since the 1999-
The Parliament is not given the opportunity to determine either the extent or the application of these carry-overs.

This issue has in part been addressed in the Committee report which recommends that Agencies report the amounts of their unspent appropriations and the reasons for the underspend to Finance at the end of each financial year and that the government tables in Parliament a consolidated report on the amount and reasons for the underspend within six months of the end of the relevant financial year.

As I have already stated, the two bills seek to appropriate an additional $1.84 billion in funding. Items of note include:

- $30.2m to the AFP to fund deployment to East Timor following civil unrest in May 2006
- $98m to Defence for additional ordinary services
- $84m in funding to enable payment for the Great Barrier Reef Marine Park Structural Adjustment Package
- $70m for the Health and Social Services Access Card Project.
- $136.1m for rebates for LPG vehicles; and
- $222.5m to the Department of Agriculture, Fisheries and Forestry in relation to finance for Exceptional Circumstances assistance support.

Many of these are no doubt worthy projects warranting additional funding. But I would note that the Parliament is being asked to provide $70 million in additional funding for the access card project, the enabling legislation for which was withdrawn just over a week ago. It was withdrawn because the Finance and Public Administration Committee reported that the government needed to go back to the drafting board to address defects in the legislation.

So money is being approved for a legislative proposal, which itself has neither been finalised as a bill nor been approved. This is dangerous, and the Minister of Finance needs to explain this matter to the Senate.

The merits or otherwise of the access card proposal have been raised elsewhere. What I question is the approach of the Government in seeking funding for an initiative before the Parliament has had the opportunity to both scrutinise the legislation to establish the measure and satisfy itself that public money should be spent on this measure. This is presumptuous, to say the least, and again antithetical to the Parliament’s constitutional and historic role in controlling the Executive’s funding and expenditure.

The Senate Committee has effectively said there must be no further erosion of parliamentary scrutiny of its expenditure by the Government.

If we carry on as present we could face a Government in the future that tries to appropriate all of its funding by means of standing appropriations.

A Government that is not accountable to its people through its parliament cannot claim to govern with a true mandate, and a Government that governs without a mandate is nothing but an elected dictatorship.

Notwithstanding my reservations, I maintain the Democrats long held stance of not blocking Government supply. The bills should pass.

Senator STOTT DESPOJA (South Australia) (5.54 pm)—The incorporated speech read as follows—

I would like to speak on the Appropriation Bill (No. 3) 2006-2007 and the Appropriation Bill (No. 4) 2006-2007. As always, these appropriation bills contain a raft of additional funding measures to be paid from the Consolidated Revenue Fund. While we will be supporting these bills, I will use this opportunity to briefly speak on some of the activities for which these bills are allocating money.

The Department of Human Services will be receiving $36.7 million under Appropriation Bill (No. 3) 2006-2007 and $34.4 million under Appropriation Bill (No. 4) 2006-2007 for the Access Card project.

The Government is yet to convince the Australian public on the necessity of having a ‘smart card’ to combat identity fraud and enhance service delivery. The Access Card project is proving a hard
sell for the Australian Government so it comes as no surprise to see the Government grant it additional funding.

In last year’s Budget, the project was allocated $1.1 billion over the next four years for the establishment and implementation of the Card. The measure also included funding of $47.3 million over four years for a communications strategy to ensure that all Australians are aware of the process for registering for the Card. So a hefty entitlement, a huge allocation of money is required in order to implement this Access Card, as it is being referred to, but which I prefer to call a national identity card, because it is an ID card by stealth; it is a de facto ID card.

I am also quite happy to refer to this card as the promissory card. I think this is an apt name for a card that promises to be all things to everyone but is destined to fail on all accounts.

From its inception, the card promised to assist in the fight against terrorism. That rhetoric has since stopped in the face of a lack of evidence to suggest that identity cards can be used as a means of preventing terrorism. Leading London-based human rights group Privacy International, in its interim report Mistaken Identity; Exploring the Relationship between National Identity Cards & the Prevention of Terrorism dated April 2004, found:

While a link between identity cards and anti-terrorism is frequently suggested, the connection appears to be largely intuitive. Almost no empirical research has been undertaken to clearly establish how identity tokens can be used as a means of preventing terrorism. ¹

The Government has also promised that there will be a range of fraud savings, $1.6 billion to $3 billion, over 10 years. Centrelink and Medicare estimate fraud and leakage in their respective organisations at around $1.4 billion to $2 billion annually. The smart card system is touted as delivering up-front savings of between $400 million and $800 million, principally consisting of reductions in identity-related fraud, abuse of concessions in Medicare and payment cancellations by Centrelink. Once fully operational the annual savings are estimated at between $125 million and $250 million.

The major problem with the Government figures in relation to the Access Card is that no one knows how they were arrived at. We know that there has been a report done by KPMG. The Government has released this report but in an edited format. Important costings have been held back on the account of them being commercially sensitive in the context of Government tendering for the smart card project. Well on March 16th the Government tender process closed and the Government is evaluating the bids. How long is this evaluation process to continue? Is this just a stalling tactic in order to deny the release of these figures?

I reiterate my calls to the Government to make available to Members of Parliament the full version of the KPMG report, not an edited version, and to do so with alacrity. Alternatively, give us new up-to-date costings. This request for further funding clearly indicates that the smart card plan the former Human Services Minister, the Hon. Joe Hockey MP, took to Cabinet is not the one the Australian public are being asked to consider, nor is it the one for which KPMG wrote a business case. Does the Government really have an idea how much this project is going to cost?

There is also a great deal of uncertainty in relation to how much identity fraud there is in the Australian community that can be directly attributed to welfare and social services fraud. The estimate of the cost and cost-savings for the tax-payer in relation to identity fraud remains unclear. Mr Jordan of KPMG in a recent Senate inquiry into the Access card estimated from Centrelink and Medicare alone the overall potential fraud and leakage in the system was $1.4 to $2 billion annually. This figure must be approached with caution. For example, it appears leakage might also relate to entitlement-based fraud and overservicing. KPMG have also not said how much identity fraud is used to perpetuate welfare fraud as opposed to the other types of identity fraud such as obtaining an identity card for the purposes of under-age drinking, tax evasion or credit-card.

The Access card project is the biggest IT project ever to be contemplated by an Australian Government, and as Gartner Asia-Pacific research vice-president Richard Harris commented: “Cost blow-outs and deadline problems are a fact of life
for even the best-planned IT projects.” As S2 Intelligence research principal Bruce McCabe commented “What are the chances of it finishing on time and on budget? Virtually nil, if you look at the experience of other large projects.”

There are several worrying features of this promissory card. The feature of most concern to the Australian public is the inclusion of a high-definition biometric photograph on the surface of millions of cards. The Government promises that the card will not become a universal form of identification. If the Government is telling the truth then I call on the Government to act now and end ordinary Australians suspicion that the smart card project is merely a platform for a national ID card by removing plans to include a photograph.

The Prime Minister has denied that the Access Card is “a Trojan Horse for an ID card”, but he will not rule out adding more functions to the smart card later. I am deeply concerned about function creep with this promissory card. It seems additional functions and features are being contemplated. At what cost, I ask? For the billion-dollar ball-park cost that has been announced, it’s difficult to know what the Australian public will get.

The prospect of having a consumer space as well as a Government space on the smart card chip has alarmed many in the community. Health professionals are concerned that sensitive health information, reserved for patient files, will now be in the public domain. Trusted and much loved health service providers like Medic Alert fear being legislated out of existence. In a meeting with my office the Chief Executive Officer advised that the misinformation and mistrust of the voluntary section of the smart card was already affecting their existing and potential client base. The Victorian Privacy Commissioner in her latest submission to the Fels Taskforce on its Discussion paper No 2 voluntary and medical information has stated blankly “no customer controlled area in the chip at all”. She also sums up the general mood about this customer controlled area in the chip in her following statement:

The chip will not only contain information said to be relevant for access to Commonwealth benefits and concessions; the bill creates a so-called customer-controlled part of the chip. As yet the size of this is unknown. What information could be put on this part of the chip is also unknown, save that the bill, in section 40, allows the cardholder to use the card for any lawful purpose. Apparently Queensland is already interested in it containing driver’s licence information. Other states and territories may follow.

Sections of the private sector such as banks are no doubt keenly interested. The consumer and privacy task force has just issued a discussion paper that flags that information such as allergies, drug alerts, chronic illness, donor status and next of kin may be included. The more information and the wider the diversity of the information that is to be included, the greater the security risks, especially, as has been suggested, if the customer has access to the information on the customer part of the chip and is able to update it or alter it from the internet-enabled home computer. Although the bill stipulates that the card cannot be required to be produced for purposes other than the purposes of the bill, if information such as driver’s licence information is included then mandatory production widens. It is also easy to predict that those that want to populate the customer part of a card will be able to coerce consent through such methods as significant financial incentives.

All around there are rumblings in the community that this promissory card is promising too much. I call on the Government to limit the scope of its smart card project now while it has the chance. This card should be about facilitating access to health and social services and the Government should desist immediately from calling it anything else. It should not be designed as a convenient form of identity or proof-of-age card, nor should it be designed as a convenient storage device for emergency and medical information, that will necessarily be sensitive and likely be viewed by any person with access to a card reader. The Government should not continue to ignore genuine concern across industry and the community that if the original and more narrow identification purpose is expanded, this may re-
sult in a extra cost and higher privacy and security risks.

Under these bills, I note that there is almost $12 million additional funding for the Australian Nuclear Science and Technology Organisation (ANSTO), though I am not surprised that the Government does not trumpet that expenditure in their second reading speech in this election year! We are, therefore, a little in the dark about what this expenditure is specifically for, even though it is one of the more significant funding appropriations in the bill. I do note though that approximately $1.6 million of that amount is for the removal of spent nuclear fuel from the ANSTO site – why has this cost more than expected?

We have seen ample evidence this year of this Government’s intention to establish a nuclear power industry in Australia. I have respect for Dr Ziggy Switkowski but I think it is not a good look that the Government would appoint him Chair of the Uranium Mining, Processing and Nuclear Energy Review and then appoint him Chair of the ANSTO Board almost immediately after the Government got the answer we suspect they were always hoping for from the Review.

We have experts from Australia and elsewhere around the world clamouring for immediate action to address climate change, and the Stern Review on the Economics of Climate Change gives us 10 to 20 years to act before global warming has an irreparable impact on our environment\(^1\), and this Government seems to believe that nuclear energy is the answer.

I have serious doubts about an energy technology being portrayed by the Government as a solution for our climate woes when the Government’s own nuclear energy review estimates that it would be 15 years before nuclear energy could be delivered to the grid in Australia\(^2\). And where does the Government expect to find the skilled technicians and scientists to run this industry when we are already facing skills shortages in other areas of science and engineering that we do actually have a strong history in?

Perhaps though I can finish by highlighting one area where these bills fall down. I notice that there is no new money under the Foreign Affairs and Trade portfolio for AusAID. I have lodged Questions on Notice at the Additional Estimates hearings in February this year relating to our aid budget and the Millennium Development Goals.

The United Nations estimates that aid donations from developed countries of 0.7 per cent of gross national income should be sufficient to meet the Millennium Development Goals. Currently our aid budget is around 0.3 per cent of gross national income, and this when Australia has been enjoying a long period of economic growth and the Government has been wondering what to do with its budget surpluses.

Even the Prime Minister’s announced increase in the aid budget to $4 billion by 2010 will leave us significantly short of the UN’s 0.7 per cent target. We are a wealthy country and we are being put to shame by others around the world that have met the UN target.

I look forward with interest to the Government’s answers to my Estimates questions but have to say that I am disappointed that the Government could not see fit to include some additional appropriations for AusAID.


Senator GEORGE CAMPBELL (New South Wales) (5.54 pm)—At the request of Senators Chris Evans and Murray, I seek leave to move a second reading amendment.

Leave granted.

Senator GEORGE CAMPBELL—I move:

At the end of the motion, add: “, but the Senate:

(a) notes that over $71 million is to be appropriated by these bills for project management and procurement activities for the Access Card project; and

(b) calls on the government to report to the Senate on the disposition of those funds should the Access Card project not proceed”.

Senator COLBECK (Tasmania—Parliamentary Secretary to the Minister for Finance and Administration) (5.55 pm)—I indicate that the government will not be supporting the amendment and I seek leave to incorporate my summing-up speech on the bill.

Leave granted.

The incorporated speech read as follows—

I rise to bring what has been a vigorous debate on Appropriation Bill (No. 3) 2006-2007 and Appropriation Bill (No. 4) 2006-2007 to a close.

I would like to thank those senators who have made a contribution.

The Additional Estimates Bills seek appropriation authority from Parliament to meet requirements that have arisen since the last Budget.

The total appropriation being sought through the Additional Estimates Bills this year is somewhat in excess of $1.8 billion, and arises from changes in the estimates of programme expenditure and from policy decisions taken by the Government since the last Budget.

The initiatives for which funding is sought in these Bills reflect the Government’s continuing commitment to:

- maintaining stability in our region and enhancing our national security;
- investing in families;
- investing in a more skilled and dynamic workforce;
- investing in alternative transport fuels; and
- providing additional assistance to those suffering the effects of the drought and those receiving structural adjustment payments following measures to protect the Great Barrier Reef Marine Park.

The more significant measures for which appropriations are proposed include:

- $64.7 million to fund Australian police deployments in East Timor (including the contribution to the United Nations Integrated Mission in East Timor); and to expand the International Deployment Group by about 114 personnel in 2006-07. The expansion will allow the AFP to respond more quickly and comprehensively to crisis situations and will help to strengthen law enforcement capabilities across our region;
- An additional $46.2 million to deliver Stage 1 of the Enhanced Land Force initiative to increase the size of the Australian Army by one light infantry battalion.
- A further $49.6 million is proposed to implement a number of innovative recruitment and retention initiatives to ensure the Australian Defence Force is able to attract and retain the people that are central to the maintenance of our defence capabilities.
- It is also proposed to provide $139.4 million for Operation ASTUTE to restore peace and stability in East Timor plus $49.7 million to acquire protective equipment to enhance the security and effectiveness of deployments to Iraq and Afghanistan.
• $34.9 million for the Protecting Australian Families Online package to create a National Filter Scheme to provide every Australian family with a free Internet filter as part of a comprehensive package of measures to crack-down on the scourge of Internet pornography;

• $53.6 million for the Skills, for the Future investment programme to support people aged 25 years and over who do not have a year 12 or equivalent qualifications and to promote career opportunities under the Skills for the Future initiative.

• Each year up to 30,000 vouchers valued at up to $3,000 will be made available to individuals in this group to undertake accredited literacy/numeracy, basic education and vocational certificate II courses;

• $136.1 million to encourage consumers to purchase new LPG vehicles and to convert existing vehicles to LPG;

• An additional $12 million to support primary producers in regions that have been declared eligible for Exceptional Circumstances assistance;

• and an additional $14 million to support primary producers in regions that have been declared eligible for interim income support.

• A further $17.3 million will be provided as taxable grants of up to $5,500 for eligible farmers, in areas that have been Exceptional Circumstances declared for more than three years, to obtain professional business and planning advice.

• $84 million has also been allocated for the Great Barrier Reef Structural Adjustment Package.

Strong Economy and Sound Budget Management
I wish to emphasise that the capacity of Government to respond effectively to the areas of need I have just outlined, is only possible because of our continuing strong management of the economy and ongoing economic reform.

The 2006-07 Mid-Year Economic and Fiscal Outlook reported that the economic and fiscal outlook for Australia remains sound, although the economy is being affected by a severe drought. Since 1996, the economy has enjoyed a long period of sustained growth; in 2006-07 it is forecast to grow by 2¼ per cent. During this sustained period of growth, the unemployment rate has fallen to 30-year lows, while inflation has remained moderate. The Consumer Price Index fell by 0.1 per cent in the December quarter 2006, to be 3.3 per cent higher than a year ago. The December quarter outcome was the first fall since the March quarter 1999, and reflected a sharp fall in petrol prices. In the period ahead, the CPI is expected to grow at a moderate rate.

The fiscal outlook continues to remain sound. The Government expects an underlying cash surplus of $11.8 billion for 2006-07, while surpluses are forecast over the forward years. These projected underlying cash surpluses emphasise Australia’s sound fiscal outlook at a time when many of the major advanced economies are continuing to experience significant deficits.

The Government has eliminated Commonwealth net debt and commenced saving for the future. $22.2 billion has been transferred to the Future Fund over the past two months, bringing the Government’s total contribution to over $40 billion. This is a significant contribution to help meet the Government’s superannuation liabilities. By addressing superannuation liabilities, the Future Fund will strengthen the Government’s financial position and help reduce pressures on the budget at a time when there will be spending challenges arising from an ageing population.

Conclusion
The people of Australia have enjoyed unprecedented economic prosperity thanks fundamentally to the Government’s impressive macroeconomic management. Through its commitment to sound financial management, the Government has put the budget in surplus, retired Government net debt, and commenced saving for its future obligations. This will free the next generation of Australians to meet their own challenges, unencumbered by the legacy of past Labor Governments that spent beyond their means.
These Bills are important pieces of legislation underpinning the Government’s programmes and reforms and deserve widespread support. I commend the Additional Estimates Bills to the Senate.

Question negatived.

Original question agreed to.

Bills read a second time.

Third Reading

Bills passed through their remaining stages without amendment or debate.

ADJOURNMENT

The ACTING DEPUTY PRESIDENT (Senator Moore)—Order! It being 5.56 pm, I propose the question:

That the Senate do now adjourn.

Fincorp

Senator WATSON (Tasmania) (5.56 pm)—Today’s editorial in the Sydney Morning Herald parallels many of my own thoughts on the collapse of the property and investment group Fincorp. It states:

Two hundred million dollars buys a lot of misery. That is the sum at risk . . . It is unclear how much will be recouped by the group’s 7,800 debenture holders, or when.

It continues:

If our ageing society is to become more self-reliant in managing its money for retirement, it needs more access, more reliable guides to investment.

I believe the role of the regulator is important, and this is where the regulator has fallen short. Yes, ASIC has intervened, on some occasions, in relation to prospectus shortcomings. But what about all the newspaper advertisements for the high interest rates that were on offer which old folks found so attractive? Those newspaper advertisements were certainly very attractive and, at the time, I took issue with them and asked ASIC what it was doing about them. It is almost a year to the day that I spoke in this chamber, waving those advertisements for all to see, about the problems at Westpoint. I then indicated that similar schemes were bound to occur in the future along the lines of Westpoint but in relation to other types of products. During that speech a year ago I sought an account from the regulator as to what it had been doing to protect retail investors from these sorts of advertisements. At a hearing of the Senate Economics Legislation Committee on 31st May 2006 I confronted the ASIC chairman and asked:

What action can be taken by ASIC or the parliament to intervene to stop any further losses of this nature reasonably quickly?

In his response, the ASIC Chairman, Mr Lucy, said:

In respect of the potential for others, we are surveilling the Australian financial market landscape very closely. We have dialogue with a small number of entities where we have varying levels of concern and we think that those issues are being managed satisfactorily.

Clearly, they were not.

At the same hearing, coincidentally, Fincorp was cited by Mr Cooper, ASIC’s Deputy Chair, as an example of where ASIC had taken action. I am not denying they did take some action. The committee sought an assurance from ASIC that it had, to use a colloquialism, a fence at the top of the cliff—in other words, a barrier before the people jumped in. Clearly, again it failed as a regulator.

In the 10 months following the appearance of ASIC before the committee, the recent events involving Fincorp show that retail investors are still at risk. It would appear, according to reports in the media this week, that the majority of investors were direct investors and did not have the benefit of investment advice. I note that the deputy chair, Jeremy Cooper, stated in the Financial Review on Tuesday, 13th September 2005:
problems arose because the sale of debenture products traditionally by-passed intermediaries such as financial planners because there is no commission and they realise that it is a high risk product.

Recognising that, why didn’t the regulator take more action? He goes on to say:

... we see ads with retired couples and Labradors. They were the advertisements that I was referring to almost a year ago today where I felt people were being misled. Why have these types of advertisements been allowed? And doesn’t the acknowledgement by ASIC of the absence of professional advice reinforce the need for much more diligence?

What is even more worrying, and a more significant indictment of ASIC, is that, unlike with Westpoint, which exploited a loophole in the law to avoid the prospectus requirements of the Corporations Act, retirees who invested in Fincorp debentures did so on the basis of a prospectus that was required by the law and which was lodged with ASIC. Further, even though ASIC claims it was on a high alert it took limited action—yes, it did take some action—to ensure that the investors were protected.

What Fincorp’s collapse shows us is that the retirement savings of many unsophisticated investors are at risk. In relation to Fincorp, I understand that, and I have to acknowledge it, ASIC placed a stop order on the Fincorp 2004 debenture prospectus in September 2004. ASIC then filed proceedings in the NSW Supreme Court against Fincorp alleging that the replacement prospectus failed to adequately or at all disclose all the risks associated with lending to related entities, did not disclose all the risks associated with lending to borrowers involved in real estate developments, did not disclose fees paid to director-related entities and made misleading statements in relation to security obtained for loans provided.

At the same time, the directors led a very high life. I think they had a yacht in the Sydney to Hobart yacht race. They certainly entertained lavishly on Sydney Harbour. Of course, there were large fees paid to interrelated entities. The Supreme Court, on 21 September 2005, ordered Fincorp to offer certain investors in the 2004 debenture issue prospectus a full refund. That was a good move. ASIC again took action on 12 September 2005 to stop advertising by Fincorp which included inducements like ‘Invest with certainty’ which was reported in the Australian Financial Review on 13 September 2005 in an article entitled ‘ASIC books Fincorp a second time’. I understand that concerns had been raised much earlier with ASIC, in June 2003, about Fincorp’s ability to deliver on its commitments and that ASIC failed to ensure that the orders of the Supreme Court were complied with. What is the point of getting an order if the regulator does not follow it up?

I conclude with the following thoughts. Debenture issuers are not subject to the same requirements as are the offerers of interests in what we call retail managed investment schemes where there is a fairly prescriptive regime that has to be followed. Where debenture offers are made to retail investors, ASIC should be looking not only at the disclosure of risk to investors but at the ability of the debenture issuer to meet its commitments, with particular regard to property valuations and the financial stability of the organisation’s intragroup funding and financial arrangements. So it is the fiddling that goes on within these sorts of organisations.

It is clear from ASIC’s actions against, for example, Bridgecorp Finance Ltd in August 2006 that it has the powers and is capable of taking this type of action. Why isn’t there a consistency across the retail investment spectrum? Given Fincorp’s poor record of compliance, why hasn’t ASIC sought orders, for
example, under sections 283HA and 283HB of the Corporations Act, similar to those obtained in the Bridgecorp matter? I believe this is another example of the regulator falling asleep at the wheel or simply being satisfied to watch the passing parade at the great expense of people who cannot afford to incur these sorts of losses. I thank the Senate.

Workplace Relations

Senator LUNDY (Australian Capital Territory) (6.05 pm)—I rise tonight to talk about a very disturbing series of incidents here in Canberra. A worker fell through a fifth-storey penetration on a Thiess Pty Ltd building site in the ACT on Wednesday, 8 February, at approximately 1 pm. The worker fell onto air-conditioning ducting being installed. This broke his fall and saved him from falling a further six to nine metres. Had the ducting not stopped him, the incident may well have been fatal. Thankfully, the worker in this case was not seriously injured. However, it is not yet 12 months since another ACT worker from another site, a family man Mr Nic Spasovski, was tragically killed by falling through a penetration on another ACT building site.

Thiess has, through company lawyers, denied any responsibility for any workers injured on their construction sites, claiming instead that employees are the responsibility of the subcontractor they employ. This is an indictment on what seems to be emerging as the preferred practice of large construction companies to change the culture of their traditional responsibility and general duty of care under the relevant legislation to a culture that tries to shift that responsibility onto subcontractors on the building sites. It advocates a culture of reaping the gains of the boom in the construction industry but not accepting any of the risks associated with potentially dangerous industries such as building and construction. I have to say that I am surprised and disappointed at what can only be described as a lack of concern by the company Thiess. I think that their attitude on this occasion has been quite high-handed and morally questionable. This is an example of how the federal government’s Work Choices legislation has had an impact on reducing the ability—

Senator Ian Macdonald—That is a very long bow.

Senator LUNDY—Senator Macdonald says that it is a long bow, but my personal experience on building and construction sites is that the safer sites are where you have the strongest union presence. One of the issues that has been made very clear to me is that as the unions’ role on building sites has been diminished under this government’s legislation, so safety on site has suffered.

This is the first example I have been given an insight into which starts to provide a very tangible expression of the change of culture that appears to be occurring. I would like to refer to the federal government’s own code of conduct. This code theoretically requires head contractors to ensure that their site is safe and that their subcontractors obey the law. That is my understanding of the law. I think we are all familiar with the Building and Construction Commission prosecuting unions, and yet they tend to be a tad idle when an employer fails to abide by the law. Thiess again demonstrated a remarkable lack of concern for the workers when, following this latest incident—which, just for Senator Macdonald’s benefit, is the one that occurred in February this year—

Senator Ian Macdonald—You said the same thing happened a year ago, long before Work Choices.

Senator LUNDY—Senator Macdonald, a similar incident happened over a year ago when a worker was killed. That is correct. But the issue I am talking about is the near
miss that occurred in February this year. Following this incident, Thiess sacked the first aid officer on the site for apparently allowing the injured worker to leave the site to seek medical attention before notifying the foreman. Initially, on 9 February, the first aid officer was issued with a formal warning by management on site. This was later withdrawn by management following representations by fellow employees.

Then on 15 February—about a week later—the first aid officer, Mr Steve Willetts, was sacked by Thiess. I am advised by the union, the CFMEU, that this kind of behaviour has become more prevalent. I am advised by the CFMEU that there is a culture of covering up incidents and it is not uncommon with this company. The union has heard that Thiess may be forcing injured workers back on the job before they have fully recovered, sometimes for just an hour a day so they do not have to lodge lost time injury reports with ACT WorkCover. I have been given two specific examples where this has occurred.

On advice from the union I learned that in December 2006 a young worker had his finger amputated after a workplace accident. Thiess apparently required this worker to attend work just long enough for them not to have to comply with the WorkCover rules, otherwise the incident would have qualified for a lost time due to injury reporting requirement. In another incident, for which I do not have the date, a worker apparently injured his back while working. Thiess paid for taxis to and from work so that he could attend for the minimum amount of time so that they did not have to put the lost time injury report to ACT WorkCover.

My understanding is that these things are being investigated. Clearly there is a great deal of frustration from the union that they are not being investigated or pursued in the appropriate way by the relevant federal authorities. For the record, if this behaviour is occurring, it is quite reprehensible and a clear indication of how much the occupational health and safety of workers has been allowed to slip, and the Work Choices legislation has contributed to this substantially.

Thiess have an injury management policy which states that all workers must attend a medical centre nominated by them, with a supervisor, in the case of any accident requiring medical attention. Requiring a supervisor to attend the appointment with the doctor not only jeopardises the injured worker’s right to privacy but constitutes another breach by Thiess. Requiring workers to attend the company’s preferred doctor is a breach of the Workers Compensation Act. It was Mr Willetts’s alleged failure to comply with what I think are illegal provisions of the company’s policy that ultimately led to his sacking. Despite the obvious claim now of unfair dismissal and despite my Liberal colleague Senator Humphries’s enthusiasm for leaping to the defence of workers on some previous occasions, I note that he has been unwilling and unavailable to stand up for Mr Willetts.

On the question of the unfair dismissal, the Office of Workplace Services has indicated that it is powerless to assist this worker in seeking justice as it is not an unfair dismissal but an unlawful termination. This means that Mr Willetts has no choice but to take his case to the Federal Court. So much for the protection of this kind of worker in this situation; what a joke! There is no independent umpire, and Steve Willetts is left to pursue the matter through the court system at a likely personal cost of some $30,000.

It is very clear to me that there is little protection for these workers in this environment. This is a case of unfair dismissal with identified breaches of the company’s policy that show it does not abide by the law, yet
the Office of Workplace Services appears to be incapable of taking on this issue and representing Mr Willetts in an unfair dismissal case. That is very disappointing. (*Time expired*)

Mr William Wilberforce

Senator BARNETT (Tasmania) (6.16 pm)—We all have heroes, and tonight I would like to speak about and celebrate the life of William Wilberforce. William Wilberforce’s impact on Australia was substantial. This week we celebrate 200 years since the abolition of slavery, and it is appropriate in that regard to recognise the impact of William Wilberforce across the globe and, in particular, in Australia. I note at the outset the motion moved in the Senate today by Senator Joyce:

That the Senate—

(a) notes that 25 March 2007 was the 200th anniversary of the passing of William Wilberforce’s bill for the abolition of the trans-Atlantic slave trade;
(b) commends the Government for continuing its work to eradicate the modern day version of slavery, the trafficking of humans for the sex industry in Australia; 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.

I celebrate the life of William Wilberforce because he had a significant influence in Australia. This week in the parliament we have had some special events to commemorate and celebrate the 200 years since the abolition of slavery. On 26 March, Dr Stuart Piggin, an associate professor and Director of the Centre for the History of Christian Thought and Experience at Macquarie University, gave a public lecture that I hosted in Parliament House on William Wilberforce and his impact on Australia, and I will share more about that shortly. The next day, on Tuesday, 27 March, World Vision sponsored an event with keynote speaker David Batstone, who gave a talk entitled ‘Liberating the captives: the rise of the global slave trade’. He has released the book *Not for Sale* and is the president of the Not for Sale Campaign, supported by World Vision and many others, which has the objective of stopping human trafficking in the sex slave industry.

William Wilberforce was born on 24 August 1759 and died on 29 July 1833—a life of 74 years. He was influenced as a young boy by his aunt towards evangelical Christianity and he attended St John’s College, Cambridge, where he befriended William Pitt, the future Prime Minister. While at university Wilberforce decided to seek election to parliament and, in 1780, was elected at the young age of 21 as the member for Hull. William Pitt became the Prime Minister in 1783 and Wilberforce became a very key supporter. He became the MP for Yorkshire in 1784 and embarked on a tour of Europe with a friend which changed his life and career. He resolved to commit his life and work to the service of God. He was counselled by John Newton, the author of *Amazing Grace*, as all of us are aware, and also by Pitt. They both advised him to remain in politics. He did so. He had two main objectives in his political career, and I would like to summarise them. His first objective was to stop the slave trade and the second was the reformation of public manners. He succeeded in both, primarily after his death.

William Wilberforce had a deep faith in Jesus Christ. He had a deep calling. He was also committed to a strategically important band of like-minded friends. He had a belief in the power of ideas and morals to change culture through a campaign of public persuasion. He was willing to pay a high price to achieve those objectives. You can see the length of time that elapsed between when he
started his campaign and his initial success in 1807 and then further success in 1833, just a month or so before he died, when the slave trade in the British Empire was abolished.

William Wilberforce had a genuine humanity rather than a fanaticism, and had strategic partnerships for the common good, irrespective of religion, ideology or method. I think his example counters the cynical pessimism of our day, of modern-day Australia, that an individual is powerless to effect change. He is a great example of a man who persevered and used what we sometimes refer to as the drip effect; he just kept chipping away, trying to make a difference, and he did.

Wilberforce was also involved in a whole range of other activities. He was a founding member of the Church Missionary Society, now the Church Mission Society, and of the Society for the Prevention of Cruelty to Animals, now the RSPCA. CMS Britain was responsible for sending the first chaplains to Australia, and I will comment more on that shortly. A CMS auxiliary was set up in Sydney in 1825, primarily to engage in work amongst Aboriginal people, with much influence in the Aboriginal community. The Benevolent Society of New South Wales was established by evangelical associates of his.

I will quote some of the comments Dr Stuart Piggin made in his public lecture about what Wilberforce did for Australia:

What did Wilberforce do for Australia? The waves created by his many societies for liberation, evangelisation and education washed over the Australian colonies. It will never do to think of your early population as made up of the great unwashed; for they were not unwashed by Wilberforce and his merry men and determined women. He unleashed a cleansing flood, not only through the large number of societies for human betterment which he supported in Britain which were reproduced in the Australian colonies, but also through the influence of the vast array of those who sought to emulate him: not only clergy and missionaries, but also settlers, governors and soldiers, merchants and farmers, and their wives and daughters.

In his address Dr Piggin referred to Wilberforce laying the foundations of the church in Australia. He also referred to the governors, specifically Governor Lachlan Macquarie. Macquarie was governor from 1810 to 1821 and transformed Sydney town through the implementation of Mr Wilberforce’s principles. In his first year in office Macquarie named a new township, on the north bank of the Hawkesbury, Wilberforce:

... in honour of and out of respect to the good and virtuous Wm. Wilberforce, Esq., MP—a true Patriot and the Real Friend of Mankind.

Stuart Piggin also referred to Darling and the abolition of transportation, to La Trobe and the care of Aboriginal people and the influence that William Wilberforce had in that regard. He said:

In 1833 Mr Wilberforce died, but his influence continued to spread in ever widening circles. In that very year the British House of Commons began an inquiry into the condition of native peoples in British settlements. Henceforth indigenous peoples were to be accorded justice, rights, civilisation, and Christianity, accepted voluntarily. This resolution of the House of Commons came from a motion from Mr Thomas Fowell Buxton, who assumed leadership of the anti-slavery movement from Mr Wilberforce.

About Wilberforce’s influence in Australia, Stuart Piggin said:

Mr Wilberforce accepted that he was not in politics to serve his own interests, but to act as a servant of Christ, a good model for a nation on the brink of self-government. His godly army abolished transportation, elevated a convict population, and transfused gospel values into your commercial institutions, your banks and newspapers and your legal system.

He referred to the two principles that Wilberforce lived by, including:
... that Christianity must be allowed to shape our social systems and national structures as well as our individual morality, and that vital religious faith is required if our cherished national values are to produce morality with civility.

In conclusion, I will say that the movie Amazing Grace will premier in the theatrette at Parliament House on 19 June, sponsored by me with World Vision. It is based on the Wilberforce story, and I am very much looking forward to it. I seek leave to table the public lecture by Dr Stuart Piggin, entitled ‘William Wilberforce and his impact on Australia’.

Leave granted.

Workplace Relations

Senator CROSSIN (Northern Territory) (6.26 pm)—I rise this evening to talk about the impact of Work Choices on families. Two weeks ago the Human Rights and Equal Opportunity Commission released an important report called It’s about time: women, men, work and family, which is the result of two years research and national community consultation. The report details a framework for reform which acknowledges the always changing family and carer responsibilities across the life cycle, and outlines the support Australians need in order to give themselves real options with regard to balancing paid work and care. As you will hear, Work Choices clearly does not provide this.

Undoubtedly, workplace relations impact on family life, so it is vitally important that when creating workplace legislation all aspects relating to it are carefully considered. This is not what the current government did when it pushed the Workplace Relations Amendment (Work Choices) Bill 2005 through parliament. Stories have been arising all over the country with regard to Australian workplace agreements taking away workers’ rights and entitlements, and more are coming out each day. The first and only set of statistics released by the Office of the Employment Advocate showed that 100 per cent of AWAs cut at least one protected award condition; 63 per cent of AWAs removed penalty rates, the compensation shiftworkers receive for working weekends and public holidays—valuable time that is spent away from their families; 50 per cent of AWAs took away shiftwork loading; and 22 per cent of AWAs contained no pay increases over the life of the agreement. There have been no further statistics released and no indication that there ever will be. Recently, the Australian Bureau of Statistics released data showing that people on AWAs actually earn less and work longer hours than those on collective agreements. How can this be supporting families?

The HREOC report acknowledged that there is clear community concern regarding the impact of Work Choices on family life. While the government is trumpeting the so-called flexibility that Work Choices gives families, HREOC discovered that one of the biggest concerns in the submissions they received was:

• the prospect of loss of control over working hours and its effect on the ability of employees to balance paid work and family/carer responsibilities;

There was also concern about:

• the prospect that minimum wages will be reduced over time because of the changes to wage setting;

• the lack of protection and possible discrimination in workplaces with less than 100 employees due to the removal of the unfair dismissal laws for businesses that fall within this category; and

• the reduced role of unions to bargain for family-friendly provisions or the right to have those provisions regulated through awards and collective agreements.

Various groups also expressed concern over the possible implications of the legislation for women, particularly the prospect of an
increase in gender pay inequity over time, and its impact on the choices men and women can make in relation to balancing paid work and care.

HREOC’s concerns went much further. They commented that Work Choices could potentially impact on the protection of workers with family and carer responsibilities, pay equity between men and women and the protection of employees in vulnerable and lower skilled positions in the Australian labour market. Workers with carer and family responsibilities have been identified by HREOC as particularly vulnerable, and there is much concern that these workers, in particular women, will be trading off wages in order to receive family-friendly employment conditions when in an individual bargaining environment. Acknowledging these concerns, HREOC stated, in recommendation No. 20:

That HREOC, in consultation with the Office of the Employment Advocate, develop community resources to assist women with workplace negotiation and individual bargaining.

I hope that that will be done and maintained through the network of working women centres, at least the couple that currently remain and are funded by the Office of the Employment Advocate. It would seem that at least recommendation 20 is a good case for this government to continue funding the working women centres and I look forward to seeing that continued funding in this year’s budget.

In order to help protect these workers, HREOC also stated, in recommendation No. 4, that legislation be introduced:

... to provide protection from discrimination for employees with family and carer responsibilities and a right to request flexible work arrangements. Obviously, the current legislation does not provide sufficient protection for these workers.

Currently the government has refused to let the Office of the Employment Advocate analyse and release data relating to AWAs. A very good point was raised by Mr Kevin Rudd during question time in the lower house on Monday, 26 March. Minister Hockey has previously claimed that there is no way of comparing AWAs with employment arrangements prior to the introduction of AWAs, yet, as Kevin Rudd rebutted, the government is constantly telling anyone who will listen that workers are better off under this new system and especially under AWAs. How is this possible? Is it not a contradiction?

Amongst other recommendations, HREOC put forward recommendation No. 11:

That the Office of the Employment Advocate be required to monitor and publish annually information about the wages and employment conditions in Australian Workplace Agreements with a particular emphasis on gender differentiated data.

That is something which the Howard government appears to be against, because they know it will demonstrate what the Work Choices laws really do: provide no choice, especially for those who are vulnerable, particularly women in the workplace.

There is quite clearly a concern amongst the Australian population that Work Choices is not supportive of families, no matter how much positive spin the government attempts to put on it. The HREOC report stated:

This paper has found that the current legislative framework is not adequate for supporting employees to meet their current and future care responsibilities.

Their final paper actually makes 45 recommendations aimed at helping Australian working families strike a balance. No doubt their report is a welcome contribution to this important debate. But the simplistic response of Joe Hockey and the Howard government
is that Work Choices and Australian workplace agreements are the answer to the work-family struggle. This government have failed to provide any evidence to prove their claim that AWAs are in fact delivering flexibility for working families.

The Bureau of Statistics released data last week that showed people on AWAs actually earn less and work longer hours than those on collective agreements. Research released in early March showed that Australians are working long and unpredictable hours—20 per cent of the people in this survey worked more than 50 hours a week; 30 per cent had to work on weekends; and some two million Australians worked more than six hours every Sunday. The only statistics that this government has ever released showed that 100 per cent of Work Choices AWAs removed at least one protected award condition.

Until this minister provides the data, he cannot continue to claim that working Australians and their families are better off. The Labor Party calls again on Minister Hockey to come clean about what AWAs are doing to Australian working families and calls on this government to respond properly to the HREOC paper and to respond to it promptly. We welcome this significant contribution to the work-family debate from the Human Rights and Equal Opportunity Commission. The balance of work and family is a key part of the modern industrial relations debate. Families are the cornerstone of our society and without families there is no foundation for anything else. Family life needs to be protected and Work Choices clearly does not do this. If families are not protected then I think our future is gravely at risk. The Labor Party is actually committed to an industrial relations system which helps Australians balance work and family life. We will consider the recommendations contained in the HREOC final paper. I want to place on record that the Labor Party believe the HREOC paper is a significant contribution to the current debate, and we look forward to this government’s thorough, prompt and proper response to this important contribution to the Work Choices debate in this country.

Workplace Relations

Senator IAN MACDONALD (Queensland) (6.35 pm)—I want to briefly comment on the unmitigated stupidity of the Labor Party’s attacks on Work Choices. Whilst I have a great deal of sympathy for the people that Senator Lundy mentioned—those who were injured on a work site—to try and associate a tragic workplace accident with the workplace relations laws is just absurd. Senator Lundy acknowledged that when she cited the two examples, one of which occurred more than a year ago—long before Work Choices was ever introduced. It just shows the absurdity and hypocrisy of the Labor’s attack.

The PRESIDENT—Order! The time allotted for the debate has expired.

Senate adjourned at 6.36 pm

DOCUMENTS

Departmental and Agency Contracts

The following document was tabled pursuant to the order of the Senate of 20 June 2001, as amended:

Australian Institute of Family Studies

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/A330/73—APU Generator Oil Pump Module [F2007L00844]*.


Customs Act—
Tariff Concession Orders—

Tariff Concession Revocation Instruments—

Financial Management and Accountability Act—
Net Appropriation Agreement for the Migration Review Tribunal and Refugee Review Tribunal [F2007L00774]*.

Fisheries Management Act—Northern Prawn Fishery Management Plan 1995—NPF Directions Nos—
103—Prohibition on fishing (prior to seasons) [F2007L00707]*.
104—Prohibition on trawling [F2007L00710]*.
106—Byproduct limits [F2007L00775]*.

Higher Education Funding Act—
Declaration under section 4—Australian College of Physical Education, Brisbane College of Theology, Sydney College of Divinity Ltd, Tabor College Tasmania, Tabor College Victoria [F2007L00840]*.

Higher Education Support Act—Higher Education Provider Approval (No. 5 of 2007)—Gestalt Association of Queensland Incorporated [F2007L00841]*.

Migration Act—Migration Regulations—
Instrument IMMI 07/011—Classes of persons who may make an internet application for a Tourist Visa [F2007L00869]*.

National Health Act—
National Health (Australian Community Pharmacy Authority Rules) Amendment Determination 2007 (No. 1) [F2007L00828]*.
Pharmaceutical Benefits Amendment Determination under paragraph 98B(1)(a) No. 5 [F2007L00839]*.

National Health Act—
National Health (Australian Community Pharmacy Authority Rules) Amendment Determination 2007 (No. 1) [F2007L00828]*.
Pharmaceutical Benefits Amendment Determination under paragraph 98B(1)(a) No. 5 [F2007L00839]*.

Public Lending Right Act—Public Lending Right Scheme 1997 (Modification No. 1 of 2007) [F2007L00858]*.

Radiocommunications Act—
Radiocommunications (Electromagnetic Radiation – Human Exposure) Amendment Standard 2007 (No. 1) [F2007L00812]*.

Telecommunications Act—
Telecommunications Integrated Public Number Database Scheme 2007 [F2007L00813]*.

* Explanatory statement tabled with legislative instrument.
QUESTIONS ON NOTICE

The following answers to questions were circulated:

**Defence: Equipment Exports**

*(Question No. 2981)*

*Senator Allison* asked the Minister representing the Minister for Defence, upon notice, on 6 February 2007:

> With reference to defence equipment exports as defined by the Defence and Strategic Goods List, for each of the top 200 export approvals:

1. What was the value?
2. What equipment was involved?
3. To what country or countries was the export made, or is planned to be made?
4. What organisation, company or government department was the planned recipient of the approved goods?
5. What assistance was provided for the sale by the department or Austrade?
6. What safeguards in the form of end user certificates were obtained?

*Senator Ellison*—The Minister for Defence has provided the following answer to the honourable senator’s question:

1. to (3) The details of the top 200 export approvals during the period 1 July – 31 December 2006, by value, for defence goods that are included in Part 1 of the Defence and Strategic Goods List published under the Customs Act 1901, are provided below.

4. Consistent with responses to previous questions of this type, the names of recipient organisations have not been released due to the Commercial-in-Confidence nature of the information.

5. This information is not recorded with export control data. Names of Australian companies are not passed to other agencies due to the Commercial-in-Confidence nature of the information. The Defence Materiel Organisation provides export facilitation assistance to Australian companies that may wish to export defence goods. Similarly, Austrade provides an export service, but this information is not shared with the Defence export control agency.

6. Each export application is considered on a case-by-case basis. Safeguards may be sought in some cases after consideration and a risk assessment by Defence. In some cases this may require end user certification, and in others delivery verification may also be required. Checks may be conducted with foreign governments or Australian officials (in location) may be requested to verify the end user and/or the end use.

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Discretionary Grants Central Register

(Question No. 3017)

Senator Mark Bishop asked the Minister for Finance and Administration, upon notice, on 20 February 2007:

With reference to the Discretionary Grants Central Register:

(1) For each of the financial years 2003-04, 2004-05 and 2005-06, what is: (a) the total value of grants approved; and (b) the total value of grants approved, broken down by state and territory.

(2) For each program in the register: (a) what is the name and description of the program; (b) what is the administering agency; and (c) for each of the financial years 2003-04, 2004-05 and 2005-06, what is: (i) the total value of grants approved, and (ii) the total value of grants approved, broken down by state and territory.
(3) What discretionary grants are not included in the register.

Senator Minchin—The answer to the honourable senator’s question is as follows:

The information sought in the question is readily available in relevant agencies’ annual reports. All government annual reports are required to be tabled by 31 October. Therefore the annual reports for the 2003-04, 2004-05 and 2005-06 financial years are all available.

Nuclear Proliferation
(Question No. 3023)

Senator Allison asked the Minister representing the Minister for Foreign Affairs, upon notice, on 23 February 2007:

(1) Is the Minister aware of the simultaneous press-conferences held by the Advisory Board of the Nobel Prize winning Bulletin of the Atomic Scientists on 17 January 2007, in which the hands of the iconic Doomsday Clock were moved forward from 7 minutes to midnight to 5 minutes to midnight.

(2) What significance does the Minister attribute to the fact that the decision to move the hands of the Doomsday Clock were taken by a board of advisors comprised of 18 Nobel Prize winning physicists, environmentalists and arms control experts.

(3) (a) Does the Government agree with other authorities, notably, former United Nations Secretary General, Mr Kofi Annan, the World Summit of Nobel Peace Prize Laureates held in Rome on 17 November to 19 November 2006, former United States (US) Secretaries of State, Henry Kissinger and George Schultz, former US Secretary of Defence, William Perry, former US senator, Sam Nunn, and former President of the Union of Soviet Socialist Republics, Mikhail Gorbachev, about the increasing urgency of measures to promote nuclear disarmament as well as non-proliferation; and (b) what is the reaction of the Minister to recent statements and articles by those figures.

(4) Will the Minister take steps, as suggested by the Advisory Board of the Bulletin of the Atomic Scientists, as well as Mr Annan, Mr Kissinger, Mr Schultz and Mr Perry, to raise the priority of both nuclear disarmament, non-proliferation and climate change in foreign policy.

(5) What new and additional steps will the Government take to adopt the advice of the Bulletin’s advisors and other eminent figures and to make a balanced approach to nuclear disarmament and non-proliferation the centrepiece of foreign policy.

(6) (a) How will the recent statements on the urgency and high priority of nuclear disarmament by so many prominent figures affect the Government’s approach to the meeting of the Nuclear Non-Proliferation Treaty (NPT) Preparatory Committee (Prepcom) to be held in Vienna from 30 April to 11 May 2007; and (b) specifically, what new and additional steps will the Government take at the upcoming NPT Prepcom to adequately reflect and respond to the concern expressed by so many eminent people.

(7) Will the Government take urgent steps, especially at the NPT Prepcom, to promote:

(a) the outlawing of nuclear tests by any nation and not only Iran and the Democratic People’s Republic of Korea;

(b) the universal signature and ratification of the Comprehensive Nuclear-Test-Ban Treaty, especially by the US and the People’s Republic of China;

(c) the continued reduction of strategic and other nuclear weapons stockpiles by the established nuclear powers and, particularly by the US and the Russian Federation below the numbers specified by the Moscow Treaty on Strategic Offensive Reductions;

(d) negative security assurances to non-nuclear armed nations by nuclear weapons states and others with nuclear weapons;

QUESTIONS ON NOTICE
(e) an immediate reduction in nuclear weapons operating status by the US and the Russian Federation, and by India and Pakistan such that a catastrophic accidental use of nuclear weapons or their use by malfunction or miscalculation is no longer possible;

(f) the removal of nuclear weapons use from national security doctrines, and the revision of nuclear postures to render their use highly improbable; and

(g) other measures as specified in the United Nations General Assembly (UNGA) resolution, ‘Renewed determination towards the total elimination of nuclear weapons’.

(8) Will the Government support other worthy measures in the UNGA such as: (a) the New Agenda resolution; (b) the Non-Aligned Movement resolution; and (c) the resolution, ‘Reducing Nuclear Danger’, sponsored by India.

(9) Does the Government intend to modify, accelerate, give greater priority to, or change in any other way to raise the priority of the abolition of nuclear weapons in the context of the NPT Prepcom, the 2010 NPT Review Conference and the alarming statements by so many authoritative figures.

(10) (a) What will the Government do to promote the representation of non-government organisations (NGOs) at the upcoming NPT Prepcom, in line with the highly positive statements toward NGO roles in the resolution, ‘Renewed determination towards the total elimination of nuclear weapons’; and (b) specifically, will the Government make a place for an NGO on its delegation.

Senator Coonan—The following answer has been provided by the Minister for Foreign Affairs to the honourable senator’s question:

(1) Yes.

(2) North Korea’s 9 October 2006 nuclear test and Iran’s continued development of uranium enrichment in defiance of the UN Security Council have increased concerns about nuclear proliferation.

(3) (a) and (b) Australia is an energetic and practical contributor on nuclear non-proliferation and disarmament issues. The Government takes a balanced approach to nuclear disarmament and non-proliferation.

(4) Nuclear disarmament, non-proliferation and climate change are important foreign policy priorities for the Government.

(5) The Government draws on a range of sources in formulating policy to advance Australian national interests. The Government takes a balanced approach to nuclear disarmament and non-proliferation.

(6) (a) The Government will continue to support the elimination of nuclear weapons through balanced, progressive and realistic steps.

(b) The Government has well-developed policies to promote nuclear disarmament. Nuclear disarmament measures the Government will promote at the NPT Preparatory Committee (PrepCom) in 2007 include encouraging the nuclear weapon states to make deeper cuts in all types of nuclear weapons, calling for the nuclear weapon states to further reduce the operational status of nuclear weapon systems and reaffirming the necessity of a diminishing role for nuclear weapons in security policies. Australia will maintain its strong support for the Comprehensive Nuclear-Test-Ban Treaty (CTBT) and for the negotiation of a Fissile Material Cut-off Treaty (FMCT) to ban the production of fissile material for nuclear weapons use.

(7) (a) The way to secure a lasting and legally-binding ban on nuclear tests by any nation is through universalisation of the CTBT. Australia is at the forefront of international efforts to attain this objective including through our role as current coordinator of international efforts to promote CTBT entry into force.

(b) See (7) (a)
(c) The Government supports deeper reductions in all types of nuclear weapons by all the nuclear weapon states. While welcoming the reductions agreed in the Moscow Treaty the Government has made clear that Australia looks to the United States and Russia to continue reductions to strategic and non-strategic nuclear weapons in both deployed and reserve holdings.

(d) As part of a Conference on Disarmament (CD) work program that includes a start to FMCT negotiations, the Government could support discussions in the CD on possible further measures to provide negative security assurances to the non-nuclear weapon states. Australia continues to attach great importance to Nuclear Weapon Free Zones as a vehicle for the NPT nuclear weapon states to provide binding negative security assurances to non-nuclear weapon states in such zones.

(e) As noted in (6) (b) the Government supports further reductions by the nuclear weapon states in the operational status of nuclear weapon systems. The Government does not intend specifying a timeframe for such reductions as they must be made in ways that promote international stability and security rather than to an externally imposed deadline. The Government notes that India and Pakistan in February 2007 signed an agreement on reducing the risk of accidental nuclear war.

(f) As noted in (6) (b) the Government continues to reaffirm the necessity of a diminishing role for nuclear weapons in security policies.

(g) As an early co-sponsor of the UN General Assembly resolution “Renewed determination towards the total elimination of nuclear weapons” Australia has made clear its support for this resolution.

(8) The Government’s position on individual UNGA resolutions can be determined only when the texts are known each year. The Government will continue to support nuclear disarmament resolutions that are practical and balanced.

(9) As noted in (6) (b) the Government already has well-developed policies to promote nuclear disarmament.

(10) (a) The Government expects that, as with past NPT PrepComs, NGOs will have an opportunity to address the conference. The Australian delegation will maintain contact with any Australian NGOs attending the PrepCom. (b) It has not been the practice to include NGO representation in Australian delegations to NPT meetings and the Government intends maintaining this approach for the 2007 NPT PrepCom.

**Zimbabwe**

(Question No. 3026)

**Senator Murray** asked the Minister representing the Minister for Foreign Affairs, upon notice, on 23 February 2007:

With reference to the article by R.W. Johnson in the *London Sunday Times* of 7 January 2007, ‘Zimbabwe, the land of dying children’:

(1) Can the Minister confirm that the broad detail of this article is accurate.

(2) Does the Minister agree with the author that ‘it is a genocide perhaps 10 times greater than Darfur’s and more than twice as large as Rwanda’s’.

(3) Can details be provided of all actions the Government is taking with respect to this human tragedy.

**Senator Coonan**—The following answer has been provided by the Minister for Foreign Affairs to the honourable senator’s question:
(1) The central claim of the article, that Zimbabwe is experiencing genocide, is based on projections that the population of the country should have reached 18 million people by 2006, compared to its estimated 2006 population of about 12 million. The projections on which this claim is based are disputed. There is no doubt, however, that the situation in Zimbabwe is dire. Inflation exceeds 1800 per cent per annum, over 80 per cent of the population live below the poverty line, unemployment is also above 80 per cent, infant mortality is 20 per cent and life expectancy has halved since 1990 to 33 years. The violent suppression of recent opposition protests also demonstrate that the regime continues to be ruthless in dealing with dissent.

(2) No.

(3) The Government has taken every available opportunity to condemn the Government of Robert Mugabe in Zimbabwe and to support democracy and human rights in Zimbabwe.

(a) In the Commonwealth, the Government supported Zimbabwe’s suspension from the Commonwealth in 2002. The Prime Minister chaired the Commonwealth Troika (comprising also the Presidents of South Africa and Nigeria) tasked with determining Zimbabwe’s status within the Commonwealth. Mr Downer, as vice-chair of the Commonwealth Ministerial Action Group, coordinated efforts to pressure Zimbabwe to return to the democratic principles enshrined in the Commonwealth’s Harare Declaration.

(b) On 13 October 2002 the Government announced that it had decided to implement financial sanctions and travel bans against Zimbabwean Government members and officials, as well as suspend defence sales and cooperation, and cultural and development cooperation. Since then, the Government has progressively strengthened the sanctions in response to the worsening situation in Zimbabwe, by including senior management officials of Zimbabwean state-owned enterprises in the financial and travel sanctions (announced on 4 March 2004) and by suspending visa-free transit rights to Zimbabwean passport holders (announced on 14 June 2005).

(c) The Government has maintained its firm support for the ordinary people of Zimbabwe. Australia has provided humanitarian assistance channelled through the World Food Program, the Food and Agriculture Organization, the United Nations Children’s Fund (UNICEF) and non-government organisations. Australia has also provided funds to civil society groups in Zimbabwe promoting human rights and democratic reform. Since 1 July 2005, Australia has provided in excess of $6.5 million to support the ordinary people of Zimbabwe.


(e) The Government lobbied successfully for the UN Secretary-General Special Representative’s report on the Zimbabwean Government’s “Operation Murambatsvina” to be referred to the United Nations Security Council on 27 July 2005 (see Mr Downer’s media release of 24 July 2005).

(f) The Government actively supported every attempt in the Third Committee of the United Nations General Assembly and the (then) United Nations Commission on Human Rights to highlight the gross misrule and abuse of democratic freedoms and human rights in Zimbabwe (see Mr Downer’s media release of 28 April 2005).
(g) In company with Canada and New Zealand, the Government brought the dire situation in Zimbabwe directly to the attention of the United Nations High Commissioner for Human Rights in 2005.

(h) In the International Monetary Fund, the Government supported the suspension of Zimbabwe’s voting and related rights and eligibility to use the general resources of the Fund, and has successfully pushed for the continuation of that suspension to the present.